ADMINISTRATIVE REGISTER OF KENTUCKY

LEGISLATIVE RESEARCH COMMISSION
FRANKFORT, KENTUCKY

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MEETING NOTICE

The Administrative Regulation Review Subcommittee is **tentatively** scheduled to meet on December 8, 1994, at 10 a.m. in Room 149 of the Capitol Annex. See **tentative agenda** on pages 1425-1427 of 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 - December 8, 1994, 10 a.m.
Room 327, State Capitol

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ADMINISTRATIVE REGULATION REVIEW PROCEDURE
(Also see KRS Chapter 13A)

Notice of Intent

Beginning July 15, 1994, administrative bodies shall file with the Regulations Compiler a Notice of Intent to promulgate an administrative regulation, including date, time and place of a public hearing on the subject matter to which the administrative regulation applies. This Notice of Intent, along with the public hearing information, shall be published in the Administrative Register. This Notice has to be filed and published in the Administrative Register, and the public hearing held or cancelled, prior to the filing of an administrative regulation.

After the scheduled hearing date, if held, the administrative body shall file with the Regulations Compiler a Statement of Consideration, setting forth a summary of the comments made at the public hearing, and the responses by the administrative body. This Statement shall not be published in the Administrative Register.

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.

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PS Form **3526**, Feb. 1989 *(See instructions on reverse)*

COMPILER'S NOTE: Administrative regulations **803 KAR 25:095 and 803 KAR 25:096** were found deficient by the Administrative Regulations Review Subcommittee on February 2, 1993. In accordance with KRS 13A.333, these administrative regulations expired on sine die adjournment of the 1994 Regular Session and were deleted from the 1994 Kentucky Administrative Regulations Service, which contained all administrative regulations in effect as of August, 1994. However, on October 5, 1994, it was brought to the attention of the Regulations Compiler that House Bill 928, §20, of the 1994 General Assembly (1994 Ky. Acts ch. 181, Sec. 20 - codified as KRS 342.734) provided that "...all administrative regulations heretofore promulgated by the Workers' Compensation Board...shall remain in effect...." This legislation had an emergency clause, and became effective on April 5, 1994. Therefore, **these two administrative regulations should have been included** in the 1994 Kentucky Administrative Regulations Service, and are printed for your information. **Please note,** 803 KAR 25:095 has since been repealed by 803 KAR 25:094, effective October 10, 1994.

803 KAR 25:095. Statements for medical services.

RELATES TO: KRS Chapter 342
STATUTORY AUTHORITY: KRS Chapter 13A, 342.020, 342.035, 342.260, 342.430, 342.735
NECESSITY AND FUNCTION: KRS 342.260 permits the Workers' Compensation Board to promulgate administrative regulations not inconsistent with KRS Chapters 13A or 342 for carrying out the provisions of the Workers' Compensation Act, and KRS 342.430 requires the board to prepare and furnish forms necessary for the efficient administration of the Workers' Compensation Act. KRS 342.735 requires the board to establish administrative regulations to expedite the payment of medical expense benefits. KRS 342.020 requires an employer, or insurer on behalf of the employer, to make all payments for medical services within thirty (30) days of receipt of a "statement for services". The function of this administrative regulation is to define what constitutes a "statement of services" requiring payment or challenge within thirty (30) days under KRS 342.020. Balance billing of employees is prohibited since all payments required for treatment under KRS 342.020 are to be made by employers or insurance carriers.

Section 1. Definitions. (1) "Statement for services" means, for the purposes of KRS 342.020(1), a completed Form HCFA 1500 or in the case of a hospital a completed Form UB-82, or successors to such forms prescribed by the Commissioner of Insurance, with the Kentucky Workers' Compensation Medical Provider's Certification attached.

(2) "Kentucky Workers' Compensation medical Provider's Certification" means a certification signed by the provider of medical services or supplies having the following content:

KENTUCKY WORKERS' COMPENSATION MEDICAL PROVIDER'S CERTIFICATION

The undersigned who has submitted the attached statement for services (Form HCFA 1500 or Form UB-82 or successor) does hereby certify that s/he has reasonable grounds to believe that the medical services, supplies or appliance(s) for which payment is sought were reasonably required as a result of the patient's having suffered a work-related injury or occupational disease.
Medical Provider:
Date:

Section 2. Payment or Challenge of Statements for Services. (1) Payment to a provider of medical services or a challenge to the compensability of medical services under the Kentucky Workers' Compensation Act shall not be required, and the thirty (30) day payment period of KRS 342.020 shall not commence to run:

(a) Until the employer or its payment obligor has received a substantially complete statement for services including the Kentucky Workers' Compensation Medical Provider's Certification;

(b) During such period as a medical provider fails to respond to a reasonable information request served by the employer or its medical payment obligor under KRS 342.020(4); or

(c) During such period as the employee's designated physician fails to provide a treatment plan when required by 803 KAR 25:096.

(2) In the event payment of a statement for services is delayed by the occurrence of any of the events set forth in subsection (1) of this section, the employer or its medical payment obligor is granted twenty (20) days after the receipt of a substantially complete statement for services, medical information release, response to a reasonable request for information, or a "treatment plan" as defined in 803 KAR 25:096 in which to either make payment or file a Request to Resolve Medical Fee Dispute (Form 112).

(3) Should the employer or its medical payment obligor fail to make payment by reason of the occurrence of any of the events of subsection (1) of this section, written notice setting forth the reason for nonpayment shall be promptly sent by mail to the medical provider and employee.

(4) If the medical provider renders a statement for services containing charges in excess of those provided in an applicable fee schedule adopted by the board, the employer or its medical payment obligor may make payment in the scheduled amount and serve written notice to the medical provider of the reason for refusing to pay a greater amount. The notice shall include a specific explanation of the manner in which a fee schedule was applied to reduce the charge contained in the statement for services. The medical provider may dispute such payment in accordance with 803 KAR 25:012, provided that the Request to Resolve Medical Fee Dispute is filed within twenty (20) days of receipt of a written notice of refusal to pay the full amount charged.

Section 3. Balance Billing. (1) No provider of workers' compensation medical services or treatment, or agent, servant, employee, assignee, employer or independent contractor acting on behalf of any workers' compensation medical provider shall knowingly collect, attempt to collect, coerce, or attempt to coerce, directly or indirectly, the payment by a workers' compensation patient of any charge for services covered by KRS 342.020 in excess of that provided by a fee schedule adopted by the board, nor cause the credit of any workers' compensation patient to be impaired by reason of the patient's failure or refusal to pay the excess charge.

(2) If only a portion of the charges contained on a statement for services is reasonably disputed by an employer or medical payment obligor, the balance upon which there is no dispute shall be paid in a timely manner as provided in KRS 342.020.

Section 4. Miscellaneous. (1) The Kentucky Workers' Compensation Medical Provider's Certification may be executed on behalf of the provider of medical services or supplies by any employee or agent who is authorized to execute billing forms UB-82 or HCFA 1500 for that provider.

(2) Patient history, written or oral, and information from the employer, medical payment obligor, prior medical providers, referring providers or their agents may furnish reasonable grounds for the belief that the medical services, supplies or appliances were reasonably required for a work-related injury or occupational disease. (19 Ky.R. 1496; Am. 1805; eff. 3-9-93; Repealed by 803 KAR 25:094, 10-10-94.)

803 KAR 25:096. Selection of physicians and treatment plans.

RELATES TO: KRS Chapter 342
STATUTORY AUTHORITY: KRS Chapter 13A, 342.020, 342.035,

342.260, 342.320, 342.735

NECESSITY AND FUNCTION: KRS 342.260 requires the Workers' Compensation Board to prepare such administrative regulations as it considers necessary to carry on its work and the work of the administrative law judges under KRS Chapter 342. KRS 342.735 requires the board to establish administrative regulations to expedite the payment of temporary total disability and medical expense benefits. The function of 803 KAR 25:096 is to regulate the selection of physicians and provide for treatment plans under KRS Chapter 342 in order to assure high quality medical care at a reasonable cost.

Section 1. Definitions. (1) "Long-term medical care" means:

(a) Medical treatment or medical rehabilitation that is reasonably projected to require a regimen of medical care for a period extending beyond three (3) months.

(b) Medical treatment that in fact continues for a period of more than three (3) months.

(c) Medical treatment including the recommendation that the employee not engage in the performance of the employee's usual work for a period of more than sixty (60) days.

(2) "Physician" means physicians and surgeons, psychologists, optometrists, dentists, podiatrists, and osteopathic and chiropractic practitioners acting within the scope of their license.

(3) "Designated physician" means the physician selected by the employee for treatment under KRS 342.020.

(4) "Treatment plan" means a written plan which may consist of copies of charts, consultation reports or other written documents maintained by the employee's designated physician discussing symptoms, clinical findings, results of diagnostic studies, diagnosis, prognosis, and the objectives, modalities, frequency and duration of treatment. It shall include, as appropriate, details of the course of ongoing and recommended treatment and the projected results.

(5) "Emergency care" means those medical services required for the immediate diagnosis or treatment of a medical condition that if not immediately diagnosed or treated could lead to serious physical or mental disability or death, or medical services that are immediately necessary to alleviate severe pain.

Section 2. Kentucky Workers' Compensation Physician Designation and Medical Release Card. (1) As soon as practicable after receiving notice of the occurrence of a work-related injury or occupational disease for which the employee has sought or intends to seek medical treatment, the employer or employer's medical payment obligor shall mail to the worker the Kentucky Workers' Compensation Physician Designation and Medical Release Card in the format of Form 113 or similar format approved by the Department of Workers' Claims.

Section 3. Employee Selection of Physician. (1) Except for emergency care, all treatment for a work-related injury or occupational disease shall be rendered under the coordination of a single physician selected by the employee. The employee shall give notice to the employer, as soon as practicable, of the selection of a "designated physician". The designated physician may refer the employee to such additional physicians or medical service providers as are reasonably necessary for treatment or evaluation.

(2) A physician accepting the employee's selection of him as "designated physician" shall forward a completed copy of the Kentucky Workers' Compensation Physician Designation and Medical Release Card to the representative of the medical payment obligor.

(3) Following his initial selection of a designated physician, the employee may change designated physicians not more than one (1) time without authorization by the employer or its medical payment obligor. Thereafter, the employee may not, except as may be required by medical emergency, make additional selections of physicians without the employer's or medical payment obligor's or an administrative law judge's written consent. Such consent shall not be unreasonably withheld.

(4) This administrative regulation does not prohibit the direct utilization of licensed medical professionals acting within the scope of their authority.

Section 4. Necessity for Treatment Plan. (1) When as a result of a work-related injury or disease an employee has been placed under long-term medical care, the designated physician shall prepare a treatment plan. A treatment plan may be amended, supplemented or changed as conditions warrant.

(2) If the employee has received treatment with passive modalities, which may include electronic stimulation, heat/cold, massage, ultrasound, diathermy, whirlpool or similar modes over a period exceeding sixty (60) days, a treatment plan shall be prepared which details the need for such treatment; the benefits, if any, derived from such treatment; the risks attendant with termination of such treatment; and the time frame in which such treatment is proposed to continue.

(3) A treatment plan shall be prepared and furnished to the employer or its payment obligor seven (7) days in advance of an elective surgical procedure or placement of the employee in a resident work hardening, pain management or medical rehabilitation program. The treatment plan shall set forth specific and measurable performance goals for the employee through any surgery, work hardening, or medical rehabilitation program.

(4) Except as provided in subsection (3) of this section, whenever a treatment plan is required to be prepared, amended, supplemented or changed pursuant to this administrative regulation, it shall be served by mail upon the employer or its medical payment obligor within fifteen (15) days of request.

(5) Preparation of a treatment plan as required by these administrative regulations is a necessary part of the care to be rendered to the patient and is an integral part of the fee authorized in a medical fee schedule for the underlying services. No additional fee shall be charged for the preparation of a treatment plan or progress reports, except a reasonable amount for the photocopying and mailing of such records.

Section 5. Experimental or Questioned Procedures. (1) When the employee has chosen a medical doctor as his designated physician, charges for treatment, diagnostic modalities, or methods which have been determined by the American Medical Association to be experimental, ineffective, of questionable value, cost ineffective, or harmful to the patient, shall be deemed noncompensable under KRS 342.020 unless rendered with the employer's or medical payment obligor's consent.

(2) When the employee has chosen a chiropractor as his designated physician or the designated physician has referred the employee to a chiropractor, charges for treatment, diagnostic modalities, or methods which have been determined by the American Chiropractic Association to be experimental, ineffective, of questionable value, cost ineffective, or harmful to the patient, shall be deemed noncompensable under KRS 342.020 unless rendered with the employer's or medical payment obligor's consent.

(3) After a Kentucky Workers' Compensation Physician Designation and Medical Release Card has been issued to the employee, the employee shall present the card to medical providers each time medical services are sought in connection with the work-related injury or occupational disease. The card will serve as authorization by the employee to the medical provider to release information as required by KRS 342.020(4).

(4) If the employee elects to change his designated physician, this shall be noted upon the Kentucky Worker's Compensation Physician Designation and Medical Release Card, and the physician accepting the new designation shall promptly forward a copy of the card reflecting the change to the medical payment obligor.

(5) The medical payment obligor shall have available, during

regular business hours, an agent who will answer telephone inquiries from medical providers or the employee concerning the claim.

Section 6. Forms. (1) Form 113 is hereby adopted and incorporated in this regulation by reference.

(2) Information available.

(a) Information and material is available for public inspection and copying at main, regional, and branch offices of the agency:

1. Frankfort - Perimeter Park West - Building C, 1270 Louisville Road, Frankfort, Kentucky 40601;

2. Louisville - Fourth Floor - The Meyer Building, 624 West Main Street, Louisville, Kentucky 40202;

3. Lexington - 950 Commerce National Building, Lexington, Kentucky 40507;

4. Paducah - 220B North 8th Street, Paducah, Kentucky 42001; and

5. Pikeville - The Justice Building, 3rd Floor, 314-316 Second Street, Pikeville, Kentucky 41501. (19 Ky.R. 1498; Am. 1806; 2043; 2246; eff. 3-9-93.)

NOTICES OF INTENT TO PROMULGATE ADMINISTRATIVE REGULATIONS

KENTUCKY HIGHER EDUCATION STUDENT LOAN CORPORATION

Date: October 18, 1994
Kentucky Higher Education Student Loan Corporation

(1) **15 KAR 1:040** - The subject matter of the proposed administrative regulation is the Federal Consolidation Loan Program.

(2) The Kentucky Higher Education Student Loan Corporation (KHESLC) intends to promulgate an administrative regulation governing the subject matter listed above, particularly, the process by which a borrower who has loans eligible for consolidation may receive a federal consolidation loan from KHESLC.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 29, 1994, at 1 p.m., at 10180 Linn Station Road, Suite C, Louisville, Kentucky 40223-5631.

(4)(a) The public hearing will be held, if it is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and a minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If 5 persons, or an administrative body or association, request this public hearing, and agree in writing to be present at this public hearing, it will be held as scheduled.

(c) If a request for a public hearing is not received from the required number of people at least 20 days prior to December 29, 1994, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Higher Education Student Loan Corporation, 10180 Linn Station Road, Suite C, Louisville, Kentucky 40223-5631.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Kentucky Higher Education Student Loan Corporation at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to borrower eligibility for consolidation of student loans is KRS 164A.040(1) and (2), 164A.050(2), 164A.060(1), 164A.065, and 164A.240(1)-(8).

(b) The administrative regulation that the Kentucky Higher Education Student Loan Corporation intends to promulgate will not amend an existing administrative regulation, and will constitute a new administrative regulation. It will establish the requirements for eligibility for a federal consolidation loan. KHESLC intends to promulgate an administrative regulation that will set forth the requirements for obtaining a federal consolidation loan. The Federal Consolidation Loan Program is one means by which KHESLC may improve and promote the educational opportunities of qualified students. By making consolidation loans, KHESLC hopes to make repayment of educational loans more convenient for student loan borrowers. The administrative regulation will require that the borrower meet certain eligibility criteria in order to qualify for a federal consolidation loan, as follows:

1. The loans to be consolidated must be eligible loans, either:
   a. Stafford Loans (formerly Guaranteed Student Loans);
   b. Federal Insured Student Loans (FISL);
   c. Supplemental Loans for Students (SLS) (formerly Auxiliary Loans to Assist Students (ALAS));
   d. Perkins Loans (formerly National Direct-Defense Student Loans (NSDL));
   e. Health Professions Student Loans (HPSL);
   f. Federal PLUS (Parent) Loans made or refinanced on or after October 17, 1986; or
   g. Health Education Assistance Loans (HEAL).
2. The loan(s) to be consolidated must be owned by KHESLC or verification must be received from lender(s) currently holding loans that the lender(s) has waived the option at consolidation or have denied a previous consolidation application.
3. The borrower must be in the grace period or repayment status on all loans being consolidated.
4. The borrower must not have any other application pending for a consolidation loan.
5. The borrower must be a U.S. Citizen, U.S. National, or an eligible noncitizen, as defined in 34 CFR Part 668.
6. The borrower must supply a minimum of two verifiable personal references who are not attending an educational institution.
7. The borrower must have an acceptable credit history. If the borrower's past credit history is adverse, the borrower must demonstrate that he/she has made an effort within the last year to resolve past delinquencies. This includes defaulted student loan borrowers who have made at least three consecutive satisfactory payments as that term is used in 34 CFR §682.
8. Borrower must be gainfully employed at the time of application or otherwise have sufficient verifiable income to cover the loan debt.
9. A married couple is eligible to receive a joint consolidation loan if each:
   a. Agrees to be held jointly and severally liable for the repayment of the total amount of the consolidation loan;
   b. Agrees to repay the debt regardless of any change in marital status; and
   c. Meets the other requirements for the making of a consolidation loan, except that only one person has to make the certification contained in item 2, above.

(c) The Necessity and Function of the proposed administrative regulation is as follows: The proposed regulation is necessary to implement the Higher Education Act of 1965, as amended (20 USC §1078-3) now in effect, and to conform to 34 CFR Part 682 published in Federal Register Vol. 59, Number 123, June 28, 1994 at page 33334 et seq., in anticipation of those regulations taking effect July 1, 1994 and July 1, 1995. The regulation is needed to conform to changes affecting the Federal Consolidation Loan Program pursuant to PL 103-66 and 103-208. There is no existing regulation that sets forth the requirements for borrower eligibility under the Federal Consolidation Loan Program.

(d) The benefits expected from administrative regulation are: A borrower that has student loans may consolidate those loans according to the above criteria. This regulation will enable the borrower to easily identify, under the criteria, whether he is qualified for a federal consolidation loan from KHESLC.

(e) The administrative regulation will be implemented as follows: The administrative regulation will delineate the types of information that must be submitted by the borrower and will be considered in the determination of whether the borrower is eligible. The administrative regulation will establish the criteria for evaluating the borrower's eligibility for a federal consolidation loan. The administrative regulation will require that a borrower complete a consolidation loan application, a promissory note, and a credit information sheet. KHESLC will evaluate the application according to the above criteria and verify the credit information. The borrower will receive written notification of a

credit decision. If the loan is approved, lender verification certificates will be sent to the borrower with instructions to complete, sign, and return to KHESLC. Upon receipt of the completed lender verifications from the borrower, KHESLC will forward the lender verifications to the appropriate lenders, in order to receive accurate payoff information on loans to be consolidated. Upon receipt of lender verifications from all lenders, checks will be sent to each lender in order to pay them in full. These payoff figures will be added together, making up the original principal balance of the federal consolidation loan.

BOARD OF NURSING

Date: November 11, 1994
General Government Cabinet
Board of Nursing

(1) **201 KAR 20:085.** Licensure periods.

(2) The Board of Nursing intends to amend the administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 29, 1994, at 9 a.m. (EST) in the Boardroom, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received at least twenty (20) days prior to December 29, 1994, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to regulation of nursing is KRS 314.131.

(b) The administrative regulation that the Board of Nursing intends to promulgate will amend 201 KAR 20:085, Licensure periods. It will change the expiration dates of licenses issued after June 1 of licensure period.

(c) The Necessity and Function of the proposed administrative regulation is as follows: To provide for licensure periods for licenses issued and to provide for expiration dates of licenses.

(d) The benefits expected from administrative regulation are: To allow licenses issued after June 1 of the last year of the licensure period to expire during the following biennial period.

KENTUCKY STATE BOARD OF PODIATRY

Date: November 10, 1994
Kentucky State Board of Podiatry

(1) Regulation Number and Title: **201 KAR 25:011**, Approved schools; examination application; fees.

(2) The Kentucky State Board of Podiatry intends to amend the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 29, 1994, at 9 a.m., in the Capitol Building, 1st Floor, 701 Capitol Avenue, Room 141, Frankfort, Kentucky.

(4)(a) The public hearing will be held if it is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and a minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If 5 persons, or an administrative body or association, request this public hearing, and agree in writing to be present at this public hearing, it will be held as scheduled.

(c) If a request for a public hearing is not received from the required number of people at least 20 days prior to December 29, 1994, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William B. Pettus, Office of Attorney General, Civil and Environmental Law Division, P. O. Box 2000, Frankfort, Kentucky 40602-2000.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from William B. Pettus at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to examination of applicants for a podiatry license is KRS 311.410(4).

(b) The administrative regulation that the Kentucky State Board of Podiatry intends to promulgate will amend 201 KAR 25:011. For example, Section 2 will be amended to permit the board to permit an applicant to file a partially completed application and be eligible to take the qualifying examination if good cause is shown.

(c) The Necessity and Function of the proposed administrative regulation is as follows: KRS 311.420 requires all persons engaging in the practice of podiatry in Kentucky to be licensed by the State Board of Podiatry. KRS 311.420 provides that each applicant shall submit to an examination conducted by the board. This regulation establishes the procedures to be followed in obtaining an application, the fees to be charged, and the procedures relating to the examination and issuance of a license to practice podiatry in this state.

(d) The benefit expected from this administrative regulation is that an applicant for a podiatrist's license will be permitted to take the qualifying examination even though the application is incomplete through no fault of the applicant.

(e) The administrative regulation will be implemented as follows: Incomplete applications will be reviewed by the president of the board to determine if good cause exists to permit the applicant to take the qualifying examination.

TOURISM CABINET
Department of Fish and Wildlife Resources

Date: October 20, 1994
Tourism Cabinet
Department of Fish and Wildlife Resources

(1) **301 KAR 2:221.** Waterfowl seasons and limits.

(2) The Department of Fish and Wildlife Resources intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 29, 1994, at 9 a.m. in the Commission Room, Arnold L. Mitchell Building, at the Game Farm, five miles west of Frankfort on U.S. 60.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least five persons, or an administrative body, or an association having at least five members; and

2. A minimum of five persons, or the administrative body or association agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing is not received from the required number of people at least 20 days prior to December 29, 1994, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to The Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601.

(b) On the request for public hearing, a person shall state:

1. "I agree to attend the public hearing"; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request from the department at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation an administrative regulation governing waterfowl seasons is KRS 150.015, 150.021, 150.170, 150.175, 150.300, 150.330, 150.340 and CFR Chapter 59 Part 20.

(b) The administrative regulation that the department intends to promulgate will not amend an existing administrative regulation. It will replace Sections 2 and 3 or 301 KAR 2:220, which will be repealed. Substantive changes from 301 KAR 2:220 are:

1. Changing opening and closing dates of waterfowl hunting seasons to account for calendar shifts;

2. Extending the closing date in the Western Duck Zone from January 5 to January 30;

3. Allowing hunters to include one (1) canvasback duck in their daily limit; and

4. Limiting the number of brant included in the daily limit to two (2).

(c) The necessity and function of the proposed administrative regulation is to establish waterfowl hunting seasons within federal guidelines mandated by the United States Fish and Wildlife Service.

(d) The benefits expected from the administrative regulation are allowing waterfowl hunting within season dates and bag limits which conserve the waterfowl resource.

(e) The administrative regulation will be implemented as follows: The department will inform the public about its provisions through brochures and mass media channels. It will be enforced by the department's Division of Law Enforcement.

Date: October 20, 1994
Tourism Cabinet
Department of Fish and Wildlife Resources

(1) **301 KAR 2:222**. Waterfowl hunting requirements.

(2) The Department of Fish and Wildlife Resources intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 29, 1994, at 9 a.m. in the Commission Room, Arnold L. Mitchell Building, at the Game Farm, five miles west of Frankfort on U.S. 60.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least five persons, or an administrative body, or an association having at least five members; and

2. A minimum of five persons, or the administrative body or association agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing is not received from the required number of people at least 20 days prior to December 29, 1994, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to The Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601.

(b) On the request for public hearing, a person shall state:

1. "I agree to attend the public hearing"; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request from the department at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation an administrative regulation governing waterfowl hunting is KRS 150.015, 150.021, 150.170, 150.175, 150.300, 150.330, 150.340 and CFR Chapter 59 Part 20.

(b) The administrative regulation that the department intends to promulgate will not amend an existing administrative regulation. It will contain the substance of Sections 4, 5, 6, 7 and 10 of 301 KAR 2:220, which it repeals. Substantive changes from 301 KAR 2:220 will:

1. Allow first-come, first-served hunting on blinds in the Duncan and Crenshaw tracts of the Sloughs Wildlife Management Area if permit holders do not occupy blinds by the beginning of shooting hours;

2. Permit waterfowl hunting seven days a week (instead of four) on the Duncan and Crenshaw tracts of the Sloughs Wildlife Management Area; and

3. Permit waterfowl hunting on the Beaver Creek Wildlife Management Area.

(c) The necessity and function of the proposed administrative regulation is to regulate waterfowl hunting in conformance with state and federal requirements to conserve waterfowl populations. This regulation also brings format and wording in compliance with KRS Chapter 13A.

(d) The benefits expected from the administrative regulation are continued conservation of waterfowl resources and allowing waterfowl hunting on wildlife management areas where special regulations are necessary to permit such activity.

(e) The administrative regulation will be implemented as follows: The department will inform the public of its provisions through brochures and mass media channels, with enforcement by the department's Division of Law Enforcement.

Date: October 20, 1994
Tourism Cabinet
Department of Fish and Wildlife Resources

(1) **301 KAR 2:223**. Waterfowl reporting requirements.

(2) The Department of Fish and Wildlife Resources intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 29, 1994, at 9 a.m. in the Commission Room, Arnold L. Mitchell building, at the Game Farm, five miles west of Frankfort on U.S. 60.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least five persons, or an administrative body, or an association having at least five members;

and

2. A minimum of five persons, or the administrative body or association agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing is not received from the required number of people at least 20 days prior to December 29, 1994, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to The Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601.

(b) On the request for public hearing, a person shall state:

1. "I agree to attend the public hearing"; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request from the Department of Fish and Wildlife Resources at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation OF administrative regulation governing waterfowl harvest reporting is KRS 150.015, 150.021, 150.300, 150.330, 150.340 and CFR Chapter 59 Part 20.

(b) The administrative regulation that the department intends to promulgate will not amend an existing administrative regulation. It will contain the substance of Section 7(9) and (12), and Section 9 of 301 KAR 2:220, which will be repealed. There will be no substantive changes but this regulation will contain revisions of format and wording to comply with the provisions of KRS Chapter 13A.

(c) The necessity and function of the proposed administrative regulation is to meet federal monitoring and quota requirements in the Ballard and Henderson-Union reporting areas, and to monitor goose harvest in areas with low goose populations and continuing restoration efforts.

(d) The benefits expected from the administrative regulation are optimized recreational opportunity and improved waterfowl conservation by close monitoring of hunter harvest in areas where goose populations are low or where the U. S. Fish and Wildlife Service has imposed harvest quotas.

(e) The administrative regulation will be implemented as follows: The department will inform the public of its provisions through brochures and mass media channels. It will be enforced by the department's Division of Law Enforcement.

Date: October 20, 1994
Tourism Cabinet
Department of Fish and Wildlife Resources

(1) **301 KAR 2:224**. Waterfowl hunting zones.

(2) The Department of Fish and Wildlife Resources intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 29, 1994, at 9 a.m. in the Commission Room, Arnold L. Mitchell Building, at the Game Farm, five miles west of Frankfort on U.S. 60.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least five persons, or an administrative body, or an association having at least five members; and

2. A minimum of five persons, or the administrative body or association agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing is not received from the required number of people at least 20 days prior to December 29, 1994, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to The Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601.

(b) On the request for public hearing, a person shall state:

1. "I agree to attend the public hearing"; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request from the department at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation an administrative regulation governing waterfowl hunting is KRS 150.015, 150.300, 150.340 and CFR Chapter 59 Part 20.

(b) The administrative regulation that the department intends to promulgate will not amend an existing administrative regulation. It will contain the zone descriptions found in Sections 2 and 7, subsections (9) and (12), of 301 KAR 2:220, which will be repealed. There are no changes in zone boundary descriptions; changes are in format and language to comply with the provisions of KRS Chapter 13A.

(c) The necessity and function of the proposed administrative regulation is to establish duck and goose hunting zones. Unevenly distributed waterfowl resources and federal requirements necessitate different season dates and harvest regulations in different sections of the Commonwealth.

(d) The benefits expected from the administrative regulation are optimizing both recreational opportunities and waterfowl conservation by tailoring hunting restrictions to specific local conditions.

(e) The administrative regulation will be implemented as follows: The department will inform the public of its provisions through brochures and mass media channels. It will be enforced by the department's Division of Law Enforcement.

DEPARTMENT OF AGRICULTURE

Date: November 9, 1994
Department of Agriculture

(1) The administrative regulation to be amended is **302 KAR 20:010**, Definitions.

(2) The Department of Agriculture intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 29, 1994, at 10 a.m. at Capital Plaza Tower, 7th floor, Frankfort, Kentucky 40601.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to December 29, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Capital Plaza Tower, 7th floor, 500 Mero Street, Frankfort, Kentucky 40601.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing.", or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Department of Agriculture at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to 302 KAR 20:010, Definitions, is KRS Chapter 246 and 247.

(b) The administrative regulation that the Department of Agriculture intends to promulgate will amend an existing administrative regulation.

(c) The Necessity and Function of the proposed administrative regulation is as follows: Definitions and terms to clarify interpretation of regulations relating to the Division of Animal Health.

(d) The benefits expected from administrative regulation are: This regulation will be current with state and federal law.

Date: November 9, 1994
Department of Agriculture

(1) The regulation to be amended is **302 KAR 20:020**, General requirements.

(2) The Department of Agriculture intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 29, 1994, at 10 a.m. at Capital Plaza Tower, 7th floor, Frankfort, Kentucky 40601.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to December 29, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Capital Plaza Tower, 7th floor, 500 Mero Street, Frankfort, Kentucky 40601.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing.", or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Department of Agriculture at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to 302 KAR 20:020, General requirements, is KRS Chapter 257.

(b) The administrative regulation that the Department of Agriculture intends to promulgate will amend an existing administrative regulation.

(c) The Necessity and Function of the proposed administrative regulation is as follows: Clarify general health requirements and provisions concerning interstate and intrastate movement of all classes of animals.

(d) The benefits expected from administrative regulation are: This regulation will be current with state and federal law.

Date: November 9, 1994
Department of Agriculture

(1) The regulation to be amended is **302 KAR 20:210**, Pseudorabies surveillance.

(2) The Department of Agriculture intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 29, 1994, at 10 a.m. at Capital Plaza Tower, 7th floor, Frankfort, Kentucky 40601.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to December 29, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Capital Plaza Tower, 7th floor, 500 Mero Street, Frankfort, Kentucky 40601.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing.", or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Department of Agriculture at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to 302 KAR 20:210, Pseudorabies surveillance, is KRS Chapter 257.

(b) The administrative regulation that the Department of Agriculture intends to promulgate will amend an existing administrative regulation.

(c) The Necessity and Function of the proposed administrative regulation is as follows: The prevention of the spread of pseudorabies, via the movement (both intrastate and interstate) of feeder pigs within market channels. Breeding swine on farms of origin which produce feeder pigs imported into Kentucky may be required to be tested.

(d) The benefits expected from administrative regulation are: This regulation will be current with state and federal law.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management

Date: November 15, 1994
Natural Resources and Environmental Protection Cabinet
Department for Environmental Protection
Division of Waste Management

(1) The administrative regulation numbers and titles of the administrative regulations to be amended are: **401 KAR 31:010**, General provisions for hazardous waste; **401 KAR 38:010**, General provisions for permitting; **401 KAR 39:080**, Recycling fees. The subject matter of the new proposed administrative regulation, **401 KAR 36:080**, is to establish facility and generator standards and permit application requirements for the reclamation of spent mercury containing lamps.

(2) The Natural Resources and Environmental Protection Cabinet intends to promulgate four administrative regulations governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulations has been scheduled for December 29, 1994, at 1:30 p.m. EST, in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky 40601.

(4)(a) The public hearing will be held if requested, in writing, by at least 5 persons, or an administrative body, or an association

having at least 5 members; and a minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If 5 persons, or an administrative body or association, request this public hearing, and agree in writing to be present at this public hearing, it will be held as scheduled.

(c) If a request for a public hearing is not received from the required number of people at least 20 days prior to December 29, 1994, the public hearing will be cancelled.

(5) Persons wishing to request a public hearing should mail their written request to the following address: Division of Waste Management, Attention James Hale, 14 Reilly Road, Frankfort, Kentucky 40601, and phone number (502) 564-6716.

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Division of Waste Management at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the reclamation of spent mercury containing lamps is KRS 224.10-100, 224.40-100, 224.40-305, 224.46-510, 224.46-520, 224.46-530, 224.46-550, 224.46-560, 224.46-570, 224.46-580.

(b) Three of the administrative regulations that the Natural Resources and Environmental Protection Cabinet intends to promulgate will amend three existing administrative regulations. 401 KAR 31:010 will be amended to include spent mercury containing lamps as not being subject to the requirements of Section 6 of 401 KAR 31:010, 401 KAR 38:010 will be amended to add provisions for generators accumulating spent mercury containing lamps destined for recycling, and 401 KAR 39:080 will be amended to establish a fee for the cost of the applications for permits. One of the administrative regulations (401 KAR 36:080) will not amend any existing administrative regulations. It will establish facility and generator standards and permit application requirements for the reclamation of spent mercury containing lamps.

(c) The Necessity and Function of the proposed administrative regulation is as follows: KRS Chapter 224 requires the Natural Resources and Environmental Protection Cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. The statute also prohibits persons from managing waste without first obtaining a permit from the cabinet. Moreover, the statute requires the cabinet to establish standards for persons storing, treating, recycling, or disposing of hazardous waste. KRS 224.46-510 states that the cabinet's criteria and lists of hazardous wastes are to be identical to those promulgated by the U.S. Environmental Protection Agency. Under the U.S. EPA criteria, spent mercury containing lamps (including fluorescent, high pressure sodium, mercury vapor, and metal halide lamps) may be classified as a hazardous waste. The proposed administrative regulations will establish facility and generator standards and permit application requirements specific to the reclamation of spent mercury containing lamps.

(d) The benefits expected from administrative regulation is a clarification of standards for facilities involved in the reclamation of spent mercury containing lamps.

(e) The administrative regulation will be implemented as follows: Facilities involved in the reclamation of spent mercury containing lamps would be required to obtain a permit from the cabinet. The permit requirements would include submittal of information regarding site design and closure as well as facility monitoring. A permit application fee would also be required, as well as financial assurance. The standards would be more inclusive than those imposed on full quantity hazardous waste generators, but less inclusive than those imposed on other hazardous waste storage, treatment, and disposal facilities.

Department for Environmental Protection
Division for Air Quality

Date: November 15, 1994
Natural Resources and Environment Protection Cabinet
Department for Environmental Protection
Division for Air Quality

(1) The subject matter of the amendments to the following six administrative regulations is a revision and state implementation plan correction to the definition of volatile organic compound. The six administrative regulations are:

401 KAR 50:010. Definitions and abbreviations of terms used in Title 401, Chapters 50, 51, 53, 55, 57, 59, 61, 63, and 65.

401 KAR 51:001. Definitions and abbreviations of terms used in Title 401, Chapter 51.

401 KAR 59:001. Definitions and abbreviations of terms used in Title 401, Chapter 59.

401 KAR 61:001. Definitions and abbreviations of terms used in Title 401, Chapter 61.

401 KAR 63:001. Definitions and abbreviations of terms used in Title 401, Chapter 63.

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

(2) The Division for Air Quality intends to promulgate amendments to the six administrative regulations cited above.

(3) A public hearing to receive oral and written comments on the proposed amendments to these administrative regulations has been scheduled for December 29, 1994, at 10 a.m. (ET), in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601.

(4)(a) The public hearing will be held if it is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and a minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If 5 persons, or an administrative body or association, request this public hearing, and agree in writing to be present at this public hearing, it will be held as scheduled.

(c) If a request for a public hearing is not received from the required number of people at least 20 days prior to December 29, 1994, the public hearing will be canceled.

(5) Persons wishing to request a public hearing should mail their written request to the following address: Division for Air Quality, Attention John E. Hornback, 803 Schenkel Lane, Frankfort, Kentucky 40601, and phone number (502) 573-3382.

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Division for Air Quality at the address listed above.

(7) Information relating to the proposed amendments to administrative regulations.

(a) The statutory authority for the promulgation of the administrative regulation relating to the definition of volatile organic compound is KRS 13A.222(4)(e) and 224.10-100.

(b) The amendments to the administrative regulations that the Division for Air Quality intends to promulgate will amend six existing air quality administrative regulations. They are: 401 KAR 50:010, Definitions and abbreviations of terms used in Title 401, Chapters 50, 51, 53, 55, 57, 59, 61, 63, and 65; 401 KAR 51:001. Definitions and abbreviations of terms used in Title 401, Chapter 51; 401 KAR 59:001, Definitions and abbreviations of terms used in Title 401,

Chapter 59; 401 KAR 61:001, Definitions and abbreviations of terms used in Title 401, Chapter 61; 401 KAR 63:001, Definitions and abbreviations of terms used in Title 401, Chapter 63; 401 KAR 65:001, Definitions and abbreviations of terms used in 401 KAR Chapter 65.

(c) The Necessity and Function of the proposed amendments to the administrative regulations is as follows: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. These regulations provide for the defining of terms to be used in Title 401, Chapters 50 to 65. The Division for Air Quality is amending the definition for volatile organic compound to be compatible with the federal definition.

(d) The benefit expected from the amendment to the administrative regulations is: The definition for volatile organic compound will be compatible with the federal definition and, therefore, approvable by the United States Environmental Protection Agency as part of the state implementation plan.

(e) The administrative regulations will be implemented as follows: On and after the effective date of this amendment, the regulations in Chapters 50 to 65 will use the amended definition of volatile organic compound.

JUSTICE CABINET
Department of Corrections

Date: October 26, 1994
Justice Cabinet
Department of Corrections

(1) Regulation Number and Title: **501 KAR 6:020**, Department of Corrections: Guidelines for monitoring supervision fees; drug and alcohol testing of offenders; and inmate wage program.

(2) The Justice Cabinet, Department of Corrections intends to amend the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 29, 1994, at 9 a.m., in the Auditorium, in the State Office Building, Frankfort, Kentucky 40601.

(4)(a) The public hearing will be held if it is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and a minimum of 5 persons, or the administrative body or association agree, in writing, to be present at the public hearing.

(b) If 5 persons, or an administrative body or association, request this public hearing, and agree in writing to be present at this public hearing, it will be held as scheduled.

(c) If a request for a public hearing is not received from the required number of people at least 20 days prior to December 29, 1994, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Justice Cabinet, Department of Corrections, Office of General Counsel, Room 200, State Office Building, Frankfort, Kentucky 40601.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Department of Corrections at the address listed.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of this administrative regulation is KRS 196.035 and 197.020.

(b) The administrative regulation that the Department of Corrections intends to promulgate will amend 501 KAR 6:020, as follows:

1. Inmate Wage Program (19.3) shall be amended to designate certain specialized food service in a higher pay category.
2. Guidelines for Monitoring Supervision Fees (27-12-10) shall be amended to include the assessment of supervision fees for out-of-state clients on probation and parole as prescribed in the revised KRS 439.315.
3. Drug and Alcohol Testing of Offenders (27-13-01) shall be amended to include language that probationers may be assessed a drug testing fee in compliance with the revision of KRS 533.030.

(c) The Necessity and Function of the proposed administrative regulation is: To provide consistent policies among all Department of Corrections entities and compliance with state and federal statutes.

(d) The benefits expected from the administrative regulation are: To provide consistent policies among all Department of Corrections entities and to most efficiently use departmental resources.

(e) The administrative regulation will be implemented as follows: By promulgating and enforcing the components of the various policies to provide consistent policy for the department.

Date: October 12, 1994
Justice Cabinet
Department of Corrections

(1) Regulation Number and Title: **501 KAR 6:070**, Kentucky Correctional Institution for Women: Transfer policy, special management unit programs: placement and review, laundry and clothing issuance, hair care services, medical examination for employees, inmate access to telephone, unauthorized items, inmate packages, admission procedure, inmate personal property, housing assignments.

(2) The Justice Cabinet, Department of Corrections intends to amend the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 30, 1994, at 9 a.m., in the Auditorium, in the State Office Building, Frankfort, Kentucky 40601.

(4)(a) The public hearing will be held if it is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and a minimum of 5 persons, or the administrative body or association agree, in writing, to be present at the public hearing.

(b) If 5 persons, or an administrative body or association, request this public hearing, and agree in writing to be present at this public hearing, it will be held as scheduled.

(c) If a request for a public hearing is not received from the required number of people at least 20 days prior to December 29, 1994, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Justice Cabinet, Department of Corrections, Office of General Counsel, Room 200, State Office Building, Frankfort, Kentucky 40601.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Department of Corrections at the address listed.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of this administrative regulation is KRS 196.035 and 197.020.

(b) The administrative regulation that the Department of Corrections intends to promulgate will amend 501 KAR 6:070, as follows:

1. Transfer Policy (06-01-02) shall be amended to include community custody and to clarify procedures for transfer to communi-

ty centers.

2. Special Management Unit Programs: Placement and Review (10-01-02) shall be amended to conform to LRC guidelines and updated to current practice.

3. Laundry and Clothing Issuance (12-02-01) shall be amended to conform to current practice and include unit laundry facilities.

4. Hair Care Services Policy (12-04-02) shall be amended to conform to current practice and to include unit hair care services.

5. Medical Examination for Employees Policy (13-08-01) shall be amended to conform to ADA guidelines.

6. Inmate Access to Telephone (16-02-01) shall be amended to conform to current practice and to add unit telephone facilities.

7. Unauthorized Items (16-03-01) shall be amended to include additional items and to clarify.

8. Inmate Packages (16-05-01) shall be amended to conform to current practice and add information about medical packages.

9. Admission Procedure (17-02-01) shall be amended to reflect current practice and to conform to LRC requirements.

10. Inmate Personal Property (17-05-01) shall be amended to conform to Corrections Policy and Procedure and to clarify.

11. Housing Assignments (18-01-02) shall be amended to include expansion of living units and their functions.

(c) The Necessity and Function of the proposed administrative regulation is: To update operating procedures at Kentucky Correctional Institution for Women to comply with OSHA Standards, American Correctional Association Standards and Department of Corrections Policies and Procedures.

(d) The benefits expected from administrative regulation are: To comply with OSHA Standards, American Correctional Association Standards and Department of Corrections Policies and Procedures.

(e) The administrative regulation will be implemented as follows: It shall be implemented by having staff comply with operational procedures and standards noted in policy changes.

Date: November 14, 1994
Justice Cabinet
Department of Corrections

(1) Regulation Number and Title: **501 KAR 6:120**, Blackburn Correctional Complex: restricted areas, inmate grievance procedures, meritorious living unit (B-1), room assignments, racial balance in living units, inmate work program, religious services, release preparation.

(2) The Justice Cabinet, Department of Corrections intends to amend the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 29, 1994, at 9 a.m., in the Auditorium, in the State Office Building, Frankfort, Kentucky 40601.

(4)(a) The public hearing will be held if it is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and a minimum of 5 persons, or the administrative body or association agree, in writing, to be present at the public hearing.

(b) If 5 persons, or an administrative body or association, request this public hearing, and agree in writing to be present at this public hearing, it will be held as scheduled.

(c) If a request for a public hearing is not received from the required number of people at least 20 days prior to December 29, 1994, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Justice Cabinet, Department of Corrections, Office of General Counsel, Room 200, State Office Building, Frankfort, Kentucky 40601.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Department of Corrections at the address listed.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of this administrative regulation is KRS 196.035 and 197.020.

(b) The administrative regulation that the Department of Corrections intends to promulgate will amend 501 KAR 6:120, as follows:

1. Inmate canteen (02-01-01) shall be amended for minor word changes, allowance of Corrections Central Office to coordinate the inmate Canteen audit.

2. Fiscal management: accounting procedures (02-02-02) shall be amended to delete cash paid for meal tickets and change deposits by business office from daily to weekly.

3. Inmate furloughs (16-01-01) shall be amended to delete material contained in Corrections Policy 25.4.

4. Inmate packages (16-03-01) shall be deleted entirely due to the duplication of Corrections policy and procedures.

5. Arts, crafts and the production of sale items (22-01-01) shall be amended for minor word changes throughout to bring this policy into compliance with LRC regulations, convert ACA standards numbers from 2nd to 3rd Edition.

6. Privileged trips (22-02-01) shall be amended for minor word changes throughout to bring this policy into compliance with LRC regulations, converted ACA standards numbers from 2nd to 3rd Edition.

7. Recreational employees (22-03-01) shall be amended for word changes throughout to bring this policy into compliance with LRC regulation, converted ACA standards numbers from 2nd to 3rd Edition and change recreational program survey from semiannually to annually.

8. Recreation and inmate activities (22-04-01) shall be amended for word changes throughout to bring this policy into compliance with LRC regulations, converted ACA standards numbers from 2nd to 3rd Edition, deletion of inmate recreational survey during orientation.

9. Inmate clubs and organizations (22-04-02) shall be amended for word changes throughout to bring this policy into compliance with LRC regulations, converted ACA standards numbers from 2nd to 3rd Edition.

10. Conducting inmate organizational meetings and programs (22-04-03) shall be amended for word changes throughout to bring this policy into compliance with LRC regulations, converted ACA standards numbers from 2nd to 3rd Edition.

11. Recreational program availability (22-04-04) shall be amended for word changes throughout to bring this policy into compliance with LRC regulations, converted ACA standards numbers from 2nd to 3rd Edition revision of specific game names to various table games wording.

12. Supervision of leisure time craft club activities and materials (22-04-05) shall be amended for word changes throughout to bring this policy into compliance with LRC regulations, deletion of wording "hazardous", as no hazardous materials are maintained in club areas, deletion of designated off days of recreational staff.

13. Music club (22-06-01) shall be amended for word changes throughout to bring this policy into compliance with LRC regulations, converted ACA standards numbers from 2nd to 3rd Edition.

14. Unit recreation program (22-08-01) shall be amended for word changes throughout to bring this policy into compliance with LRC regulations, converted ACA standards numbers from 2nd to 3rd Edition.

15. Use of inmates in recreational programs (22-09-01) shall be amended for word changes throughout to bring this policy into compliance with LRC regulations, converted ACA standards numbers from 2nd to 3rd Edition.

(c) The Necessity and Function of the proposed administrative

regulation is: To update operating procedures at Blackburn Correctional Complex to comply with OSHA Standards, American Correctional Association Standards and Department of Corrections Policies and Procedures.

(d) The benefits expected from administrative regulation are: To comply with OSHA Standards, American Correctional Association Standards and Department of Corrections Policies and Procedures.

(e) The administrative regulation will be implemented as follows: It shall be implemented by having staff comply with operational procedures and standards noted in policy changes.

TRANSPORTATION CABINET

Date: November 15, 1994
Transportation Cabinet

(1) **601 KAR 1:029**, Definitions relating to 601 KAR 1:030 through 601 KAR 1:145; **601 KAR 1:030**, Hearings; **601 KAR 1:031**, Procedure when no protest to notice of hearing is filed; **601 KAR 1:040**, Application for operating authority and registration of motor carriers authorized to operate by the Interstate Commerce Commission; **601 KAR 1:045**, Application for certificate filing; **601 KAR 1:050**, Rates and fares; **601 KAR 1:060**, Tariffs; **601 KAR 1:065**, Time schedules; **601 KAR 1:070**, Notice; **601 KAR 1:085**, Annual reports; **601 KAR 1:090**, Exempted commodities; **601 KAR 1:105**, Off-route points and alternative routes; **601 KAR 1:110**, Leasing services; **601 KAR 1:170**, Transportation of financial documents, information, or materials.

(2) The Kentucky Transportation Cabinet intends to promulgate administrative regulations to implement the federal law which was passed in the summer of 1994 preempting state economic regulation of the property carrying motor carrier industry. Section 601 of the Airport Improvement Program Reauthorization Act is effective January 1, 1995. Therefore, the Transportation Cabinet needs to amend all of its administrative regulations which relate to the economic regulation of transporters of property.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 29, 1994 at 10 a.m. local prevailing time, at 501 High Street, 4th Floor Hearing Room, Frankfort, Kentucky 40622.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to December 29, 1994, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Sandra G. Pullen, 501 High Street, 10th Floor, State Office Building, Frankfort, Kentucky 40622.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Transportation Cabinet at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of amendments to the administrative regulations relating to the economic deregulation of the intrastate transportation of property is Section 601 of the 1994 Airport Improvement Program Reauthorization Act.

(b) The administrative regulation that the Transportation Cabinet intends to amend 14 administrative regulations relating to economic control of transporters of property.

(c) The Necessity and Function of the proposed administrative regulation relating to economic deregulation of the transportation of property is as follows: Section 601 of the 1994 Airport Improvement Program Reauthorization Act requires that by January 1, 1995, all states will have deregulated the intra-state oversight of rates, routes, and services of transporters of property operating in intrastate commerce. This bill specifically excluded household goods carriers thus allowing the states to continue oversight of household goods carriers. States still retain authority to regulate safety, truck size and weight, financial responsibility relating to insurance, and hazardous materials routing. Therefore, only the portion of these administrative regulations relating to rates, routes, and services will be amended.

(d) The benefits expected are: compliance with the federal law.

Date: November 15, 1994
Transportation Cabinet

(1) **603 KAR 3:080** relating to outdoor advertising devices and **603 KAR 3:090** relating to scenic byways.

(2) The Kentucky Transportation Cabinet intends to promulgate an administrative regulation establishing the application procedures and entrance criteria for the scenic byways program in Kentucky. In addition, the question of restriction of billboards on scenic byways will be examined. The existing administrative regulation 603 KAR 3:080 prohibits the erection along a scenic byway of an outdoor advertising device of any type once the highway is designated as a scenic byway. However, the latest federal guidelines relating to "scenic highways" require that billboard outdoor advertising devices be prohibited only those roads on which outdoor advertising devices are already governed pursuant to 603 KAR 3:080, i.e., interstates, parkways, and federal aid primary highways. At the public comment hearing the Transportation Cabinet specifically requests public opinions relating to the prohibition of the erection of outdoor advertising devices along scenic byways other than those previously mentioned.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 29, 1994 at 1 p.m. local prevailing time, at 501 High Street, 4th Floor Hearing Room, Frankfort, Kentucky 40622.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to December 29, 1994, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Sandra G. Pullen, 501 High Street, 10th Floor, State Office Building, Frankfort, Kentucky 40622.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Transportation Cabinet at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to outdoor advertising devices is KRS 177.860,

23 USC 131, and 23 CFR Part 750. The statutory authority for the promulgation of administrative regulation relating to scenic byways is KRS 176.050, 189.337, and Section 1047 of PL 102-240, 105 stat. 1914.

(b) The Transportation Cabinet intends to promulgate a new administrative regulation relating to scenic byways and to amend an existing administrative regulation relating to outdoor advertising devices.

(c) The Necessity and Function of the proposed administrative regulation relating to outdoor advertising devices is as follows: KRS 177.860 authorizes the Department of Highways to establish reasonable standards for advertising devices on or visible from interstate, parkway, and federal-aid primary highways. This administrative regulation is the means used by the Department of Highways to establish these standards. In addition, KRS 177.867 requires the Department of Highways to pay just compensation for the removal of legally erected advertising devices which are not in compliance with current state law or administrative regulation. This administrative regulation states forth standards for determining when the Department of Highways shall pay just compensation. 49 USC 131 prohibits the erection of new outdoor advertising devices along the highway which has been designated as a scenic byway and is controlled by this administrative regulation. Therefore, this administrative regulation also spells out those highways along which no new billboards may be erected. The necessity and function of the proposed new administrative regulation relating to scenic byways is as follows: The Intermodal Surface Transportation Efficiency Act of 1991 placed a strong emphasis on the identification of scenic byways across the United States. The Kentucky Transportation Cabinet believes a scenic byway program is necessary to protect the state's natural scenic resources, promote tourism, foster associated economical development, reduce travel on high volume interstates and highways, and maximize the potential of little travelled or by-passed roads. This administrative regulation will establish application procedures for designating a public road as a scenic byway, standards for reviewing the application and procedure for and terminating the designation of highway designated as a scenic byway.

(d) The benefits expected are: Increased tourism on the scenic highways of Kentucky.

WORKFORCE DEVELOPMENT CABINET
Department of Vocational Rehabilitation

Date: November 14, 1994
Workforce Development Cabinet
Department of Vocational Rehabilitation

(1) Regulation Number and Title: **781 KAR 1:010**, Department of Vocational Rehabilitation appeals procedures.

(2) The Workforce Development Cabinet, Department of Vocational Rehabilitation intends to amend the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 28, 1994, at 10 a.m., in the DVR Training Room, 61 Fountain Place, Wilkinson Boulevard, Frankfort, Kentucky 40601.

(4)(a) The public hearing will be held if it is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members and a minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public meeting.

(b) If 5 persons, or an administrative body or association, request this public hearing, and agree in writing to be present at this public hearing, it will be held as scheduled.

(c) If a request for public hearing is not received from the required number of people at least 20 days prior to December 28, 1994, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Department for Vocational Rehabilitation, 935 Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Department for Vocational Rehabilitation at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to vocational rehabilitation is KRS 151B.195.

(b) The administrative regulation that the department intends to promulgate will amend 781 KAR 1:010 as follows: Section 1 will be amended to define "eligible individual", "commissioner", and "impartial hearing officer." Section 2 will be amended to prohibit the department from suspending, reducing or terminating services without the individual's consent, pending a final determination or other final resolution, unless the service was obtained through misrepresentation, fraud, collusion, or criminal conduct. Section 3 will be amended to substitute the term "eligible individual" for the term "client." The content of Sections 4, 5, and 6 will be deleted and a Section 6 will become Section 4. The new Section 4 will be amended to clarify individual choice in review procedures and set time limits for requests for review. Procedures for an administrative review will become Section 5. Section 5 will require that a report be sent to the individual within 10 days rather than the current 15. Section 6 will establish new procedures for impartial hearings that are consistent with the 1992 Amendments to the Rehabilitation Act. Section 7 will establish new procedures for conduct of hearings that are consistent with the 1992 Amendments to the Rehabilitation Act. Section 8 will establish new procedures for findings and decisions that are consistent with the 1992 amendments to the Rehabilitation Act. Section 9 deals with restrictions on the provision of legal counsel. Section 9 will be amended to use the term "eligible individual" rather than "client".

(c) The Necessity and Function of the proposed administrative regulation is: Section 102(d)(1) of the 1992 amendments to the Rehabilitation Act (29 USC §791) requires states to establish appeals procedures for eligible individuals who are dissatisfied with restriction or denial of services. These amendments satisfy that requirement.

(d) The benefits expected from administrative regulation are: Applicants and eligible individuals will have reviews conducted and findings determined on a more timely basis. The selection of a pool of hearing officers will involve members of the Vocational Rehabilitation Advisory Council, many of whom are current and former participants in the program. As a result, selected impartial hearing officers will have a better understanding of, and be sensitive to, pertinent disability related issues.

(e) The administrative regulation will be implemented as follows: All applicants and eligible individuals will be advised of their rights to administrative review and impartial hearing and of the availability of legal services from the Client Assistance Program. Any individual who is dissatisfied may request a review. Requested reviews will be conducted pursuant to procedures listed in this administrative regulation.

Date: November 14, 1994
Workforce Development Cabinet
Department of Vocational Rehabilitation

(1) Regulation Number and Title: **781 KAR 2:011**, Repeal of existing administrative regulations 781 KAR 2:010, Department of

Vocational Rehabilitation, independent living rehabilitation services appeal procedures and 781 KAR 2:020, General provision for operation of the Department of Vocational Rehabilitation independent living program.

(2) The Workforce Development Cabinet, Department of Vocational Rehabilitation intends to repeal the administrative regulations cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 28, 1994, at 10 a.m., in the DVR Training Room, 61 Fountain Place, Wilkinson Boulevard, Frankfort, Kentucky 40601.

(4)(a) The public hearing will be held if it is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members and a minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public meeting.

(b) If 5 persons, or an administrative body or association, request this public hearing, and agree in writing to be present at this public hearing, it will be held as scheduled.

(c) If a request for public hearing is not received from the required number of people at least 20 days prior to December 28, 1994, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Department for Vocational Rehabilitation, 935 Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Department for Vocational Rehabilitation at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to vocational rehabilitation is KRS 151B.195.

(b) The administrative regulation that the department intends to promulgate will repeal 781 KAR 2:010 and 781 KAR 2:020.

(c) The Necessity and Function of the proposed administrative regulation is: The administrative regulation is necessary to repeal two existing regulations. The Department of Vocational Rehabilitation no longer administers a program of individualized independent living services. These amendments satisfy that requirement.

(d) The benefits expected from administrative regulation are: The regulation will repeal administrative provisions that are no longer necessary.

(e) The administrative regulation will be implemented as follows: Any prospective applicant will be advised that the department no longer administers a program of independent living services. Instead the individuals will be asked to request services from one of the existing centers for independent living.

Date: November 14, 1994
Workforce Development Cabinet
Department for the Blind

(1) Regulation Number and Title: **782 KAR 1:040**, Department for the Blind appeals procedures for applicants and clients.

(2) The Workforce Development Cabinet, Department for the Blind intends to amend the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 28, 1994, at 10 a.m., in the Department of Vocational Rehabilitation Training Room, 61 Fountain Place, Wilkinson Boulevard, Frankfort, Kentucky 40601.

(4)(a) The public hearing will be held if it is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members and a minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public meeting.

(b) If 5 persons, or an administrative body or association, request this public hearing, and agree in writing to be present at this public hearing, it will be held as scheduled.

(c) If a request for public hearing is not received from the required number of people at least 20 days prior to December 28, 1994, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Department of the Blind, 427 Versailles Road, Frankfort, Kentucky 40601.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Department of the Blind at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to vocational rehabilitation for individuals who are blind or visually impaired is KRS 163.470.

(b) The administrative regulation that the department intends to promulgate will amend 782 KAR 1:040 as follows: A new Section 1 will be added to define "eligible individual", "applicant," "agency" or "department," "commissioner", and "impartial hearing officer." The new Section 2 will be amended to prohibit the department from suspending, reducing or terminating services without the individual's consent pending a final determination or other final resolution, unless the service was obtained through misrepresentation, fraud, collusion, or criminal conduct. It will also be amended to substitute the term "eligible individual" for the term "client". The content of current Sections 2, 3 and 4 will be deleted. The new Section 3 will be amended to clarify individual choice in review procedures and set time limits for requests for review. Procedures for an administrative review will become Section 4. Section 4 will require that a report be sent to the individual within 10 days rather than the current 15. Section 5 will establish new procedures for impartial hearings that are consistent with the 1992 Amendments to the Rehabilitation Act. It will establish new procedures for findings and decisions that are consistent with the 1992 amendments to the Rehabilitation Act. A new Section 6 will deal with restrictions on the provision of legal counsel.

(c) The Necessity and Function of the proposed administrative regulation is: Section 102(d)(1) of the 1992 amendments to the Rehabilitation Act (29 USC §791) requires states to establish appeals procedures for eligible individuals who are dissatisfied with restriction or denial of services. These amendments satisfy that requirement.

(d) The benefits expected from administrative regulation are: Applicants and eligible individuals will have reviews conducted and findings determined on a more timely basis. The selection of a pool of hearing officers will involve members of the Department for the Blind Advisory Council, many of whom are current and former participants in the program. As a result, selected impartial hearing officers will have a better understanding of, and be more sensitive to, pertinent disability related issues.

(e) The administrative regulation will be implemented as follows: All applicants and eligible individuals will be advised of their rights to administrative review and impartial hearing and of the availability of legal services from the Client Assistance Program. Any individual who is dissatisfied may request a review. Requested reviews will be conducted pursuant to procedures listed in this administrative

regulation.

LABOR CABINET
Department of Workers' Claims

Date: November 11, 1994
Kentucky Department of Workers' Claims

(1) The subject matter of the proposed administrative regulation is an amendment to the procedure for adjustment of claim, **803 KAR 25:011**.

(2) The Commissioner of the Department of Workers' Claims intends to promulgate an amend to the administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 29, 1994, at 10 a.m. at the Farnham Dudgeon Civic Center, Conference Rooms ABC, 405 Mero Street, Frankfort, Kentucky 40601.

(4)(a) The public hearing will be held if it is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and a minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If 5 persons, or an administrative body or association, request this public hearing and agree in writing to be present at this public hearing, it will be held as scheduled.

(c) If a request for a public hearing is not received from the required number of people at least 20 days prior to December 29, 1994, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Department of Workers' Claims, Perimeter Park West, Building C, 1270 Louisville Road, Frankfort, Kentucky 40601, Attn: Valerie L. Salven, General Counsel.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Department of Workers' Claims at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the procedures for adjustments of claims is KRS 342.260.

(b) The administrative regulation that the commissioner intends to promulgate will amend 803 KAR 25:011 as follows: Changes will be made throughout the regulation to conform with House Bill 928 passed by the 1994 Regular Session of the General Assembly. In addition, changes will be made to the regulation that will permit the Department of Workers' Claims to utilize a nonerasable optical imaging system in the filing and subsequent handling of records.

(c) The Necessity and Function of the proposed administrative regulation is as follows: House Bill 928 made numerous changes to KRS Chapter 342 and the manner in which workers' compensation claims must now be practiced and decided. In addition, the Department of Workers' Claims intends to implement the use of a nonerasable optical imaging system for the storage of records, and this new system will require changes in the existing regulation.

(d) The benefits expected from administrative regulation are that processes and procedures under KRS Chapter 342 shall be as summary and simple as reasonably possible, as required by KRS 342.260(2).

(e) The administrative regulation will be implemented as follows: The purpose of the public hearing is to solicit comments and suggestions about the changes that should be made to 803 KAR 25:011 and the forms incorporated by reference in that regulation. These comments and suggestions will then be considered along with the suggestions made by a committee consisting of workers' compensation attorneys, administrative law judges, and a member of the Workers' Compensation Board in determining the amendments that will be proposed by the commissioner.

Date: November 11, 1994
Kentucky Department of Workers' Claims

(1) The subject matter of the proposed administrative regulation is pilot programs for 24-hour coverage, **803 KAR 25:200**.

(2) The Commissioner of the Department of Workers' Claims intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 29, 1994, at 10 a.m. at the Farnham Dudgeon Civic Center, Conference Rooms ABC, 405 Mero Street, Frankfort, Kentucky 40601.

(4)(a) The public hearing will be held if it is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and a minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If 5 persons, or an administrative body or association, request this public hearing and agree in writing to be present at this public hearing, it will be held as scheduled.

(c) If a request for a public hearing is not received from the required number of people at least 20 days prior to December 29, 1994, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Department of Workers' Claims, Perimeter Park West, Building C, 1270 Louisville Road, Frankfort, Kentucky 40601, Attn: Valerie L. Salven, General Counsel.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Department of Workers' Claims at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the integrated management of an employer's workers' compensation and group health insurance claims by an insurer authorized to do business in the Commonwealth is KRS 342.352 passed by the Regular Session of the 1994 General Assembly.

(b) The administrative regulation that the commissioner intends to promulgate will not amend an existing administrative regulation. It will provide the guidelines by which the commissioner may establish one or more pilot programs for interested employers of integrated management of an employer's workers' compensation and group health insurance claims by an insurer authorized to do business in the Commonwealth.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 342.352 authorizes the commissioner to establish one or more pilot programs for 24-hour coverage prior to September 1, 1998.

(d) The benefits expected from administrative regulation are an overall reduction in insurance premiums for workers' compensation and health insurance in Kentucky. Also, simplification of claims processing for employers, insurers, and employees.

(e) The administrative regulation will be implemented as follows: The purpose of the public hearing is to solicit comments and suggestions about what the proposed regulation should contain. The commissioner will then consider all the suggestions that comply with KRS 342.352 in determining the best manner in which pilot programs may be established.

DEPARTMENT OF INSURANCE

Date: November 14, 1994
Public Protection and Regulation Cabinet
Department of Insurance

(1) **806 KAR 17:070**, Filing procedures for health insurance rates; experience data on individual Medicare supplement policies.

(2) The Public Protection & Regulation Cabinet, Department of Insurance, intends to amend the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 29, 1994, at 10 a.m., at the Department of Insurance, 215 West Main Street, Frankfort Kentucky 40601, Attention: Carla Montgomery.

(4)(a) The public hearing will be held if it is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and a minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If 5 persons, or an administrative body or association, request this public hearing, and agree in writing to be present at this public hearing, it will be held as scheduled.

(c) If a request for a public hearing is not received from the required number of people at least 20 days prior to December 29, 1994, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Department of Insurance, 215 West Main Street, Frankfort Kentucky 40601.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Department of Insurance at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation is KRS 304.2-110 and 304.17-400.

(b) The administrative regulation that the cabinet intends to promulgate will amend 806 KAR 17:070, as follows: Section 3 will be deleted. Appendix A will be deleted.

(c) The Necessity and Function of the proposed administrative regulation is: The information that is required is not necessary. It is collected, processed and made available to the states by the National Association of Insurance Commissioner's (NAIC) through a federal program. This information does not need to be collected by the Department of Insurance. Insurance companies should not be required to submit information that is not being used.

(d) The benefits expected from administrative regulation are: Elimination of unnecessary filings by insurance companies.

(e) The administrative regulation will be implemented as follows: It will be implemented by deleting Section 3 and Appendix A and not requiring insurance companies to file this information with the Department of Insurance.

KENTUCKY RACING COMMISSION

Date: October 28, 1994
Kentucky Racing Commission

(1) Regulation Number and Title: **810 KAR 1:032**, Breeders' Award Program.

(2) The Kentucky Racing Commission intends to amend the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 28, 1994 at 9 a.m. at the commission offices at 4063 Iron Works Pike, Building B, Lexington, Kentucky 40511.

(4)(a) The public hearing will be held if it is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and a minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If 5 persons, or an administrative body or association, request this public hearing, and agree in writing to be present at this public hearing, it will be held as scheduled.

(c) If a request for a public hearing is not received from the required number of people at least 20 days prior to December 28, 1994, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mr. Michael Fulkerson, c/o Kentucky Racing Commission, 4063 Iron Works Pike, Building B, Lexington, Kentucky 40511.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request from the Kentucky Racing Commission at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the Breeders' Award Program is KRS 230.380.

(b) The administrative regulation that the commission intends to promulgate will amend 810 KAR 1:032, as follows: Two changes will be made to this regulation. First, stallion owner will be changed to mean the owner of the stallion at the end of the year the awards are earned, rather than the owner at the time the stallion was bred. Second, stallion will not be precluded from awards if they are bred in the Southern Hemisphere.

(c) The Necessity and Function of the proposed administrative regulation is: As foal crops are added each year to the program, it becomes an accounting nightmare to maintain records for the various members of a stallion syndicate as members come and go each year. Using the current membership minimizes the paperwork and rewards those who stay in the business. The allowance for breeding in the Southern Hemisphere is common among other states' breeders' programs.

(d) The benefits expected from the amendment to the administrative regulation are: The first change will minimize the paperwork and accounting for the stallion farms and the second change is designed to keep us competitive with other states.

(e) The administrative regulation will be implemented as follows: The new changes will be applied to the awards made in the late spring of 1995.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Protection

Date: October 27, 1994
Public Protection and Regulation Cabinet
Department of Housing, Buildings and Construction

(1) Regulation Number and Title: **815 KAR 30:010;** LP gas license; financial responsibility required.

(2) The Department of Housing, Buildings and Construction intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Thursday, December 29, 1994, at 10 a.m., local time, in the Department of Housing's Conference Room at 1047 U.S. Highway 127 South, Suite #1, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least five (5) persons, or an administrative body, or an association having at least five (5) members; and

2. A minimum of five (5) persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least twenty (20) days prior to December 29, 1994, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Honorable Judith G. Walden, General Counsel, Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Suite #1, Frankfort, Kentucky 40601.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the department's general counsel at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of this administrative regulation is KRS 234.120.

(b) The department intends to amend 815 KAR 30:010 by amending Sections 1(1) and (3)(a) to conform to 1994 legislation.

(c) The Necessity and Function of the proposed administrative regulation is as follows: KRS 234.120 requires the commissioner to promulgate reasonable administrative regulations requiring proof of financial responsibility. This administrative regulation assures that persons injured by LP gas dealers have insurance against which to recoup some of their loss.

(d) The benefits expected from this administrative regulation are: Assure a fund for recovery from accidents or negligence of licensed dealers of LP gas.

(e) This administrative regulation will be implemented by notifying all dealers that the amount of insurance required by House Bill 449 of the 1994 Legislative Session must be certified by company certificate for 1995 licensure.

CABINET FOR HUMAN RESOURCES
Office of Inspector General

Date: October 17, 1994
Cabinet for Human Resources
Office of Inspector General

(1) **902 KAR 20:121** - Proposed administrative regulation - Nonemergency health care transportation services. This proposed administrative regulation covers health care transportation as provided to an individual whose impaired health condition does not indicate a need for medical treatment during transit, or emergency medical treatment upon arrival at the final destination.

(2) The Office of Inspector General intends to promulgate the proposed administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 29, 1994, at 9 a.m. in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to December 29, 1994, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4-West, Frankfort, Kentucky 40621, (502) 564-7900.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from: Administrative Regulation Coordinator, Office of Inspector General, CHR Building, 4-East, 275 East Main Street, Frankfort, Kentucky 40621.

(c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans with Disabilities Act. Persons requesting assistance regarding Cabinet for Human Resources' regulations may call toll free 1-800-372-2973 (U/TDD).

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to nonemergency health care transportation services is KRS 216B.042 and 216B.105.

(b) The administrative regulation that the Office of Inspector General intends to promulgate will not amend an existing administrative regulation. It will replace 902 KAR 20:120 which was found deficient by the Administrative Regulation Review Subcommittee.

(c) The Necessity and Function of the proposed administrative regulation is as follows: The administrative regulation establishing standards for nonemergency health transportation services, 902 KAR 20:120, was found deficient by the Administrative Regulation Review Subcommittee at its March 7, 1994, meeting. The finding of deficiency resulted from the prohibition of the use of emergency lights or sirens by ambulances categorized as nonemergency vehicles as found in Section 3(2)(e). Pursuant to KRS 13A.333(1), 902 KAR 20:120 expired on adjournment of the 1994 regular session of the General Assembly. KRS 216B.042 requires the cabinet to establish standards for health facilities and health services, and authorizes it to promulgate administrative regulations. Without an administrative regulation establishing standards for nonemergency health care transportation services, the cabinet would be in violation of the legislative mandate expressed in KRS 216B.042. KRS 13A.333(6) prohibits an administrative body from promulgating an administrative regulation that is

identical to or substantially the same as an administrative regulation that has expired. This administrative regulation is not identical to or substantially the same as 902 KAR 20:120, because:

1. Only the section prohibiting the use of emergency lights or sirens by vehicles that provide nonemergency health transportation was found deficient;

2. This administrative regulation does not prohibit emergency lights or sirens by vehicles that provide nonemergency health transportation; and

3. It is required by the legislative mandate of KRS 216B.042.

(d) The benefits expected from this proposed administrative regulation are that the cabinet will be in compliance with the legislative mandate of KRS 216B.042.

(e) The administrative regulation will be implemented as follows: Licensure requirements will be implemented by the Division of Licensing and Regulation in the Office of Inspector General, Cabinet for Human Resources, in accordance with KRS 216B.042 and 216B.105.

Department for Social Insurance

Date: November 1, 1994
Cabinet for Human Resources
Department for Social Insurance

(1) **904 KAR 2:370**. Technical requirements; job opportunities and basic skills. Cabinet for Human Resources, Department for Social Insurance.

(2) The Department for Social Insurance intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 29, 1994, at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, first floor, 275 East Main Street, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to December 29, 1994, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7900.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Social Insurance, Division of Management and Development, by writing to the Cabinet for Human Resources, 275 East Main Street, 3rd Floor West, Frankfort, Kentucky 40621.

(c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Human Resources' regulations may call toll free 1-800-372-2973 (V/TDD).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the Job opportunities and basic skills program is KRS 194.050, 205.200(2) and 45 CFR 250.

(b) The administrative regulation that the Department for Social Insurance intends to promulgate will amend 904 KAR 2:370, Technical requirements; job opportunities and basic skills. The amendment revises policy regarding the Alternative Work Experience Program (AWEP) to allow JOBS participants to be placed into any for-profit entity. Previously assignments were limited to health care facilities only. In addition, the requirement for revising the JOBS participants employability plan at the end of each six month period for the AWEP and Other Work Experience Program (OWEP) components has been deleted. The plan will be reassessed and revised at the end of participation in each of the components. Finally, we are adding another good cause reason for noncompliance in the JOBS program or for failing to accept employment when found. The new good cause reason includes participants who are enrolled in a component activity which is not scheduled for the entire month. This would include summer school break and July break for adult education providers.

(c) The Necessity and Function of the proposed administrative regulation is as follows: The proposed regulatory amendments are permissible as a state option by the federal government. We believe the changes will help in improving services provided to participants in the JOBS program as well as assisting case managers in completing their administrative responsibilities.

(d) The benefits expected from the administrative regulation amendment are: The change that removes limitations on types of entities will allow more opportunities for JOBS participants to become self-sufficient by allowing JOBS participants to be placed with more employers to receive training. The change that eliminates the six month reassessment and revision to the individual's employability plan will eliminate an activity for the case manager without causing a negative impact on the participant. Assessments will continue at the conclusion of participation in the component. This change will also allow the participant more time to actually spend in the component.

Department for Mental Health and Mental Retardation Services

Date: November 15, 1994
Cabinet for Human Resources
Department for Mental Health and Mental Retardation Services

(1) **908 KAR 2:090**. Decriminalization of mental illness, Cabinet for Human Resources, Department for Mental Health and Mental Retardation Services.

(2) The Department for Mental Health and Mental Retardation Services intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 29, 1994, at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, first floor, 275 East Main Street, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to December 29, 1994, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7900.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Mental Health and Mental Retardation Services, Division of Administration and Financial Management, 275 E. Main St., Frankfort, Kentucky 40621.

(c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans with Disabilities Act. Persons requesting assistance regarding Cabinet for Human Resources' regulations may call toll free 1-800-372-2973 (V/TDD).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the decriminalization of persons with mental illness is found within state statute. Applicable statutes are: KRS Chapters 202A, 202B, and 645.

(b) The administrative regulation that the Department for Mental Health and Mental Retardation Services intends to promulgate will not amend an existing administrative regulation. It will establish the administrative regulations for HB 207 under 908 KAR Chapter 2.

(c) The Necessity and Function of the proposed administrative regulation are as follows: The administrative regulation will outline the following:

1. Definition of a crisis stabilization unit;

2. Transportation and custody for purposes of psychiatric evaluation;

3. Use of restraints;

4. Provision of privacy for individuals who are held for evaluation;

5. Identifying rights for individuals held to communicate by phone;

6. Responsibility for planning and coordinating services under KRS Chapters 202A, 202B, and 645.

(d) The benefits expected from administrative regulation are: The individuals detained under this law will no longer be jailed. The transportation and treatment of individuals detained will be clarified for persons involved in the involuntary commitment process.

Date: November 15, 1994
Cabinet for Human Resources
Department for Mental Health/Mental Retardation Services

(1) **908 KAR 2:100**. Implementation of the Kentucky Early Intervention System which is comprised of the interdependent array of services and activities for the provision of a statewide, comprehensive, coordinated, multidisciplinary interagency program for infants and toddlers with disabilities and their families. Cabinet for Human Resources, Department for Mental Health/Mental Retardation Services.

(2) The Department for Mental Health/Mental Retardation Services intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 29, 1994, at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, first floor, 275 East Main Street, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested in writing by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, agrees, in writing, to be present at the public hearing.

(b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least 20 days prior to December 29, 1994, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7900.

(b) On a request for a public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate administrative regulations governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request from the Administrative Regulation Coordinator, Department for Mental Health/Mental Retardation Services, Division of Administration & Financial Management, 275 East Main Street, Frankfort, Kentucky 40621.

(c) NOTE: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Human Resources' regulations may call toll free 1-800-372-2973 (V/TDD).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the Kentucky Early Intervention System is KRS 200.650 - 200.676.

(b) The administrative regulation will not amend an existing administrative regulation. It will implement the provisions of KRS 200.650 - 200.676 including the development of a comprehensive, coordinated, statewide interagency system of early intervention services.

(c) The Necessity and Function of the proposed administrative regulation is as follows: To implement a comprehensive, coordinated statewide interagency system of early intervention services by setting forth definitions, clarifying the lead agency responsibilities, and establishing eligibility criteria, personnel requirements, and procedural safeguards in order to enhance the capacity of families to meet the needs of children with disabilities.

(d) The benefits expected from the administrative regulation are: To enhance the development of all infants and toddlers with disabilities in the Commonwealth of Kentucky in order to minimize developmental delay, and to maximize individual potential for adult independence.

EMERGENCY ADMINISTRATIVE REGULATIONS NOW IN EFFECT

(NOTE: Emergency administrative regulations expire 170 days from publication or upon replacement, repeal, or withdrawal)

STATEMENT OF EMERGENCY
31 KAR 4:090E

This emergency administrative regulation sets forth guidelines for counties conducting mock elections for school children during an election. This emergency administrative regulation is necessary to insure that the November 1994 regular election will not be impaired in those counties conducting mock elections for school children. The emergency administrative regulation shall be replaced by an ordinary administrative regulation.

BRERETON JONES, Governor
BOB BABBAGE, Secretary of State and Chairman

STATE BOARD OF ELECTIONS

31 KAR 4:090E. Mock elections for school children.

RELATES TO: KRS 117.235
STATUTORY AUTHORITY: KRS 117.235
EFFECTIVE: October 17, 1994
NECESSITY AND FUNCTION: This administrative regulation is necessary to insure that the regular election process will not be impaired if a county conducts mock elections for school children.

Section 1. A mock election for school children conducted at the polling place in conjunction with any regular, primary or special election shall not interfere with the regular voting process.

Section 2. The precinct election officers shall maintain order at the polls if a mock election for school children is being conducted at the polling place to insure that the regular voting process is not impaired.

BOB BABBAGE, Chairman
APPROVED BY AGENCY: October 13, 1994
FILED WITH LRC: October 17, 1994 at 4 p.m.

REGULATORY IMPACT ANALYSIS

Contact person: George Russell
1. Type and number of entities affected: 120 county boards of election.
2. Direct and indirect costs or savings on the:
(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. There are no direct or indirect costs or savings on the cost of living or employment in Kentucky as a result of this administrative regulation.
(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. There are no direct or indirect costs or savings on the cost of doing business in Kentucky as a result of this administrative regulation.
(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition). There are no reporting or paperwork requirements for the county boards of election as a result of this administrative regulation.
1. First year following implementation:
2. Second and subsequent years:
3. Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: There are no direct or indirect costs or savings to the State Board of Elections as a result of this administrative regulation.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements for the State Board of Elections as a result of this administrative regulation.
4. Assessment of anticipated effect on state and local revenues. There is no anticipated effect on state and local revenues as a result of this administrative regulation.
5. Source of revenue to be used for implementation and enforcement of administrative regulation. There is no additional cost to the county boards of election as a result of this administrative regulation; therefore, no source of revenue for implementation or enforcement of this administrative regulation is necessary.
6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation on:
(a) Geographical area in which administrative regulation will be implemented. This administrative regulation will have no economic effect on the Commonwealth of Kentucky.
(b) Kentucky.
7. Assessment of alternative methods; reasons why alternative methods were rejected. This administrative regulation simply sets forth restrictions for conducting mock elections for school children. Alternative methods were not considered because it was unnecessary.
8. Assessment of expected benefits: This administrative regulation will provide guidance to counties conducting mock elections for school children.
(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There are no effects on public health or environmental welfare in Kentucky as a result of this administrative regulation.
(b) State whether a detrimental effect on environment and public health would result if not implemented. There would not be a detrimental effect on the environment or public health if this administrative regulation is not implemented.
(c) If detrimental effect would result, explain detrimental effect:
9. Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no known statutes, administrative regulations or government policies which overlap or conflict with this administrative 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:
10. Any additional information or comments: None
11. TIERING: Is tiering applied? No. Tiering is unnecessary because this administration regulation must apply uniformly throughout 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? Yes

2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation will affect 120 county boards of elections which are charged with administering the election laws within their counties.

3. State the aspect or service of local government to which this administrative regulation relates. This emergency administrative regulation relates to the conducting of elections by county boards of elections.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. This administrative regulation will have no effect on the expenditures and revenues of a local government.

Revenues (+1):
Expenditures (+/-):
Other explanation:

STATEMENT OF EMERGENCY
301 KAR 2:221E

Waterfowl hunting season frameworks are established annually by the United States Fish and Wildlife Service. Under federal law, states which wish to establish waterfowl hunting seasons must do so within these federal frameworks. Development of the federal regulations involves consideration of harvest and population data, coordination with state wildlife agencies, and public involvement. Consequently, federal migratory bird hunting regulations are promulgated less than six weeks before the opening dates of the hunting season. An ordinary administrative regulation cannot be adopted in the short time between final promulgation of federal regulations and the scheduled opening of state waterfowl hunting seasons, necessitating the promulgation of an emergency regulation. This emergency regulation will be replaced by an ordinary administrative regulation.

BRERETON C. JONES, Governor
C. THOMAS BENNETT, Commissioner

TOURISM CABINET
Department of Fish and Wildlife Resources

301 KAR 2:221E. Waterfowl seasons and limits.

RELATES TO: KRS 150.010, 150.015, 150.170, 150.175, 150.235, 150.240, 150.305, 150.330, 150.340, 150.360, 150.600, 15.603, 150.630, 150.990, 59 CFR Part 20

STATUTORY AUTHORITY: KRS 150.015, 150.021, 150.170, 150.175, 150.330, 150.340, 150.600, 150.603, 59 CFR Part 20

EFFECTIVE: November 11, 1994

NECESSITY AND FUNCTION: To set waterfowl season dates and limits within federal waterfowl hunting frameworks.

Section 1. Zone Descriptions. Hunting zones, special hunt areas and reporting areas are described in 301 KAR 2:224.

Section 2. Gun and Archery Season Dates and Bag Limits for Ducks, Coots and Mergansers. (1) Season dates.

(a) Statewide, November 24 through November 27.

(b) Eastern duck zone: December 16 through January 20.

(c) Western duck zone: December 10 through January 14.

(2) Gun and archery daily limits.

(a) Three (3) ducks, which shall include no more than:

1. Two (2) mallards, which shall include no more than one (1) hen mallard.

2. Two (2) wood ducks.

3. One (1) black duck.

4. One (1) redhead.

5. One (1) pintail.

6. One (1) canvasback.

(b) Fifteen (15) coots.

(c) Five (5) mergansers, which shall include no more than one (1) hooded merganser.

(d) Possession limits are double daily limits.

Section 3. Gun and Archery Seasons Dates and Bag Limits for Geese. (1) Snow goose and brant season dates: statewide, November 24 through January 31.

(2) Canada goose and white-fronted goose season dates.

(a) Eastern goose zone: December 13 through January 31.

(b) Pennyroyal/Coalfield goose zone: December 17 through January 20.

(c) Western goose zone: December 10 through January 31, or until quotas described in Section 6 of this administrative regulation are reached.

(d) Fulton County: December 10 through February 13, or until quotas described in Section 5 of this administrative regulation are reached.

(e) West-Central and Cave Run special hunt regions: December 17 through December 23.

(3) The following are closed to goose hunting:

(a) Breathitt, Clay, Laurel, Knott, Perry and Whitley counties.

(b) Bell County south of Highway 119 and east of US 25E.

(c) McCreary County east of US 27.

(d) Pulaski County east of US 27.

(e) Cave Run Lake and the lands inside a boundary formed by Highways 801, 1274, 36, 211 and US 60.

(4) Christian County north of Highway 68/80 is closed to Canada goose hunting.

(5) Daily limits.

(a) Except in the Cave Run special hunt region, seven (7) geese, which shall include no more than:

1. Two (2) Canada geese.

2. Two (2) white-fronted geese.

3. Two (2) brant.

(b) In the Cave Run special hunt region, one (1) Canada goose. Persons shall not take snow geese, brant or white-fronted geese.

(5) Possession limits are double daily limits.

Section 4. Shooting Hours. (1) Except as specified in this administrative regulation or on wildlife management areas as stipulated in 301 KAR 2:222, one-half (1/2) hour before sunrise until sunset.

(2) In the Cave Run special hunt area, one-half (1/2) hour before sunrise until 2 p.m.

Section 5. Ballard Wildlife Management Area North of Terrell Landing Road. (1) Ducks, coots and mergansers, December 13 through January 14 or until the Ballard reporting area goose quota is reached.

(2) Geese, December 13 through January 31 or until the Ballard reporting area quota is reached.

(3) No hunting on Sundays, Mondays, Christmas Day or New Year's Day.

(4) Shooting hours: one-half (1/2) hour before sunrise until noon.

(5) Waterfowl hunters:

(a) Shall apply in advance.

(b) Shall not have more than ten (10) shotgun shells in their possession.

(c) Shall case their guns while using department-supplied transportation to and from blinds.

(d) Shall be accompanied by an adult if under eighteen (18) years old.

(6) More than three (3) persons shall not occupy a blind.

(7) The Ohio River from fifty (50) yards upstream from Dam 53 to fifty (50) yards downstream from the southern border of the Ballard Wildlife Management Area is closed to waterfowl hunting from October 15 through March 15.

Section 6. Falconry Waterfowl Season and Limits. (1) Season: statewide, November 5 through January 31.

(2) Daily limit: three (3) waterfowl.

(3) Possession limit: six (6) waterfowl.

Section 7. Quotas and Early Goose Season Closings. (1) If hunters reach a quota of 14,300 Canada geese in the Ballard reporting area before January 31:

(a) Goose season shall close in the Ballard reporting area.

(b) In the counties associated with the Ballard reporting area, the goose season shall close:

1. Seven (7) days later; or

2. On the scheduled closing date, whichever occurs first.

(2) If hunters reach a quota of 4,200 Canada geese in the Henderson-Union reporting area before January 31:

(a) Goose season shall close in the Henderson-Union reporting area.

(b) In the counties associated with the Henderson-Union reporting area, goose season shall close:

1. Seven (7) days later; or

2. On the scheduled closing date, whichever occurs first.

(3) The department shall provide at least a twenty-four (24) hour notice of the time and date of early closures.

C. THOMAS BENNETT, Commissioner
CRIT LUALLEN, Secretary
MIKE BOATWRIGHT, Chairman
APPROVED BY AGENCY: August 26, 1994
FILED WITH LRC: November 11, 1994 at 9 a.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Lauren Schaaf

(1) Type and number of entities affected: Approximately 14,000 persons hunt waterfowl annually in Kentucky.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. This administrative regulation should have no impact on costs of living or employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No impacts are anticipated.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Waterfowl hunters must purchase licenses as well as state and federal waterfowl stamps. This is a continuing requirement that will impose no additional requirements.

2. Second and subsequent years: Same as first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No new direct or indirect costs or savings will be incurred.

2. Continuing costs or savings: Same as for first year.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: No additional reporting or paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: No increase or decrease on state or local revenues is anticipated.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Revenue from the sale of hunting and fishing licenses and from the Federal Aid to Wildlife Restoration will be used to implement this administrative regulation.

(6) To the extend available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No public comments received. Waterfowl hunting creates substantial economic activity in certain sections of the state. This administrative regulation will allow waterfowl hunting to continue by establishing hunting seasons within federal frameworks.

(b) Kentucky: The statewide impact of waterfowl hunting is minimal, but this administrative regulation does allow for the continuance of this activity.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The alternative of not having a waterfowl season was rejected because waterfowl represent a renewable natural resource which affords recreational opportunities and generates economic activity throughout the commonwealth.

(8) Assessment of expected benefits: Continuation of waterfowl hunting and short- and long-term conservation of waterfowl resources are the primary benefits.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Regulated harvest of waterfowl ensures the continuation of this important component of the Commonwealth's biological diversity.

(b) State whether a detrimental effect on environmental and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: Inability to regulate waterfowl resource.

(9) Identify and 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.

(10) Any additional information or comments: The provisions of this regulation were contained in 301 KAR 2:220, which is being repealed and replaced with regulations which better meet the formatting and wording requirements of KRS Chapter 13A.

(11) TIERING: Is tiering applied? (Explain why tiering was or was not used) Tiering was used to apply different season dates and harvest limits to various regions of the state. This was done to maximize hunter opportunity while conserving waterfowl resources.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 50 CFR Part 20, Federal Register, Vol. 59, No 186, Tuesday, September 27, 1994.

2. State compliance standards. State seasons and bag limits are within the federal frameworks.

3. Minimum or uniform standards contained in the federal mandate. Ducks, coots and mergansers: Not more than a 30 day season with a 4 bird bag limit or a 40 day season with a 3 bird bag limit between October 1, 1994 and January 20, 1995. The state may be split into 2 zones with no more than 2 segments in each zone. The daily bag limit with a 30 day season is 4 ducks and may not include more than 3 mallards (no more than 1 hen mallard), 3 mottled ducks, 1 black duck, 1 pintail, 2 wood ducks, 1 canvasback and 1 redhead. The daily bag limit with a 40 day season is 3 ducks and may not include more than 2 mallards (no more than 1 hen mallard), 1 black duck, 2 wood ducks, 1 redhead, and 1 pintail of either sex. The possession limit shall be twice the daily bag. The coot daily bag shall be 15 with the possession limit being 30. The merganser limit shall be 5 daily (only 1 may be a hooded merganser) and the possession limit being twice the daily bag. Both the coot and merganser bag shall be

in addition to the duck limit.

Geese: The season for light geese (snow geese) may extend for 107 days and the season for white-fronted geese may extend for 70 days. Season framework for light geese is between the Saturday nearest October 1, 1994 and February 14, 1995, and season framework for white-fronted geese is between the Saturday nearest October 1, 1994 through January 31, 1995.

The Canada goose season in the Western Goose Zone season may extend for 53 days (66 days in Fulton County) between October 1, 1994 and January 31, 1995 (except February 15, 1995 in Fulton County), or until the harvest of 21,900 birds is taken, whichever occurs first.

Pennyroyal/Coalfield Zone Canada goose season may extend for 35 days with a daily bag limit of 2 Canada geese.

The Canada goose season in the remainder of the state may extend for 50 days with a daily bag limit of 2 Canada geese between the Saturday nearest October 1, 1994 and January 31, 1995. Possession limit is twice the daily bag limit.

The daily bag limit shall be 7 geese, to include no more than 2 Canada geese, 2 white-fronted geese and 2 brant.

Shooting hours shall be 1/2 hour before sunrise until sunset daily for all species.

Falconry season for migratory birds mentioned above shall fall between September 1, 1994 and March 10, 1995 and shall not exceed 107 days. Daily bag and possession limits shall not exceed 3 birds daily or 6 in possession, singly or in the aggregate of species. Hunting hours shall be the same as for firearms hunting.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Seasons for light geese and white-fronted geese are shorter due to the paucity of birds wintering in Kentucky during the early parts of the framework dates. Exerting hunting pressure on so few birds could jeopardize long-term bird use in Kentucky.

The Ballard Wildlife Management Area season is for 36 days or 17 days shorter than the Western Goose Zone so that controlled hunts will not jeopardize goose and duck use. Scheduled resting periods during the framework is a good means of enhancing historic use patterns.

STATEMENT OF EMERGENCY
301 KAR 2:222E

Waterfowl hunting season frameworks are established annually by the United States Fish and Wildlife Service. Under federal law, states which wish to establish waterfowl hunting seasons must do so within these federal frameworks. Development of the federal regulations involves consideration of harvest and population data, coordination with state wildlife agencies, and public involvement. Consequently, federal migratory bird hunting regulations are promulgated less than six weeks before the opening dates of the hunting season. An ordinary administrative regulation cannot be adopted in the short time between final promulgation of federal regulations and the scheduled opening of state waterfowl hunting seasons, necessitating the promulgation of an emergency regulation. This emergency regulation will be replaced by an ordinary administrative regulation.

BRERETON C. JONES, Governor
C. THOMAS BENNETT, Commissioner

TOURISM CABINET
Department of Fish and Wildlife Resources

301 KAR 2:222E. Waterfowl hunting requirements.

RELATES TO: KRS 150.010, 150.015, 150.170, 150.175, 150.235, 150.240, 150.305, 150.330, 150.340, 150.360, 150.600, 15.603, 150.630, 150.990, 59 CFR Part 20

STATUTORY AUTHORITY: KRS 150.015, 150.021,150.170, 150.175, 150.330, 150.340, 150.600, 150.603, 59 CFR Part 20

EFFECTIVE: November 11, 1994

NECESSITY AND FUNCTION: To establish statewide waterfowl hunting requirements and to specify seasons and other requirements on wildlife management areas. This administrative regulation contains a portion of the substance of 301 KAR 2:220, which it repeals. Substantive changes from 301 KAR 2:220 are: allowing first-come, first-served hunting in blinds in the Duncan and Crenshaw tracts of the Sloughs Wildlife Management Area if permit holders do not occupy blinds by the beginning of shooting hours, permitting waterfowl hunting seven (7) days a week (instead of four (4)) on the Duncan and Crenshaw tracts of the Sloughs Wildlife Management Area and permitting waterfowl hunting on the Beaver Creek Wildlife Management Area.

Section 1. Definitions. (1) "Blind" means:

(a) A concealing enclosure.

(b) A pit.

(c) A boat.

(2) "Permanent blind" means a blind left in place more than twenty-four (24) hours.

(3) "Statewide waterfowl seasons" means the provisions of this administrative regulation and of 301 KAR 2:221.

(4) "Waterfowl" means ducks, geese, coots and mergansers.

Section 2. Waterfowl hunters shall not use or carry:

(1) Shotgun shells containing:

(a) Lead shot; or

(b) Shot not approved by the U.S. Fish and Wildlife Service for waterfowl hunting.

(2) Shot larger than size "T".

(3) Shotshells longer than three and one-half (3-1/2) inches.

Section 3. Requirements for Waterfowl Hunters in the Ballard Reporting Area, as Described in 301 KAR 2:224. (1) Waterfowl hunters:

(a) Shall hunt from blinds unless hunting in flooded, standing timber.

(b) Shall not hunt from or establish a blind:

1. Within 100 yards of another blind; or

2. Within fifty (50) yards of a property line.

(c) Shall not possess more than one (1) shotgun while in a blind.

(2) More than five (5) persons shall not occupy a blind.

Section 4. Blind Restrictions on Wildlife Management Areas. (1) Except as specified in this section or in Section 5 of this administrative regulation, on wildlife management areas:

(a) Waterfowl hunters shall not establish or hunt from:

1. Permanent blinds.

2. Blinds within 200 yards of:

a. Another blind; or

b. A waterfowl refuge.

(b) Persons shall not hunt in designated recreation areas or access points.

(c) More than four (4) persons shall not occupy a blind.

(d) Hunters shall remove decoys and personal effects daily.

(2) Persons wishing to establish permanent blinds on Barkley Lake, Barren River Lake, Buckhorn Lake, Green River Lake, Nolin

River Lake, Paintsville Lake, Rough River Lake and Taylorsville Lake Wildlife Management Areas:

(a) Shall first obtain a permit from the U. S. Army Corps of Engineers.

(b) May designate one (1) other person as a partner.

(c) Shall participate in a drawing for blind permits on the Barkley, Barren, Green, Paintsville, and Taylorsville areas.

(d) Shall present a valid hunting license at the time of the drawing.

(e) Shall not hold more than one (1) permit per area.

(3) Holders of blind permits:

(a) Shall construct blinds before November 20 or forfeit the permit.

(b) Shall not lock blinds.

(c) Unless an extension of time is granted, shall remove blinds within thirty (30) days of the close of waterfowl season or be ineligible for a permit the following year.

(4) Blinds not occupied by the permit holder one-half (1/2) hour before sunrise shall be available to other hunters on a first-come, first-serve basis.

(5) Blind restrictions shall not apply to falconers when gun or archery seasons are not open.

Section 5. Exceptions for Wildlife Management Areas. (1) Statewide waterfowl seasons apply unless otherwise stated in this section.

(2) If specific hunting dates are given in this section, persons may hunt waterfowl only on these dates.

(3) Ballard Wildlife Management Area. Waterfowl hunting requirements are stipulated in 301 KAR 2:221.

(4) Barkley Lake Wildlife Management Area.

(a) Permanent blinds may be used as specified in Section 4 of this administrative regulation.

(b) Persons shall establish permanent blinds within ten (10) yards of their assigned and numbered blind markers within:

1. An area bounded by the mouth of Donaldson Creek, the east side of the Cumberland River Channel and the boat ramp at Linton.

2. An area bounded by the Pryor's Creek Light, the west side of the Cumberland River Channel, Land between the Lakes Road 204 and river mile 73.5.

(c) The following refuge areas are closed to the public:

1. From November 1 through February 15 within an area west of the main river channel between river mile 51 (Hayes Landing Light) and river mile 57.3 (Crooked Creek Light):

a. Including the row of islands on the west side of the main river channel; and

b. Not including Taylor Bay and Jake Fork Bay.

2. From November 1 through March 15 within Honker Bay and Fulton Bay as marked by buoys and signs.

(d) From October 15 through March 15, persons shall not hunt:

1. Within 200 yards of; or

2. Within the area defined by the levee between river mile 68.4 and river mile 70.4.

(5) Barren River Lake Wildlife Management Area. Permanent blinds may be used as specified in Section 4 of this administrative regulation.

(6) Buckhorn Lake Wildlife Management Area. Permanent blinds may be used as specified in Section 4 of this administrative regulation.

(7) Cane Creek Wildlife Management Area is closed to waterfowl hunting.

(8) Cumberland Lake Wildlife Management Area. The following sections are closed to the public from October 15 through March 15:

(a) Wesley Bend, the area bounded by Fishing Creek, Beech Grove Road and Fishing Creek Road.

(b) Yellowhole, the area bounded by Fishing Creek Road and Hickory Nut Road.

(9) Cyprus-AMEX Wildlife Management Area is closed to waterfowl hunting.

(10) Grayson Lake Wildlife Management Area. Persons shall not hunt waterfowl:

(a) Within the no wake zone at the dam site marina;

(b) From the shores of Camp Webb;

(c) From the shores of the state park; or

(d) On Deer Creek Fork of Grayson Lake.

(11) Green River Lake Wildlife Management Area.

(a) Permanent blinds may be used as specified in Section 4 of this administrative regulation.

(b) Shooting hours: one-half (1/2) hour before sunrise until 2 p.m.

(12) Higginson-Henry Wildlife Management Area. Portions marked by signs are closed to the public.

(13) Kaler Bottoms Wildlife Management Area. Shooting hours: one-half (1/2) hour before sunrise until 2 p.m.

(14) Land Between the Lakes.

(a) The following portions are closed to the public from November 1 through March 15:

1. Long Creek Pond.

2. The eastern one-third (1/3) of Smith Bay.

3. The eastern two-thirds (2/3) of Duncan Bay.

(b) The following portions are closed to waterfowl hunting:

1. The Environmental Education Center.

2. Energy Lake.

(c) Persons shall possess an annual Land Between the Lakes hunting permit when hunting waterfowl:

1. Inland from the water's edge of Kentucky Lake or Barkley Lake; or

2. From boats over flooded portions of Land Between the Lakes when lake levels are above elevation 359.

(d) Persons shall not hunt waterfowl on inland areas during quota deer hunts.

(e) Persons shall not establish or use permanent blinds:

1. On inland areas; or

2. Along the Kentucky Lake shoreline of Land Between the Lakes.

(f) Waterfowl hunters shall remove decoys and personal effects daily.

(15) Mill Creek Wildlife Management Area is closed to waterfowl hunting.

(16) Nolin River Lake Wildlife Management Area. Permanent blinds may be used as specified in Section 4 of this administrative regulation.

(17) Obion Creek Wildlife Management Area. Shooting hours are one-half (1/2) hour before sunrise until 2 p.m.

(18) Ohio River Waterfowl Refuge.

(a) Persons shall not hunt from October 15 through March 15 on the Kentucky portion of the Ohio River from Smithland Lock and Dam upstream to a powerline crossing at approximately river mile 911.5.

(b) Stewart Island is closed to the public from October 15 through March 15, except for quota deer hunting.

(19) Peabody Wildlife Management Area.

(a) Shooting hours: one-half (1/2) hour before sunrise until 2 p.m.

(b) The following portions, as posted by signs, are closed to the public from October 15 through March 15:

1. Gibralter Mine, as bounded by Rockport Road, the Western Kentucky Parkway, Pond Creek and the P&M Haul Road.

2. Sinclair Mine, as bounded by railroad tracks, the haul road and posted signs.

3. Homestead, as bounded by the haul road and the Green River.

(20) Peal Wildlife Management Area. Shooting hours: one-half (1/2) hour before sunrise until 2 p.m.

(21) Pioneer Weapons Wildlife Management Area.

(a) Waterfowl hunters may use breech-loading shotguns along the shoreline of Cave Run Lake.

(b) Waterfowl hunters shall use muzzle-loading shotguns

elsewhere on the area.

(22) Redbird Wildlife Management Area is closed to waterfowl hunting.

(23) The main block of Robinson Forest Wildlife Management Area is closed to waterfowl hunting.

(24) Sloughs Wildlife Management Area.

(a) Shooting hours, one-half (1/2) hour before sunrise until 2 p.m.

(b) On the Grassy-Pond Powells Lake Unit, waterfowl hunters:

1. Shall use permanent blinds provided by the department.

2. Shall remove decoys and personal effects from blinds or the vicinity of blinds daily.

(c) On the Jenny Hole-Highlands Creek Unit, waterfowl hunters:

1. Shall not establish or hunt from blinds closer than 200 yards from another hunting party.

2. Shall remove decoys and personal effects from blinds or the vicinity of blinds daily.

(d) If the Ohio River reaches a level that requires boat access, waterfowl hunters:

1. May hunt from boats without regard to department blinds.

2. Shall not hunt closer than 200 yards from another boat.

(e) Waterfowl hunters on the Crenshaw and Duncan Tracts of the Sauerheber Unit:

1. Shall hunt from blinds assigned by the department through a drawing.

2. May occupy blinds not claimed by the permittee by the opening of shooting hours.

3. Shall not have more than fifteen (15) shotgun shells in their possession.

(f) The Crenshaw and Duncan tracts are closed to hunting except waterfowl from October 15 through March 15.

(g) The remainder of the Sauerheber Unit is closed to the public from October 15 through March 15.

(25) Swan Lake Wildlife Management Area. Portions marked by signs are closed to the public from October 15 through March 15.

(26) Taylorsville Lake Wildlife Management Area.

(a) Permanent blinds may be used as specified in Section 4 of this administrative regulation.

(b) The portion east of Van Buren Boat Ramp as marked by signs is closed to the public from the Monday following the scheduled quota deer hunt through March 15.

(27) Westvaco Wildlife Management Area.

(a) Shooting hours, one-half (1/2) hour before sunrise until 2 p.m.

(b) The portion south of the Westvaco Road as posted by signs is closed to the public from November 1 through March 15.

(c) Persons shall obtain a Westvaco permit before hunting.

(28) White City Wildlife Management Area. Shooting hours are from one-half (1/2) hour before sunrise until 2 p.m.

(29) Yellowbank Wildlife Management Area. The area designated by signs and painted boundary markers is closed to the public from October 15 through March 15.

Section 6. 301 KAR 2:220, Hunting seasons for migratory birds, is repealed.

C. THOMAS BENNETT, Commissioner
CRIT LUALLEN, Secretary
MIKE BOATWRIGHT, Chairman
APPROVED BY AGENCY: August 26, 1994
FILED WITH LRC: November 11, 1994 at 9 a.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Lauren Schaaf

(1) Type and number of entities affected: Approximately 14,000 persons hunt waterfowl annually in Kentucky.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. This administrative regulation should have no impact on costs of living or employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No impacts are anticipated.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Waterfowl hunters must purchase licenses as well as state and federal waterfowl stamps. This is a continuing requirement that will impose no additional requirements.

2. Second and subsequent years: Same as first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No new direct or indirect costs or savings will be incurred.

2. Continuing costs or savings: Same as for first year.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: No additional reporting or paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: No increase or decrease on state or local revenues is anticipated.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Revenue from the sale of hunting and fishing licenses and from the Federal Aid to Wildlife Restoration will be used to implement this administrative regulation.

(6) To the extend available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No public comments received. Waterfowl hunting creates substantial economic activity in certain sections of the state. This administrative regulation will allow waterfowl hunting to continue by establishing hunting seasons within federal frameworks.

(b) Kentucky: The statewide impact of waterfowl hunting is minimal, but this administrative regulation does allow for the continuance of this activity.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The alternative of not having a waterfowl season was rejected because waterfowl represent a renewable natural resource which affords recreational opportunities and generates economic activity throughout the commonwealth.

(8) Assessment of expected benefits: Continuation of waterfowl hunting and short- and long-term conservation of waterfowl resources are the primary benefits.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Regulated harvest of waterfowl ensures the continuation of this important component of the Commonwealth's biological diversity.

(b) State whether a detrimental effect on environmental and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: Inability to regulate waterfowl resource.

(9) Identify and 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.

(10) Any additional information or comments: The provisions of this regulation were contained in 301 KAR 2:220, which is being repealed and replaced with regulations which better meet the formatting and wording requirements of KRS Chapter 13A.

(11) TIERING: Is tiering applied? (Explain why tiering was or was not used) Tiering was used to apply different season dates and other

specialized hunting requirements to various wildlife areas across the state. This was done to maximize hunter opportunity while conserving waterfowl resources.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 50 CFR Part 20, Federal Register, Vol. 59, No 186, Tuesday, September 27, 1994.

2. State compliance standards. State seasons and bag limits are within the federal frameworks.

3. Minimum or uniform standards contained in the federal mandate. Ducks, coots and mergansers: Not more than a 30 day season with a 4 bird bag limit or a 40 day season with a 3 bird bag limit between October 1, 1994 and January 20, 1995. The state may be split into 2 zones with no more than 2 segments in each zone. The daily bag limit with a 30 day season is 4 ducks and may not include more than 3 mallards (no more than 1 hen mallard), 3 mottled ducks, 1 black duck, 1 pintail, 2 wood ducks, 1 canvasback and 1 redhead. The daily bag limit with a 40 day season is 3 ducks and may not include more than 2 mallards (no more than 1 hen mallard), 1 black duck, 2 wood ducks, 1 redhead, and 1 pintail of either sex. The possession limit shall be twice the daily bag. The coot daily bag shall be 15 with the possession limit being 30. The merganser limit shall be 5 daily (only 1 may be a hooded merganser) and the possession limit being twice the daily bag. Both the coot and merganser bag shall be in addition to the duck limit.

Geese: The season for light geese (snow geese) may extend for 107 days and the season for white-fronted geese may extend for 70 days. Season framework for light geese is between the Saturday nearest October 1, 1994 and February 14, 1995, and season framework for white-fronted geese is between the Saturday nearest October 1, 1994 through January 31, 1995.

The Canada goose season in the Western Goose Zone season may extend for 53 days (66 days in Fulton County) between October 1, 1994 and January 31, 1995 (except February 15, 1995 in Fulton County), or until the harvest of 21,900 birds is taken, whichever occurs first.

Pennyroyal/Coalfield Zone Canada goose season may extend for 35 days with a daily bag limit of 2 Canada geese.

The Canada goose season in the remainder of the state may extend for 50 days with a daily bag limit of 2 Canada geese between the Saturday nearest October 1, 1994 and January 31, 1995. Possession limit is twice the daily bag limit.

The daily bag limit shall be 7 geese, to include no more than 2 Canada geese, 2 white-fronted geese and 2 brant.

Shooting hours shall be 1/2 hour before sunrise until sunset daily for all species.

Falconry season for migratory birds mentioned above shall fall between September 1, 1994 and March 10, 1995 and shall not exceed 107 days. Daily bag and possession limits shall not exceed 3 birds daily or 6 in possession, singly or in the aggregate of species. Hunting hours shall be the same as for firearms hunting.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Seasons for light geese and white-fronted geese are shorter due to the paucity of birds wintering in Kentucky during the early parts of the framework dates. Exerting hunting pressure on so few birds could jeopardize long-term bird use in Kentucky.

The Ballard Wildlife Management Area season is for 36 days or 17 days shorter than the Western Goose Zone so that controlled hunts will not jeopardize goose and duck use. Scheduled resting periods during the framework is a good means of enhancing historic use patterns.

STATEMENT OF EMERGENCY
301 KAR 2:223E

Waterfowl hunting season frameworks are established annually by the U. S. Fish and Wildlife Service. Under federal law, states which wish to establish waterfowl hunting seasons must do so within these federal frameworks. Development of the federal regulations involves consideration of harvest and population data, coordination with state wildlife agencies, and public involvement. Consequently, federal migratory bird hunting regulations are promulgated less than six weeks before the opening dates of the hunting season. An ordinary administrative regulation cannot be adopted in the short time between final promulgation of federal regulations and the scheduled opening of state waterfowl hunting seasons, necessitating the promulgation of an emergency regulation. This emergency regulation will be replaced by an ordinary administrative regulation.

BRERETON C. JONES, Governor
C. THOMAS BENNETT, Commissioner

TOURISM CABINET
Department of Fish and Wildlife Resources

301 KAR 2:223E. Waterfowl reporting requirements.

RELATES TO: KRS 150.010, 150.015, 150.170, 150.175, 150.235, 150.240, 150.305, 150.330, 150.340, 150.360, 150.600, 15.603, 150.630, 150.990, 59 CFR Part 20

STATUTORY AUTHORITY: KRS 150.015, 150.021, 150.170, 150.175, 150.300 150.330, 150.600, 150.603, 59 CFR Part 20

EFFECTIVE: November 15, 1994

NECESSITY AND FUNCTION: Monitoring hunter harvest is necessary because of federally mandated quotas or limited populations in goose restoration areas. This administrative regulation is necessary to assure that complete harvest data are collected in a timely manner. The substance of this administrative regulation was contained in 301 KAR 2:220, which is being repealed and replaced with regulations which better meet the formatting and wording requirements of KRS Chapter 13A. This administrative regulation imposes no new requirements or restrictions over those contained in 301 KAR 2:220.

Section 1. Definitions. (1) "Commercial waterfowl hunting area" means private lands or waters where a fee is charged for hunting waterfowl.

(2) "Noncommercial waterfowl hunting area" means private land or water where a fee is not charged for hunting waterfowl.

(3) "Operator" means:

(a) The owner, manager or other person in charge of a commercial waterfowl hunting area;

(b) The owner or tenant of a noncommercial waterfowl hunting area; or

(c) A person to whom the owner or tenant has assigned, in writing on forms provided by the department, exclusive control of waterfowl hunting rights on a noncommercial waterfowl hunting area.

Section 2. In the Ballard Reporting Area or the Henderson-Union Reporting Area, as described in 301 KAR 2:224:

(1) Operators of commercial waterfowl hunting areas shall obtain a commercial waterfowl shooting area permit for each area they operate.

(a) A tract of land divided by a public road may operate under one (1) permit.

(b) Tracts of land separated by property belonging to another person shall require separate permits for each tract.

(2) Operators of commercial waterfowl hunting areas shall maintain complete and accurate records of waterfowl harvested on

daily waterfowl harvest register forms provided by the department.

(3) Operators of noncommercial waterfowl hunting areas:

(a) Shall obtain a noncommercial migratory goose hunting permit from the department.

(b) Shall display the permit openly on the area.

(c) Shall make daily waterfowl harvest register forms available to goose hunters.

(d) Shall require goose hunters to:

1. Enter their names, addresses, hunting license numbers and the date on the register before hunting; and

2. Enter the number of geese taken by species before leaving the area.

(4) Operators of commercial or noncommercial waterfowl hunting areas:

(a) Shall close each week's waterfowl harvest register after shooting hours on Wednesday.

(b) Shall mail or hand deliver the original form to the address indicated so that it arrives no later than the following Monday.

(c) Shall retain forms for two (2) months after the close of goose season.

(d) Shall allow agents of the department or the U. S. Fish and Wildlife Service to inspect permits and harvest records.

(5) Persons hunting geese on commercial or noncommercial waterfowl hunting areas:

(a) Shall enter their names, addresses, hunting license numbers and the date on the register form before hunting, and

(b) Shall record the number of geese taken by species on the register form before leaving the area.

(6) Persons hunting geese on public areas, including the Ohio or Mississippi rivers or their overflow areas, within the Ballard or Henderson-Union reporting areas:

(a) Shall obtain a daily waterfowl harvest register from the department.

(b) Before hunting, shall enter on the register:

1. Their names, addresses, hunting license numbers and the date.

2. If an individual is carrying the form for a hunting party, the name, address and hunting license number of each member of the party, and the date.

(c) Shall record on the register the number of geese by species taken each day.

(d) Shall mail or hand deliver the completed register to the address indicated on the form so that it arrives no later than Monday of each week.

Section 3. Persons hunting geese in the West-Central or Cave Run special hunt regions, as defined in 301 KAR 2:224:

(1) Shall carry a permit to hunt Canada geese on special areas form.

(2) Shall complete and return the harvest survey portion of the permit by January 6.

(3) Shall not be eligible for permits the following year if they do not return harvest surveys by January 6.

Section 4. Items Incorporated by Reference. The following forms are incorporated by reference. They are available for examination or copying from the Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601 from 8 a.m. until 4:30 p.m. eastern time during business days.

(1) Kentucky Permit to Hunt Canada Geese on Special Areas.

(2) Noncommercial Migratory Goose Hunting Permit.

(3) Daily Waterfowl Harvest Register.

(4) Application for Commercial Waterfowl Shooting Area Permit.

(5) Assignment of Waterfowl Hunting Rights.

C. THOMAS BENNETT, Commissioner
CRIT LUALLEN, Secretary

MIKE BOATWRIGHT, Chairman
APPROVED BY AGENCY: August 26, 1994
FILED WITH LRC: November 15, 1994 at 8 a.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Lauren Schaaf

(1) Type and number of entities affected: Approximately 500 individuals or businesses will be required to report their goose harvest.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. Reporting of goose harvest to determine if quotas are reached is a federal requirement. Waterfowl hunting generates substantial economic activity in the areas of Western Kentucky covered by this administrative regulation, which would be lost if we do not meet this federal requirement.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. Costs of obtaining permits and mailing forms, as required by this regulation, are minimal.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Waterfowl hunters, as well as operators of commercial and noncommercial waterfowl hunting areas, are required to obtain permits and report goose harvest. This is an existing requirement, so this administrative regulation will neither increase or decrease costs.

2. Second and subsequent years: Same as first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: This is an existing activity; neither costs nor savings will be impacted by this administrative regulation.

2. Continuing costs or savings: Same as for first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The department must print and distribute permits and harvest forms and tabulate waterfowl harvest from returned forms.

(4) Assessment of anticipated effect on state and local revenues: No increase or decrease is anticipated.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Fish and Game Fund revenues.

(6) To the extend available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No public comments received. This is a continuing regulation which will have no additional positive or negative economic impact.

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: This is a federally mandated requirement. The alternative is not permit Canada goose hunting in two of the areas of the state with high goose populations. This is an unacceptable alternative because geese are a renewable natural resource which provide considerable recreational opportunity and economic benefit in these areas.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environmental and public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify and 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.

(10) Any additional information or comments: The substance of this administrative regulation was contained in 301 KAR 2:220, which is being repealed and replaced with regulations which meet the formatting and language requirements of KRS Chapter 13A. This administrative regulation contains no substantive changes from 301 KAR 2:220.

(11) TIERING: Is tiering applied? Tiering was used to the extent that differing requirements are placed on operators of commercial waterfowl hunting areas, operators of non-commercial waterfowl hunting areas, and individual hunters.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 50 CFR Part 20, Federal Register, Vol. 59, No 186, Tuesday, September 27, 1994.

2. State compliance standards. State seasons and bag limits are within the federal frameworks.

3. Minimum or uniform standards contained in the federal mandate. Ducks, coots and mergansers: Not more than a 30 day season with a 4 bird bag limit or a 40 day season with a 3 bird bag limit between October 1, 1994 and January 20, 1995. The state may be split into 2 zones with no more than 2 segments in each zone. The daily bag limit with a 30 day season is 4 ducks and may not include more than 3 mallards (no more than 1 hen mallard), 3 mottled ducks, 1 black duck, 1 pintail, 2 wood ducks, 1 canvasback and 1 redhead. The daily bag limit with a 40 day season is 3 ducks and may not include more than 2 mallards (no more than 1 hen mallard), 1 black duck, 2 wood ducks, 1 redhead, and 1 pintail of either sex. The possession limit shall be twice the daily bag. The coot daily bag shall be 15 with the possession limit being 30. The merganser limit shall be 5 daily (only 1 may be a hooded merganser) and the possession limit being twice the daily bag. Both the coot and merganser bag shall be in addition to the duck limit.

Geese: The season for light geese (snow geese) may extend for 107 days and the season for white-fronted geese may extend for 70 days. Season framework for light geese is between the Saturday nearest October 1, 1994 and February 14, 1995, and season framework for white-fronted geese is between the Saturday nearest October 1, 1994 through January 31, 1995.

The Canada goose season in the Western Goose Zone season may extend for 53 days (66 days in Fulton County) between October 1, 1994 and January 31, 1995 (except February 15, 1995 in Fulton County), or until the harvest of 21,900 birds is taken, whichever occurs first.

Pennyroyal/Coalfield Zone Canada goose season may extend for 35 days with a daily bag limit of 2 Canada geese.

The Canada goose season in the remainder of the state may extend for 50 days with a daily bag limit of 2 Canada geese between the Saturday nearest October 1, 1994 and January 31, 1995. Possession limit is twice the daily bag limit.

The daily bag limit shall be 7 geese, to include no more than 2 Canada geese, 2 white-fronted geese and 2 brant.

Shooting hours shall be 1/2 hour before sunrise until sunset daily for all species.

Falconry season for migratory birds mentioned above shall fall between September 1, 1994 and March 10, 1995 and shall not exceed 107 days. Daily bag and possession limits shall not exceed 3 birds daily or 6 in possession, singly or in the aggregate of species. Hunting hours shall be the same as for firearms hunting.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Seasons for light geese and white-fronted geese are shorter due to the paucity of birds wintering in Kentucky during the early parts of the framework dates. Exerting hunting pressure on so few birds could jeopardize long-term bird use in Kentucky.

The Ballard Wildlife Management Area season is for 36 days or 17 days shorter than the Western Goose Zone so that controlled hunts will not jeopardize goose and duck use. Scheduled resting periods during the framework is a good means of enhancing historic use patterns.

STATEMENT OF EMERGENCY
301 KAR 2:224E

Waterfowl hunting season frameworks are established annually by the U. S. Fish and Wildlife Service. Under federal law, states which wish to establish waterfowl hunting seasons must do so within these federal frameworks. Development of the federal regulations involves consideration of harvest and population data, coordination with state wildlife agencies, and public involvement. Consequently, federal migratory bird hunting regulations are promulgated less than six weeks before the opening dates of the hunting season. An ordinary administrative regulation cannot be adopted in the short time between final promulgation of federal regulations and the scheduled opening of state waterfowl hunting seasons, necessitating the promulgation of an emergency regulation. This emergency regulation will be replaced by an ordinary administrative regulation.

BRERETON C. JONES, Governor
C. THOMAS BENNETT, Commissioner

TOURISM CABINET
Department of Fish and Wildlife Resources

301 KAR 2:224E. Waterfowl hunting zones.

RELATES TO: KRS 150.010, 150.015, 150.170, 150.175, 150.235, 150.240, 150.305, 150.330, 150.340, 150.360, 150.600, 15.603, 150.630, 150.990, 59 CFR Part 20

STATUTORY AUTHORITY: KRS 150.015, 150.021, 150.170, 150.175, 150.330, 150.600, 150.603, 59 CFR Part 20

EFFECTIVE: November 11, 1994

NECESSITY AND FUNCTION: Unevenly distributed waterfowl resources and federal requirements necessitate different season dates and harvest regulations in different sections of the Commonwealth. This administrative regulation establishes waterfowl hunting zones. The substance of this administrative regulation is contained in 301 KAR 2:220, which is being repealed and replaced by regulations which better meet the formatting and language requirements of KRS Chapter 13A. This administrative regulation makes no changes in existing waterfowl hunting zones.

Section 1. Goose Hunting Zones. (1) The western goose zone includes Henderson County and the portion of Kentucky west of:

(a) US 60 from the Henderson-Union County line to US 641;

(b) US 641 to Interstate 24;

(c) Interstate 24 to the Purchase Parkway; and

(d) The Purchase Parkway.

(2) The Ballard Reporting Area includes the portion of Ballard County north or west of:

(a) The Ballard-McCracken County line to State Road 358;

(b) State Road 358 to US 60;

(c) US 60 to the city limits of Wickliffe;

(d) The city limits of Wickliffe to the center of the Mississippi River.

(3) Counties associated with the Ballard reporting area include:

(a) The portion of Ballard county not included in the Ballard reporting area;

(b) Carlisle and McCracken counties; and

(c) The portions of Fulton, Graves, Hickman and Marshall counties in the western goose zone.

(4) The Henderson-Union reporting area includes Henderson County and the portion of Union County in the western goose zone.

(5) Counties associated with the Henderson-Union reporting area include those portions of Crittenden, Livingston and Lyon Counties in the western goose zone.

(6) The Pennyroyal-Coalfield goose zone includes the area between the western goose zone and:

(a) Interstate 65 from the Tennessee line to the Green River Parkway;

(b) The Green River Parkway to the US 60 by-pass at Owensboro;

(c) The US 60 by-pass to US 231; and

(d) US 231 to the Indiana border.

(7) The Eastern Goose Zone includes the portions of Kentucky not included in the Western or Pennyroyal-Coalfield goose zones.

(8) The west-central special hunt region includes:

(a) Muhlenburg County;

(b) Ohio County south of Rough River;

(c) Butler County west of Highway 79 and north of Highway 70;

(d) Hopkins County:

1. East of Highways 814 and 109;

2. South of US 41A between Highways 814 and Madisonville; and

3. South of Highway 85 east of Madisonville.

(9) The Cave Run special hunt region includes Bath, Menifee, Morgan and Rowan counties, except Paintsville Lake and its shoreline in Morgan County.

Section 2. Duck, Coot, and Merganser Hunting Zones. (1) "Western duck zone" means the portion of Kentucky included in the western and Pennyroyal-Coalfield goose zones.

(2) "Eastern duck zone" means the portion of Kentucky not included in the western duck zone.

C. THOMAS BENNETT, Commissioner
CRIT LUALLEN, Secretary
MIKE BOATWRIGHT, Chairman
APPROVED BY AGENCY: August 26, 1994
FILED WITH LRC: November 11, 1994 at 9 a.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Lauren Schaaf

(1) Type and number of entities affected: Approximately 14,000 persons hunt waterfowl annually in Kentucky.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. This administrative regulation should have no impact on costs of living or employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No impacts are anticipated.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Waterfowl hunters must purchase licenses as well as state and federal waterfowl stamps. This is a continuing requirement that will impose no additional requirements.

2. Second and subsequent years: Same as first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No new direct or indirect costs or savings will be incurred.

2. Continuing costs or savings: Same as for first year.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: No additional reporting or paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: No increase or decrease on state or local revenues is anticipated.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Revenue from the sale of hunting and fishing licenses and from the Federal Aid to Wildlife Restoration will be used to implement this administrative regulation.

(6) To the extend available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No public comments received. Waterfowl hunting creates substantial economic activity in certain sections of the state. This administrative regulation will allow waterfowl hunting to continue by establishing hunting seasons within federal frameworks.

(b) Kentucky: The statewide impact of waterfowl hunting is minimal, but this administrative regulation does allow for the continuance of this activity.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The alternative of not having a waterfowl season was rejected because waterfowl represent a renewable natural resource which affords recreational opportunities and generates economic activity throughout the commonwealth.

(8) Assessment of expected benefits: Continuation of waterfowl hunting and short- and long-term conservation of waterfowl resources are the primary benefits.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Regulated harvest of waterfowl ensures the continuation of this important component of the Commonwealth's biological diversity.

(b) State whether a detrimental effect on environmental and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: Inability to regulate waterfowl resource.

(9) Identify and 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.

(10) Any additional information or comments: The provisions of this regulation were contained in 301 KAR 2:220, which is being repealed and replaced with regulations which better meet the formatting and wording requirements of KRS Chapter 13A.

(11) TIERING: Is tiering applied? (Explain why tiering was or was not used) Tiering was used to apply different season dates and harvest limits to various regions of the state. This was done to maximize hunter opportunity while conserving waterfowl resources.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 50 CFR Part 20, Federal Register, Vol. 59, No 186, Tuesday, September 27, 1994.

2. State compliance standards. State seasons and bag limits are within the federal frameworks.

3. Minimum or uniform standards contained in the federal mandate. Ducks, coots and mergansers: Not more than a 30 day season with a 4 bird bag limit or a 40 day season with a 3 bird bag

limit between October 1, 1994 and January 20, 1995. The state may be split into 2 zones with no more than 2 segments in each zone. The daily bag limit with a 30 day season is 4 ducks and may not include more than 3 mallards (no more than 1 hen mallard), 3 mottled ducks, 1 black duck, 1 pintail, 2 wood ducks, 1 canvasback and 1 redhead. The daily bag limit with a 40 day season is 3 ducks and may not include more than 2 mallards (no more than 1 hen mallard), 1 black duck, 2 wood ducks, 1 redhead, and 1 pintail of either sex. The possession limit shall be twice the daily bag. The coot daily bag shall be 15 with the possession limit being 30. The merganser limit shall be 5 daily (only 1 may be a hooded merganser) and the possession limit being twice the daily bag. Both the coot and merganser bag shall be in addition to the duck limit.

Geese: The season for light geese (snow geese) may extend for 107 days and the season for white-fronted geese may extend for 70 days. Season framework for light geese is between the Saturday nearest October 1, 1994 and February 14, 1995, and season framework for white-fronted geese is between the Saturday nearest October 1, 1994 through January 31, 1995.

The Canada goose season in the Western Goose Zone season may extend for 53 days (66 days in Fulton County) between October 1, 1994 and January 31, 1995 (except February 15, 1995 in Fulton County), or until the harvest of 21,900 birds is taken, whichever occurs first.

Pennyroyal/Coalfield Zone Canada goose season may extend for 35 days with a daily bag limit of 2 Canada geese.

The Canada goose season in the remainder of the state may extend for 50 days with a daily bag limit of 2 Canada geese between the Saturday nearest October 1, 1994 and January 31, 1995. Possession limit is twice the daily bag limit.

The daily bag limit shall be 7 geese, to include no more than 2 Canada geese, 2 white-fronted geese and 2 brant.

Shooting hours shall be 1/2 hour before sunrise until sunset daily for all species.

Falconry season for migratory birds mentioned above shall fall between September 1, 1994 and March 10, 1995 and shall not exceed 107 days. Daily bag and possession limits shall not exceed 3 birds daily or 6 in possession, singly or in the aggregate of species. Hunting hours shall be the same as for firearms hunting.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Seasons for light geese and white-fronted geese are shorter due to the paucity of birds wintering in Kentucky during the early parts of the framework dates. Exerting hunting pressure on so few birds could jeopardize long-term bird use in Kentucky.

The Ballard Wildlife Management Area season is for 36 days or 17 days shorter than the Western Goose Zone so that controlled hunts will not jeopardize goose and duck use. Scheduled resting periods during the framework is a good means of enhancing historic use patterns.

STATEMENT OF EMERGENCY
501 KAR 6:020E

In order to continue to operate the Department of Corrections in accordance with KRS Chapter 196, the department needs to implement this emergency administrative regulation. An ordinary administrative regulation will not suffice because the effected institutional policies must be revised immediately to allow the Department of Corrections to come into compliance with revised legislation referencing changes in guidelines for monitoring supervision fees and drug and alcohol testing for offenders. (See KRS 439.325 and 533.030.) This emergency regulation shall be replaced by the ordinary administrative regulation in accordance with KRS Chapter 13A.

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

DEPARTMENT OF CORRECTIONS

501 KAR 6:020E. Corrections policies and procedures.

RELATES TO: KRS Chapters 196, 197, 439
STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640
EFFECTIVE: November 7, 1994
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 October 26, [~~October 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 [~~(Amended 10/12/94)~~]
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
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
14.6 Inmate Grievance Procedures
15.1 Hair and Grooming Standards
15.2 Offenses and Penalties
15.3 Meritorious Good Time
15-05-01 Restoration of Forfeited Good Time
15.6 Adjustment Procedures and Programs
15.7 Inmate Account Restriction
16.1 Inmate Visits
16.2 Inmate Correspondence
16.3 Telephone Calls
16.4 Inmate Packages
17-01-01 Inmate Personal Property
17.2 Assessment Center Operations
17.3 Controlled Intake of Inmates
18.1 Classification of the Inmate
18.5 Custody and Security Guidelines [~~(Amended 10/12/94)~~]
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 [~~(Amended 10/12/94)~~]
18.12 Referral Procedure for Inmates Adjudicated Guilty But Mentally Ill
18.13 Population Categories
18.15 Protective Custody
18.17 Interstate Agreement on Transfers [~~(Added 10/12/94)~~]
18.18 International Transfer of Inmates [~~(Added 10/12/94)~~]
19.1 Government Services Projects
19.2 Community Services Projects
19.3 Inmate Wage Program (Amended 10/26/94)
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 (Amended 10/26/94)
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 (Amended 10/26/94)
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: October 26, 1994
FILED WITH LRC: November 7, 1994 at 9 a.m.

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.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None
2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Policy revisions.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1994-1996 biennium.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: N/A

(9) 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

(10) Any additional information or comments: None

(11) TIERING: Is 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.

STATEMENT OF EMERGENCY
501 KAR 6:070E

In order to continue to operate the Department of Corrections in accordance with KRS Chapter 196, the department needs to implement this emergency regulation. An ordinary administrative regulation cannot suffice because the effected institutional policies must be revised immediately to allow the Kentucky Correctional Institution for Women to come into compliance with national accreditation standards prior to a November audit by the American Correctional Association. The reaccreditation is a requirement mandated by the federal court guidelines in Canterino v. Wilson, 869 F2d 948 (6th Cir., 1989). This emergency regulation shall be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

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

DEPARTMENT OF CORRECTIONS

501 KAR 6:070E. 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
EFFECTIVE: November 7, 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 October 26 [~~June 14~~], 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
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 (Amended 10/26/94)
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 (Amended 10/26/94)
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
KCIW 12-01-01 Control of Pests and Vermin
KCIW 12-02-01 Laundry and Clothing Issuance (Amended 10/26/94)
KCIW 12-02-03 Donated Items
KCIW 12-04-02 Hair Care Services (Amended 10/26/94)
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 (Amended 10/26/94)
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 (Amended 10/26/94)
KCIW 16-03-01 Inmate Visiting Regulations (Amended 10/26/94) [(~~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 (Amended 10/26/94)
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 (Amended 10/26/94)
KCIW 17-05-01 Inmate Personal Property Guidelines (Amended 10/26/94)
KCIW 18-01-02 Institutional Housing Assignments (Amended 10/26/94)
KCIW 18-01-03 Honor Program
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 25-02-02 Furloughs
KCIW 25-03-01 Escorted Community Leave

JACK C. LEWIS, Commissioner
APPROVED BY AGENCY: October 26, 1994
FILED WITH LRC: November 7, 1994 at 9 a.m.

REGULATORY IMPACT ANALYSIS

Contact person: Jack Damron

(1) Type and number of entities affected: 151 employees of the correctional institutions, 439 inmates, and all visitors to state correctional institutions.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None
2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Policy revisions.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1994-1996 biennium.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: N/A

(9) 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

(10) Any additional information or comments: None

(11) TIERING: Is 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.

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY AND REVIEWING SUBCOMMITTEE

DEPARTMENT OF LAW
(As Amended)

40 KAR 2:220. Application procedure for obtaining going-out-of-business sale permits in excess of two (2) sales in a four (4) year period.

RELATES TO KRS [~~Chapter~~] 365.447 [~~(HB 787, §4)~~]
STATUTORY AUTHORITY: KRS 15.180, [~~Chapter~~] 365.447 [~~(HB 787, §4), 367.150(4)~~]
NECESSITY AND FUNCTION: KRS [~~Chapter~~] 365.447 [~~(HB 787, §4)~~] requires in pertinent part the Office of the Attorney General to promulgate administrative regulations pertaining to applications by any party for more than two (2) going-out-of-business sale permits during a four (4) year period. This administrative regulation sets forth the procedures for applying for a subsequent permit, the investigation to be initiated and conducted by the Attorney General, and charges to the applicant, pursuant to KRS [~~Chapter~~] 365.447 [~~(HB 787, §4)~~].

Section 1. Application Procedure for Excess Permits. When any individual, partnership, corporation or other firm seeks a permit to conduct more than two (2) going-out-of-business sales within a four (4) year period, such party shall obtain, complete, and submit to the Office of the Attorney General, Division of Consumer Protection, an application form to obtain such permit.

Section 2. Investigation to Determine Legitimate Business Purpose. (1) Upon receipt of such application, the Office of the Attorney General, Division of Consumer Protection, shall initiate and conduct an investigation to determine if there is a legitimate business reason to conduct more than two (2) going-out-of-business sales within a four (4) year period. The Division of Consumer Protection shall investigate the circumstances of all previous going-out-of-business sales conducted by the applicant within the previous four (4) years and consider all relevant information in reaching its decision. **Relevant business records and information shall include information relating to activities and going-out-of-business sales conducted in other jurisdictions.** The Attorney General may request additional information and relevant business records from the applicant in determining the legitimacy of the business reason for the application.

(2) The Attorney General shall determine if there is a legitimate business reason for the applicant's request for any excess permits and deny or grant the permit within thirty (30) days of receiving the application.

(3) Valid business reasons for conducting more than two (2) going-out-of-business sales within a four (4) year period shall include:

(a) Insolvency of the business or owner(s);

(b) Unprofitability or inadequate profitability of the business;

(c) Retirement of the owner(s);

(d) Intent of the owner(s) to engage in other enterprises or endeavors;

(e) Termination of the business to free assets to pay any judgment of any court;

(f) Death of the owner(s), and the representatives of the estate(s), or their heirs, distributees, devisees, legatees, or their successors and assigns seek to terminate the business;

(g) Where the business is required or compelled to be discontinued because:

1. The premises upon which it is being conducted have been taken by eminent domain; or

2. The premises upon which it is being conducted must be vacated pursuant to court order pursuant to a legal or judicial proceeding; or

3. The business's lease on the premises upon which it is operating has been terminated by the landlord, or the landlord will not renew the lease.

(4) Business reasons which are not legitimate for the purposes of KRS 365.447 shall include, but not be limited to:

(a) Opening the business with intent to conduct a going-out-of-business sale with inventory brought in for that purpose, whether such inventory is owned by the business owner(s) or not, more than ninety (90) days prior to the application for the license;

(b) Buying into an existing business with the intent to conduct a going-out-of-business sale, and bringing in large quantities of goods for that purpose, whether such inventory is owned by the business owner(s) or not, more than ninety (90) days prior to the application for the license.

Section 3. The Applicant May be Charged the Costs of the Investigation. The Attorney General may charge the applicant for the costs of the investigation. The actual costs shall be assessed the applicant by the Attorney General, however the minimum charge shall be twenty-five (25) dollars, and the maximum charge $250.

Section 4. Any applicant whose application is denied by the Attorney General following investigation may seek appeal of the denial pursuant to 40 KAR 2:230 and 40 KAR 2:240.

BRENT L. CALDWELL, Deputy Attorney General
APPROVED BY AGENCY: July 8, 1994
FILED WITH LRC: July 8, 1994 at 2 p.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
(As Amended)

400 KAR 1:090. Administrative hearings practice provisions.

RELATES TO: KRS 146.450, 146.530, 146.990, 151.125, 151.182, 151.184, 223.200, 223.420, 223.991, 224.10-270, 224.10-410, 224.10-420, 224.10-430, 224.10-440, 224.20-755(7), 224.60-130, 224.60-140, 350.028, 350.0301, 350.070, 350.090, 350.093, 350.130, 350.255, 350.465, 350.990, 30 CFR Parts 724, 730, 731, 732, 733, 735, 917, 30 USC 1253, 1255
STATUTORY AUTHORITY: KRS Chapter 13A, 146.450, 146.990, 151.125, 223.200, 223.991, 224.10-100, 224.10-420, 224.10-430, 224.60-120, 350.020, 350.028, 350.0301, 350. 465, 350.610, 30 CFR Parts 724, 730, 731, 732, 733, 735, 917, 30 USC 1253, 1255
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part authorizes the cabinet to promulgate administrative regulations pertaining to surface coal mining and reclamation operations and coal exploration operations. This administrative regulation sets forth practice provisions for the permanent regulatory program in addition to those found in 405 KAR 7:091 and 405 KAR 7:092. KRS Chapters 224 and portions of KRS Chapters 146 and 223 in pertinent part authorize the cabinet to promulgate administrative regulations pertaining to the conduct of administrative hearings concerning matters covered by KRS Chapters 146, 223, and 224. This administrative regulation sets forth practice provisions for the administration of matters falling under KRS Chapters 146, 223 and 224. KRS

Chapter 151 in pertinent part authorizes the secretary to promulgate, without notice or hearing, rules and administrative regulations with respect to procedural aspects of administrative hearings. This administrative regulation sets forth practice provisions for the administration of matters falling under KRS Chapter 151.

Section 1. Applicability. This administrative regulation shall govern the conduct by the cabinet of all administrative hearings authorized by KRS Chapters 151, 224, and 350, and pertinent portions of KRS Chapters 146 and 223, including those pending at the time this administrative regulation becomes effective.

Section 2. Construction. This administrative regulation shall be construed liberally and in conformity with reasonable administrative practice to achieve just, timely and inexpensive determinations of matters before the office. This administrative regulation is not intended to be comprehensive, and nothing contained herein shall be construed to limit the authority of a hearing officer to govern the conduct of his docket or the procedural course of a particular administrative hearing as authorized by statute and administrative regulation and in accordance with reasonable administrative practice.

Section 3. Assignment of Case Numbers and Captions. (1) Assignment of case numbers. The office shall stamp each initiating document filed on the date received by the office and shall assign a file number to that document.

(2) Captions generally. All initiating documents, pleadings, motions, orders and all other papers filed in any case before the office shall be uniformly marked in the caption to indicate the file number(s) and, where applicable, shall show the permit number(s), the noncompliance number(s), the cessation order number(s), the notice of violation number(s), the petitioner's or plaintiff's name(s), the respondent's or defendant's name(s), and any intervenors' names.

(3) Consolidated case captions. All documents filed in consolidated proceedings shall list all case file numbers as set forth in subsection (2) of this section. If a document filed in a consolidated proceeding pertains to some, but not all, of the cases consolidated, the party filing such a document shall indicate in the text thereof the case(s) to which the document applies.

Section 4. Facsimile Filings. (1) Time and manner of filing. Persons filing documents with the office may file such documents by telefacsimile machine at the telefacsimile number listed for the office. The telefacsimile document shall be stamped filed according to the time and date stamp placed on the telefacsimile copy by the telefacsimile machine and shall be promptly filed in the record upon retrieval from the telefacsimile machine. If the telefacsimile machine malfunctions, the telefacsimile document shall be stamped as of the date actually received in the office.

(2) Originals filed. Parties filing by telefacsimile machine shall promptly [~~immediately~~]after telefaxing a document file the original of the document with the office. The original shall be file stamped on the date actually received by the office. The effective date of filing shall be the date of the receipt in the office of the telefacsimile document or the original document, whichever is earlier.

Section 5. Initiating Documents, Answers and Responsive Pleadings. (1) Initiating documents. In addition to other administrative regulations governing the contents of an initiating document, an initiating document [~~shall contain a statement of facts entitling the filing party to administrative relief, shall contain a specific request for the relief to which the filing party deems himself entitled,~~] shall identify by name and file number all related actions pending before the office known to the filing party, [~~shall identify by name and address all interested persons known to the filing party unless such persons have expressed a desire to have their identity kept confidential,~~] and shall set forth the current, complete and correct name, address, telephone number, and telefax number, if any, of the filing party and, if he is represented, his counsel.

(2) Answers and responsive pleadings. In addition to other administrative regulations governing the contents of an answer or responsive pleading, an answer or responsive pleading, if required or permitted, [~~shall specifically admit or deny each allegation contained in the initiating document,~~] shall set forth other matters to be considered in the action, and shall set forth the current, complete and correct name, address, telephone number, and telefax number, if any, of the responding party and, if he is represented, his counsel. If a responding party is without knowledge or information sufficient to form a belief as to the truth of an allegation, he shall so state and this shall have the effect of a denial.

(3) Effect of failure to deny. Allegations in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided. Allegations in a pleading to which a responsive pleading is required may be deemed admitted when not denied in the responsive pleading. Failure to plead any available administrative affirmative defense in a required responsive pleading may constitute a waiver of such defense, except that lack of jurisdiction over the subject matter and failure to state a claim upon which relief can be granted shall not be waived by failure to assert them in a responsive pleading.

Section 6. Prehearing Conferences. (1) General provisions. To the extent practicable, a prehearing conference shall be held in all cases filed with the office.

(2) Telephonic prehearing conferences. Prehearing conferences may be held in person or by telephone. Any party who requests a telephonic prehearing conference shall initiate the conference call, unless the hearing officer orders otherwise.

Section 7. Mediation. (1) General provisions.

(a) Referral to mediation. At any time prior to the conclusion of the final prehearing conference, a hearing officer may, by appropriate order, refer all or any part of any case to nonbinding mediation. A case shall not be referred for mediation if the cabinet advises the hearing officer that mediation would require deviation from statutory or regulatory requirements. Cases may be referred to any mediator employed by the office or approved by the chief hearing officer.

(b) Disqualification of mediator. Any party may move the hearing officer to enter an order disqualifying the mediator for good cause, except that employment by the cabinet shall not constitute good cause for such disqualification. If the hearing officer rules that a mediator is disqualified from mediating the case, he shall enter an order referring the matter to another mediator. Nothing in this provision shall preclude a mediator from disqualifying himself or refusing any assignment. Unless the hearing officer orders otherwise, the time for mediation shall be tolled during any periods in which a motion to disqualify is pending.

(c) Statements not admissible. No statements or admissions made for the purpose of mediation are subject to disclosure through discovery, nor may they be admitted in evidence at an administrative hearing or used by the hearing officer in making any report and recommendation to the secretary.

(d) Proceedings not stayed. Referral of a case to mediation shall not operate as a stay of discovery or other prehearing proceedings, unless otherwise ordered by the hearing officer or agreed to in writing by the parties. While a case is in mediation, the hearing officer may schedule periodic prehearing conferences to ascertain the status of mediation.

(2) Mediation conferences.

(a) Time and purpose of conference. Within ten (10) days from the entry of a mediation referral order, the mediator shall schedule a mediation conference, which shall be held within thirty (30) days from the entry of the mediation referral order unless otherwise agreed to in writing by the parties. The conference shall be conducted by the

mediator to consider the possibility of settlement, the simplification of the issues and any other matters which the mediator and the parties determine may aid in the handling or the disposition of the proceedings.

(b) Duration. The mediator may schedule such sessions as are necessary to complete the process of mediation, and mediation shall continue until the parties have reached a settlement, until any party is unwilling to proceed further, until the mediator determines that further efforts would be of no avail, or until the hearing officer orders the matter remanded from mediation. After the conclusion of the first mediation conference, any party may move the hearing officer to remove the case from mediation and to set the case for a prehearing conference or an administrative hearing.

(c) Appearance at conference. The parties shall attend the mediation conference(s). Counsel may also be present. If a party to mediation is the cabinet or any other public entity, that party shall be deemed to appear at a mediation conference by the presence of a representative with full authority to negotiate on behalf of the cabinet or other entity and to recommend settlement to the secretary or to the appropriate decision-making body of the entity. In all other cases, a party is deemed to appear at a mediation conference if that party or a representative having full authority to negotiate on behalf of that party [~~settle without further consultation~~] is present.

(d) Production of documents and witnesses. The mediator may request that the parties bring documents or witnesses, including expert witnesses, to the mediation sessions, but has no authority to order such production.

(3) Reporting to the hearing officer.

(a) Refusal to accept. The mediator shall notify the hearing officer promptly in writing when a case is not accepted for mediation.

(b) Remand prior to settlement. At any time after the case has been referred for mediation, the mediator may for good cause in writing return the case to the hearing officer. The hearing officer shall promptly thereafter schedule a prehearing conference or an administrative hearing.

(c) Full settlement. If a case is settled prior to or during mediation, an attorney for one (1) of the parties shall promptly prepare and submit to the hearing officer an agreed order reflecting the terms of the settlement in accordance with Section 16 of this administrative regulation.

(d) Partial settlement. If some but not all of the issues in the case are settled during mediation or if agreements are reached to limit discovery or on any other matter, the parties shall, within ten (10) days of the conclusion of mediation, file with the office a joint statement enumerating the issues that have been resolved and the issues that remain for an administrative hearing. The hearing officer shall then return the matter to his active docket and promptly schedule a prehearing conference or an administrative hearing.

(e) Mediator's report. Within ten (10) days of the conclusion of cases accepted for mediation, the mediator shall state in writing to the hearing officer that the mediation process has ended. If the parties do not reach an agreement as to any matter as a result of mediation, the mediator shall state in writing the lack of an agreement to the hearing officer and shall make no other comment or recommendation.

Section 8. Entry of Appearance and Notice of Withdrawal. (1) Filing of notice of entry of appearance. All attorneys representing parties before the office must file a written notice of entry of appearance in each case before they may practice in that case before the office. The notice of entry of appearance must set forth the current, complete and correct name, address, telephone number and telefax number, if any, of the attorney and his client. An attorney is not required to file a separate notice of entry of appearance if he files the initial pleading on behalf of his client in conformity with Section 5 of this administrative regulation.

(2) Withdrawal of representation. An attorney of record shall not withdraw from representation in a proceeding before the office without leave of the hearing officer. Leave shall be given unless the hearing officer determines that the withdrawal will result in substantial prejudice or will unduly delay the consideration and resolution of the case.

(3) Filing of notice of change of address. Each party or, if he is represented, his counsel shall promptly notify the office of any change of address, telephone number, or telefax number required to be filed pursuant to this administrative regulation by filing a notice of entry of change of address in the record.

Section 9. Motion Practice. (1) General provisions. All requests for relief which are not required to be made in a pleading shall be in the form of a motion. All motions filed with the office shall state precisely the relief requested, with citations to the record, the administrative regulations or the law as appropriate. All written motions shall comply with the provisions of this section. Failure to comply with this section may be grounds for denying the motion.

(2) Motions. All motions filed with the office going to the merits of a case, including motions to dismiss, motions for summary disposition, motions to strike, and motions on the pleadings shall be accompanied by a brief memorandum setting forth the grounds for the motion and shall contain citation of authorities relied upon.

(a) No memorandum in support of a motion longer than twenty-five (25) pages in length shall be filed in the office without prior leave of a hearing officer.

(b) A motion shall indicate in its caption the nature of the motion.

(3) Responses. Any party [~~properly~~] served with a motion may file a response memorandum opposing the motion, with citation of supporting authorities.

(a) A response memorandum shall be filed no later than fifteen (15) days of the date of service of a motion unless a different response time is ordered by the hearing officer. The time for filing a response memorandum may be extended once without leave of the hearing officer for no more than thirty (30) additional days by written agreement of all parties filed in the office prior to the deadline for filing that is being extended. [~~within fifteen (15) days of service of the motion.~~]

(b) No response memorandum longer than twenty-five (25) pages in length shall be filed in the office without prior leave of a hearing officer.

(c) A response memorandum shall indicate in its caption that it is a response memorandum.

(4) Replies. Any party [~~properly~~] served with a response memorandum may file a reply memorandum addressing only matters initially raised in the response.

(a) A reply memorandum shall be filed no later than five (5) days of the date of service of a response memorandum unless a different reply period is ordered by the hearing officer. The time for filing a reply memorandum may be extended once without leave of the hearing officer for no more than ten (10) additional days by written agreement of all parties filed in the office prior to the deadline for filing that is being extended. [~~within five (5) days of service of the response memorandum.~~]

(b) No reply memorandum longer than ten (10) pages in length shall be filed in the office without prior leave of a hearing officer.

(c) A reply memorandum shall indicate in its caption that it is a reply memorandum.

(5) Failure to file supporting memorandum. Failure to file a memorandum in support of a motion or in support of a response or reply may be grounds for ruling against the party failing to file the supporting memorandum.

(6) Format of memoranda. All motions, memoranda, pleadings and briefs filed with the office shall conform to the following requirements:

(a) Paper size and binding. All motions, memoranda, pleadings and briefs shall be on eight and one-half (8 1/2) inches by eleven (11) inches paper stock. Filings shall not be side-bound or top-bound with

bindings that interfere with the inclusion of the papers or pleadings in the office files unless permitted by the hearing officer.

(b) Type size and style. All motions, memoranda, pleadings and briefs shall be in type no smaller than ten (10) point nor closer than twelve (12) pitch.

(c) Signature. All motions, memoranda, pleadings and briefs shall be signed by the party or counsel submitting same and shall include the name, address, telephone number and telefax number, if any, of the attorney of record or party filing such document.

(d) Certificate of service. All documents served under these administrative regulations shall have proof of service by a written certification. Proof of service shall state the date and method of service and shall be signed by a person who can verify service.

(7) Originals only filed. Unless otherwise ordered by the hearing officer, only the original motion, memorandum, pleading or brief, together with any telefacsimile thereof, shall be filed with the office.

(8) Submission of authority. If a person filing a motion, brief or memorandum has relied upon a pertinent case decision or other legal authority in the motion, brief or memorandum, that person may file [~~submit~~] with such motion, brief or memorandum a copy of the case decision or other legal authority. If the person files [~~submits~~] a copy of authority, he shall serve upon all other parties to the case a copy of the case decision or other legal authority with the memorandum or motion. [~~Such copies of authority shall not be filed in the record but may be relied upon by the hearing officer.~~]

(9) Proposed orders. No motion, response or memorandum supporting or opposing a motion shall be accepted for filing by the office unless accompanied by a tendered separate proposed order granting the requested relief or denying the motion. The tendered order shall contain a service page listing the current, correct and complete names and addresses of all parties and counsel of record upon whom the office is required to serve the order. Parties may submit proposed orders in electronic form if accompanied by a hard copy.

(10) Good cause exception. The hearing officer may exempt a party from compliance with subsections (6) and (9) of this section upon a showing of good cause or undue hardship.

Section 10. Hearings on Motions. (1) Requests for hearing on motion. Any party making a motion may request that such motion be heard before the hearing officer assigned to the case in which the motion is made. A request for a hearing on a motion shall give notice that the motion will be heard on any [~~the first~~] regularly scheduled motion day for the hearing officer that follows the expiration of the time for filing a reply memorandum unless otherwise ordered by the hearing officer.

(2) Court reporter. Any party may arrange for a court reporter to record a hearing on a motion. The party requesting the court reporter shall bear all appearance costs and expenses associated with having the court reporter at the motion hearing.

(3) Motion days. Motion days shall be conducted on a regular basis according to a schedule established by the office. The office shall post a current schedule which sets forth the time, place and date of upcoming motion days.

(4) Failure to appear at hearing. A hearing officer before whom a motion is made may deny any motion for which a movant schedules or notices a hearing and fails to appear. A hearing officer before whom a motion is made may grant any motion for which a movant schedules or notices a hearing and the nonmovant fails to appear, upon proof by the movant filed in the record that the motion was served on the nonmoving party.

Section 11. Motion for Continuance. No motion for a continuance shall be granted if made within two (2) days of a prehearing conference or fifteen (15) days of an administrative hearing, unless compelling cause is shown therefor. All motions for a continuance shall be in writing, shall be filed with the office, and shall be served upon all other parties to the case. Continuances shall not be granted upon oral motion absent good cause shown.

Section 12. Directed Recommendation. (1) Time and standard. At the close of the presentation of evidence by a party at an administrative hearing, the opposing party may move the hearing officer for a directed recommendation to the secretary. The moving party shall state the specific grounds therefor. In ruling on the motion for directed recommendation, the hearing officer shall consider all of the evidence presented at the administrative hearing by the nonmoving party and shall draw all inferences therefrom in favor of the nonmoving party. If, after so considering the evidence, the hearing officer determines that the nonmoving party has failed to meet his burden of proof [~~there is not substantial evidence appearing in the record upon which the secretary could grant the nonmoving party relief~~], the hearing officer shall grant the moving party's motion and shall recommend that the secretary deny the nonmoving party's request for relief.

(2) Motion for directed recommendation not a waiver. A motion for a directed recommendation is not a waiver of an administrative hearing. A party who moves for a directed recommendation at the close of the evidence offered by an opponent may offer evidence in the event that the motion is not granted, without having to reserve the right to do so and to the same extent as if the motion had not been made.

Section 13. Dismissal for Failure to Prosecute. Cases which have been on the docket of the office for a period of one year without any activity shall be dismissed, with prejudice, for failure to prosecute unless there is good cause shown why they should not be dismissed. Once per year the office shall determine all cases in which no activity has been taken for one year or more. Thereafter, the hearing officer to whom such cases are assigned shall issue an order directing the petitioner or plaintiff of the case to show cause why the case should not be dismissed. If the petitioner or plaintiff does not show good cause why the matter should not be dismissed, the hearing officer shall recommend dismissal of the matter.

Section 14. Filing Exceptions. (1) Filing with the office. Any party filing exceptions to a hearing officer's report and recommendation or a response to such exceptions as provided for by statute or administrative regulation shall file the exceptions or response in the record of the case in the office. All such exceptions and responses shall conform to the format for motion memoranda specified in Section 9(6) of this administrative regulation.

(2) Draft order of the secretary. All parties filing exceptions to a hearing officer's report and recommendation shall tender with their exceptions a draft final order for the secretary. The excepting party's draft final order shall set out the relief the party requests in its exceptions. The tendered order shall contain a service page listing the current, correct and complete names and addresses of all parties and counsel of record upon whom the cabinet is required to serve the order. Parties may submit proposed orders in electronic form if accompanied by a hard copy.

(3) Good cause exception. The secretary may exempt a party from compliance with the formatting requirements of subsection[s] (1) of this section and the requirements of subsection (2) of this section upon a showing of good cause or undue hardship.

Section 15. Filing Transcripts. (1) Transcript to be filed on use. Any party who obtains a transcript of a proceeding before the office and who cites to, quotes from or otherwise relies upon that transcript in any document filed with the office shall file a complete copy of the transcript in the record in the office, unless a copy of the transcript has been previously filed in the record.

(2) Time for filing. Any party filing a transcript under this section shall file the transcript no later than the date upon which the party first cites to, quotes from or relies upon the transcript in any document

filed with the office.

(3) Failure to file transcript. Failure to file any transcript cited, quoted or otherwise relied upon in a document filed with the office shall be grounds for striking all or part of such motion, memorandum, pleading or other document.

Section 16. Agreed Orders. All agreed orders entered into which resolve any claim or part of a claim in a case pending before a hearing officer shall be tendered to the office for acknowledgement by the hearing officer before being presented to the secretary, and shall contain thereon a signature line for the hearing officer. The filing of an agreed order in accordance with this section shall not relieve the parties from compliance with the provisions of Section 11 of this administrative regulation.

PHILLIP J. SHEPHERD, Secretary
APPROVED BY AGENCY: September 8, 1994
FILED WITH LRC: September 9, 1994 at 9 a.m.

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

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.**100-60.109** [~~, Subpart J~~], 42 USC 7411
STATUTORY AUTHORITY: KRS 224.10-100, **224.20-100, 224.20-110, 224.20-120, 40 CFR 60.100-60.109 42 USC 7411**
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 **incorporated by reference** [~~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 **3** [**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. **Definitions. As used in 40 CFR 60.100 to 60.109, the following terms shall be defined as provided in this section:**

(1) Except as provided in subsection (2) of this section, "administrator" means the Secretary of the Natural Resources and Environmental Protection Cabinet.

(2) As used in 40 CFR 60.109, "administrator" means the administrator of the U.S. EPA.

(3) "State" means the Commonwealth of Kentucky. [~~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. **(1) 40 CFR 60.100 to 60.109, (40 CFR 60 Subpart J), Standards of performance for petroleum refineries, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993, is incorporated by reference.**

(2) The material incorporated by reference may be obtained, inspected, or copied at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.: [~~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.

(3) 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.

Section **3.** [~~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.

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

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.**110-60.113** [~~, Subpart K~~], 42 USC 7411
STATUTORY AUTHORITY: KRS 224.10-100, **224.20-100, 224.20-110, 224.20-120, 40 CFR 60.110-60.113, 42 USC 7411**
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 **incorporated by reference** [~~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. **Definitions. As used in 40 CFR 60.110 to 60.113, "administrator" means the Secretary of the Natural Resources and Environmental Protection Cabinet.** [~~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. **(1) 40 CFR 60.110 to 60.113, (40 CFR 60, Subpart K), Standards of performance for petroleum liquids for which construction, reconstruction, or modification commenced after June 11, 1973, and prior to May 19, 1978, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993, is incorporated by reference.**

(2) The material incorporated by reference may be obtained, inspected, or copied at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

[~~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.

(3) 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.

PHILLIP J. SHEPHERD, Secretary
APPROVED BY AGENCY: June 13, 1994
FILED WITH LRC: June 15, 1994 at 9 a.m.

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

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.**110a-60.115a** [~~, Subpart Ka~~], 42 USC 7411

STATUTORY AUTHORITY: KRS 224.10-100, **224.20-100, 224.20-110, 224.20-120, 40 CFR 60.110a-60.115a, 42 USC 7411**

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 **incorporated by reference** [~~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. **Definitions. As used in 40 CFR 60.110a to 60.115a, the following terms shall be defined as provided in this section:**

(1) Except as provided in subsection (2) of this section, "administrator" means the Secretary of the Natural Resources and Environmental Protection Cabinet.

(2) As used in 40 CFR 60.1114a, "administrator" means the administrator of the U.S. EPA. [~~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. **(1) 40 CFR 60.110a to 60.115a, (40 CFR 60, Subpart Ka), 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, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993, is incorporated by reference.**

(2) The material incorporated by reference may be obtained, inspected, or copied at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.: [~~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;

(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.

(3) 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.

PHILLIP J. SHEPHERD, Secretary
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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(As Amended)

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.**150-60.156** [~~, Subpart O~~], 42 USC 7411, Federal Register, 59 FR 5107, February 3, 1994

STATUTORY AUTHORITY: KRS 224.10-100**, 224.20-100, 224.20-110, 224.20-120, 40 CFR 60.150-60.156, Federal Register 59 FR 5107, February 3, 1994, 42 USC 7411**

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 **incorporated by reference** [~~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 **3** [~~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. **Definitions. As used in 40 CFR 60.150 to 60.156, the following terms shall be defined as provided in this section:**

(1) Except as provided in subsection (2) of this section, "administrator" means the Secretary of the Natural Resources and Environmental Protection Cabinet.

(2) As used in 40 CFR 60.156, "administrator" means the administrator of the U.S. EPA.

(3) "State" means the Commonwealth of Kentucky. [~~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. **(1) 40 CFR 60.150 to 60.156, (40 CFR 60 Subpart O), Standards of performance for sewage treatment plants, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993, is incorporated by reference.**

(2) The material incorporated by reference may be obtained, inspected, or copied at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.: [~~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.

(3) 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.

Section **3.** [~~4.~~] 401 KAR 59:070, New sewage treatment plants, is hereby repealed.

PHILLIP J. SHEPHERD, Secretary
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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(As Amended)

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.**160-60.166** [~~, Subpart P~~], 42 USC 7411

STATUTORY AUTHORITY: KRS 224.10-100**, 224.20-100, 224.20-110, 224,20-120, 40 CFR 60.160-60.166, 42 USC 7411**

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 **incorporated by reference** [~~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 **3** [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. **Definitions. As used in 40 CFR 60.160 to 60.166, "administrator" means the Secretary of the Natural Resources and Environmental Protection Cabinet.** [~~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. **(1) 40 CFR 60.160 to 60.166, (40 CFR 60 Subpart P), Standards of performance for primary copper smelters, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993, is incorporated by reference.**

(2) The material incorporated by reference may be obtained, inspected, or copied at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.: [~~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.

(3) 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.

Section **3.** [~~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.

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

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.**170-60.176** [~~, Subpart Q~~], 42 USC 7411

STATUTORY AUTHORITY: KRS 224.10-100**, 224.20-100, 224.20-110, 224.20-120, 40 CFR 60.170-60.176, 42 USC 7411**

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 **incorporated by reference** [~~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 **2** [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. **(1) 40 CFR 60.170 to 60.176, (40 CFR 60 Subpart Q), Standards of performance for primary zinc smelters, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993, is incorporated by reference.**

(2) The material incorporated by reference may be obtained, inspected, or copied at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.: [~~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.

(3) 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.

Section **2.** [~~4.~~] 401 KAR 59:115, New primary zinc smelters, is hereby repealed.

PHILLIP J. SHEPHERD, Secretary
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FILED WITH LRC: June 15, 1994 at 9 a.m.

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

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.**180-60.186** [~~, Subpart R~~], 42 USC 7411

STATUTORY AUTHORITY: KRS 224.10-100**, 224.20-100, 224.20-110, 224.20-120, 40 CFR 60.180-60.186, 42 USC 7411**

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 **incorporated by reference** [~~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 **2** [**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. **(1) 40 CFR 60.180 to 60.186, (40 CFR 60 Subpart R), Standards of performance for primary lead smelters, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993, is incorporated by reference.**

(2) The material incorporated by reference may be obtained, inspected, or copied at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.: [~~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.

(3) 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.

Section **2.** [~~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.

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

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.**190-60.195** [~~, Subpart S~~], 42 USC 7411

STATUTORY AUTHORITY: KRS 224.10-100**, 224.20-100, 224.20-110, 224.20-120, 40 CFR 60.190-60.195, 42 USC 7411**

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 **incorporated by reference** [~~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 **3** [**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. **Definitions. As used in 40 CFR 60.190 to 60.195, the following terms shall be defined as provided in this section:**

(1) Except as provided in subsection (2) of this section, "administrator" means the Secretary of the Natural Resources and Environmental Protection Cabinet.

(2) As used in 40 CFR 60.194(d), "administrator" means the administrator of the U.S. EPA.

(3) "Director of the enforcement division of the appropriate EPA regional office" means the Director of the Division for Air Quality. [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. **(1) 40 CFR 60.190 to 60.195, (40 CFR 60 Subpart S), Standards of performance for primary aluminum reduction plants, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993, is incorporated by reference.**

(2) The material incorporated by reference may be obtained, inspected, or copied at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.: [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.

(3) 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.

Section **3.** [4.] 401 KAR 59:125, New primary aluminum reduction plants, is hereby repealed.

PHILLIP J. SHEPHERD, Secretary
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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(As Amended)

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] 60.250-60.254 [, Subpart Y], 42 USC 7411

STATUTORY AUTHORITY: KRS 224.10-100, **224.20-100, 224.20-110, 224.20-120, 40 CFR 60.250-60.254, 42 USC 7411**

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 **incorporated by reference** [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 **3** [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. Definitions. As used in 40 CFR 60.250 to 60.254, "administrator" means the Secretary of the Natural Resources and Environmental Protection Cabinet.

Section 2. (1) 40 CFR 60.250 to 60.254, (40 CFR 60 Subpart Y), Standards of performance for coal preparation plants, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993, is incorporated by reference.

(2) The material incorporated by reference may be obtained, inspected, or copied at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

(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.

(3) 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.

[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 3. [~~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.

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

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~~] 60.260-60.266 [~~, Subpart Z~~], 42 USC 7411

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 60.260-60.266, 42 USC 7411

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 **incorporated by reference** [~~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 3 [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. Definitions. As used in 40 CFR 60.260 to 60.266, "administrator" means the Secretary of the Natural Resources and Environmental Protection Cabinet.

Section 2. (1) 40 CFR 60.260 to 60.266, (40 CFR 60 Subpart Z), Standards of performance for ferroalloy production facilities, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993, is incorporated by reference.

(2) The material incorporated by reference may be obtained, inspected, or copied at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

(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.

(3) 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.

[~~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 3. [~~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.

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

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] 60.330-60.335[, Subpart GG], 42 USC 7411
STATUTORY AUTHORITY: KRS 224.10-100, **224.20-100, 224.20-110, 224.20-120, 40 CFR 60.330-60.335, 42 USC 7411**
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 **incorporated by reference** [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 **3** [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. Definitions. As used in 40 CFR 60.330 to 60.335, the following terms shall be defined as provided in this section:
(1) Except as provided in subsection (2) of this section, "administrator" means the Secretary of the Natural Resources and Environmental Protection Cabinet.
(2) As used in 40 CFR 60.334(b)(2) and 40 CFR 60.335(f)(1), "administrator" means the administrator of the U.S. EPA.

Section 2. (1) 40 CFR 60.330 to 60.335, (40 CFR 60 Subpart GG), Standards of performance for stationary gas turbines, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993, is incorporated by reference.
(2) The material incorporated by reference may be obtained, inspected, or copied at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:
(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.
(3) 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.

~~[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 these 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 **3.** [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.

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

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] 60.340-60.344[, Subpart HH], 42 USC 7411
STATUTORY AUTHORITY: KRS 224.10-100, **224.20-100, 224.20-110, 224.20-120, 40 CFR 60.340-60.344, 42 USC 7411**
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 **incorporated by reference** [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 **2** [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. (1) 40 CFR 60.340 to 60.344, (40 CFR 60 Subpart HH), Standards of performance for lime manufacturing plants, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993, is incorporated by reference.

(2) The material incorporated by reference may be obtained, inspected, or copied at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

(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.

(3) 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.

~~[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 **2.** **[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.

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

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**.370-60.374[**~~, Subpart KK~~**]**, 42 USC 7411

STATUTORY AUTHORITY: KRS 224.10-100**, 224.20-100, 224.20-110, 224.20-120, 40 CFR 60.370-60.374, 42 USC 7411**

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 **incorporated by reference** **[**~~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 **2** **[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. (1) 40 CFR 60.370 to 60.374, (40 CFR 60 Subpart KK), Standards of performance for lead-acid battery manufacturing plants, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993, is incorporated by reference.

(2) The material incorporated by reference may be obtained, inspected, or copied at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

(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.

(3) 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.

~~[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 **2.** ~~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.

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

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.**380-60.386** ~~, Subpart LL~~, 42 USC 7411
STATUTORY AUTHORITY: KRS 224.10-100**, 224.20-100, 224.20-110, 224.20-120, 40 CFR 60.380-60.386, 42 USC 7411**
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 **incorporated by reference** ~~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 **3** ~~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. Definitions. As used in 40 CFR 60.380 to 60.386, the following terms shall be defined as provided in this section:

(1) "Administrator" means the Secretary of the Natural Resources and Environmental Protection Cabinet.

(2) "Agency" means the U.S. EPA.

(3) "State" means the Commonwealth of Kentucky.

Section 2. (1) 40 CFR 60.380 to 60.386, (40 CFR 60 Subpart LL), Standards of performance for metallic mineral processing plants, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993, is incorporated by reference.

(2) The material incorporated by reference may be obtained, inspected, or copied at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

(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.

(3) 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.

~~[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 3. [~~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.

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

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~~] 60.390-60.398[~~, Subpart MM~~], 42 USC 7411

STATUTORY AUTHORITY: KRS 224.10-100, **224.20-100, 224.20-110, 224.20-120, 40 CFR 60.390-60.398, 42 USC 7411**

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 **incorporated by reference** [~~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 3 [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. Definitions. As used in 40 CFR 60.390 to 60.398, the following terms shall be defined as provided in this section:

(1) Except as provided in subsection (2) of this section, "administrator" means the Secretary of the Natural Resources and Environmental Protection Cabinet.

(2) As used in 40 CFR 60.398, "administrator" means the administrator of the U.S. EPA.

Section 2. (1) 40 CFR 60.390 to 60.398, (40 CFR 60 Subpart MM), Standards of performance for automobile and light-duty truck surface coating operations, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993, is incorporated by reference.

(2) The material incorporated by reference may be obtained, inspected, or copied at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

(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.

(3) 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.

[~~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 3. [~~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.

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

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~~] 60.400-60.404 [~~, Subpart NN~~], 42 USC 7411
STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 60.400-60.404, 42 USC 7411
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 incorporated by reference [~~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 2 [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. (1) 40 CFR 60.400 to 60.404, (40 CFR 60 Subpart NN), Standards of performance for phosphate rock plants, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993, is incorporated by reference.

(2) The material incorporated by reference may be obtained, inspected, or copied at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

(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.

(3) 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.

[~~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 2. [~~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.

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

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~~] 60.420-60.424 [~~, Subpart PP~~], 42 USC 7411
STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 60.420-60.424, 42 USC 7411
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 incorporated by reference [~~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 2 [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. (1) 40 CFR 60.420 to 60.424, (40 CFR 60 Subpart PP), Standards of performance for ammonium sulfate manufacture, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993, is incorporated by reference.

(2) The material incorporated by reference may be obtained, inspected, or copied at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

(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.
(3) 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.

[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 2. [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.

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

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] 60.440-60.447 [, Subpart RR], 42 USC 7411
STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 60.440-60.447, 42 USC 7411
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 incorporated by reference [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 3 [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. Definitions. As used in 40 CFR 60.440 to 60.447, the following terms shall be defined as provided in this section:
(1) Except as provided in subsection (2) of this section, "administrator" means the Secretary of the Natural Resources and Environmental Protection Cabinet.
(2) As used in 40 CFR 60.446(c), "administrator" means the administrator of the U.S. EPA.
(3) "State" means the Commonwealth of Kentucky.

Section 2. (1) 40 CFR 60.440 to 60.447, (40 CFR 60 Subpart RR), Standards of performance for pressure sensitive tape and label surface coating operations, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993, is incorporated by reference.
(2) The material incorporated by reference may be obtained, inspected, or copied at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:
(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.
(3) 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.

[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 3. [~~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.

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

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.**450-60.456** [~~, Subpart SS~~], 42 USC 7411

STATUTORY AUTHORITY: KRS 224.10-100, **224.20-100, 224.20-110, 224.20-120, 40 CFR 60.450-60.456, 42 USC 7411**

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 **incorporated by reference** [~~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 3 [~~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. Definitions. As used in 40 CFR 60.450 to 60.456, the following terms shall be defined as provided in this section:

(1) Except as provided in subsection (2) of this section, "administrator" means the Secretary of the Natural Resources and Environmental Protection Cabinet.

(2) As used in 40 CFR 60.456(d), "administrator" means the administrator of the U.S. EPA.

Section 2. (1) 40 CFR 60.450 to 60.456, (40 CFR 60 Subpart SS), Standards of performance for industrial surface coating: large appliances, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993, is incorporated by reference.

(2) The material incorporated by reference may be obtained, inspected, or copied at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

(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.

(3) 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.

[~~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 3. [~~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.

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

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~~] 60.460-60.466 [~~, Subpart TT~~], 42 USC 7411

STATUTORY AUTHORITY: KRS 24.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 60.460-60.466, 42 USC 7411

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 **incorporated by reference** [~~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 3 [~~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. Definitions. As used in 40 CFR 60.460 to 60.466, the following terms shall be defined as provided in this section:

(1) Except as provided in subsection (2) of this section, "administrator" means the Secretary of the Natural Resources and Environmental Protection Cabinet.

(2) As used in 40 CFR 60.466(d), "administrator" means the administrator of the U.S. EPA.

Section 2. (1) 40 CFR 60.460 to 60.466, (40 CFR 60 Subpart TT), Standards of performance for metal coil surface coating, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993, is incorporated by reference.

(2) The material incorporated by reference may be obtained, inspected, or copied at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

(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.

(3) 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.

[~~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 3. [~~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.

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

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] 60.470-60.474 [, Subpart UU], 42 USC 7411
STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 60.470-60.474, 42 USC 7411
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 incorporated by reference [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 3 [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. Definitions. As used in 40 CFR 60.470 to 60.474, the following terms shall be defined as provided in this section:
(1) Except as provided in subsection (2) of this section, "administrator" means the Secretary of the Natural Resources and Environmental Protection Cabinet.
(2) As used in 40 CFR 60.472(5) and 40 CFR 60.474(g), "administrator" means the administrator of the U.S. EPA.

Section 2. (1) 40 CFR 60.470 to 60.474, (40 CFR 60 Subpart UU), Standards of performance for asphalt processing and asphalt roofing manufacture, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993, is incorporated by reference.
(2) The material incorporated by reference may be obtained, inspected, or copied at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:
(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.
(3) 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.

[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 still 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 3. [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.

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

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] 60.480-60.489 [, Subpart VV], 42 USC 7411
STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 60.480-60.489, 42 USC 7411
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 incorporated by reference [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 3 [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. Definitions. As used in 40 CFR 60.480 to 60.489, the following terms shall be defined as provided in this section:

(1) Except as provided in subsection (2) of this section, "administrator" means the Secretary of the Natural Resources and Environmental Protection Cabinet.

(2) As used in 40 CFR 60.482-1(c)(2) and 40 CFR 60.484, "administrator" means the administrator of the U.S. EPA.

Section 2. (1) 40 CFR 60.480 to 60.489, (40 CFR 60 Subpart VV), Standards of performance for equipment leaks of VOC in the synthetic organic chemicals manufacturing industry, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993, is incorporated by reference.

(2) The material incorporated by reference may be obtained, inspected, or copied at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

(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.

(3) 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.

~~[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 **3.** ~~[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.

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

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.**490-60.496** ~~[, Subpart WW]~~, 42 USC 7411

STATUTORY AUTHORITY: KRS 224.10-100**, 224.20-100, 224.20-110, 224.20-120, 40 CFR 60.490-60.496, 42 USC 7411**

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 **incorporated by reference** ~~[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 **3** ~~[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. Definitions. As used in 40 CFR 60.490 to 60.496, the following terms shall be defined as provided in this section:

(1) Except as provided in subsection (2) of this section, "administrator" means the Secretary of the Natural Resources and Environmental Protection Cabinet.

(2) As used in 40 CFR 60.496, "administrator" means the administrator of the U.S. EPA.

(3) "State" means the Commonwealth of Kentucky.

Section 2. (1) 40 CFR 60.490 to 60.496, (40 CFR 60 Subpart WW), Standards of performance for the beverage can surface coating industry, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993, is incorporated by reference.

(2) The material incorporated by reference may be obtained, inspected, or copied at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

(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.

(3) 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.

[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, 1980 [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 3. [4.] 401 KAR 59:216, New beverage can coating operations, is hereby repealed.

PHILLIP J. SHEPHERD, Secretary
APPROVED BY AGENCY: August 10, 1994
FILED WITH LRC: August 15, 1994 at 11 a.m.

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

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] 60.500-60.506 [, Subpart XX], 42 USC 7411

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 60.500-60.506, 42 USC 7411

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 incorporated by reference [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 2 [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. (1) 40 CFR 60.500 to 60.506, (40 CFR 60 Subpart XX), Standards of performance for bulk gasoline terminals, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993, is incorporated by reference.

(2) The material incorporated by reference may be obtained, inspected, or copied at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

(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.

(3) 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.

[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 **2.** ~~[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.

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

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.**540-60.548** ~~[, Subpart BB]~~, 42 USC 7411
STATUTORY AUTHORITY: KRS 224.10-100**, 224.20-100, 224.20-110, 224.20-120, 40 CFR 60.540-60.548, 42 USC 7411**
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 **incorporated by reference** ~~[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 **3** ~~[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. Definitions. As used in 40 CFR 60.540 to 60.548, the following terms shall be defined as provided in this section:

(1) Except as provided in subsection (2) of this section, "administrator" means the Secretary of the Natural Resources and Environmental Protection Cabinet.

(2) As used in 40 CFR 60.548, "administrator" means the administrator of the U.S. EPA.

(3) "State" means the Commonwealth of Kentucky.

Section 2. (1) 40 CFR 60.540 to 60.548, (40 CFR 60 Subpart BBB), Standards of performance for the rubber tire manufacturing industry, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993, is incorporated by reference.

(2) The material incorporated by reference may be obtained, inspected, or copied at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

(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.

(3) 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.

~~[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 **3.** ~~[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.

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

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~~] 60.560-60.566 [~~, Subpart DDD~~], 42 USC 7411
STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 60.560-60.566, 42 USC 7411
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 incorporated by reference [~~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. Definitions. As used in 40 CFR 60.560 to 60.566, the following terms shall be defined as provided in this section:
(1) Except as provided in subsection (2) of this section, "administrator" means the Secretary of the Natural Resources and Environmental Protection Cabinet.
(2) As used in 40 CFR 60.566, "administrator" means the administrator of the U.S. EPA.
(3) "State" means the Commonwealth of Kentucky.

Section 2. (1) 40 CFR 60.560 to 60.566, (40 CFR 60 Subpart DDD), Standards of performance for volatile organic compound (VOC) emissions from the polymer manufacturing industry, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993, is incorporated by reference.
(2) The material incorporated by reference may be obtained, inspected, or copied at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:
(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.
(3) 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.

[~~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.

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

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~~] 60.580-60.585 [~~, Subpart FFF~~], 42 USC 7411
STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 60.580-60.585, 42 USC 7411
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 incorporated by reference [~~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 3 [~~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. Definitions. As used in 40 CFR 60.580 to 60.585, the following terms shall be defined as provided in this section:

(1) "Administrator" means the Secretary of the Natural Resources and Environmental Protection Cabinet.

(2) "Agency" means the U.S. EPA.

(3) "State" means the Commonwealth of Kentucky.

Section 2. (1) 40 CFR 60.580 to 60.585, (40 CFR 60 Subpart FFF), Standards of performance for flexible vinyl and urethane coating and printing, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993, is incorporated by reference.

(2) The material incorporated by reference may be obtained, inspected, or copied at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

(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.

(3) 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.

[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 3. [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.

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

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] 60.590-60.593 [, Subpart GGG], 42 USC 7411

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 60.590-60.593, 42 USC 7411

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 incorporated by reference [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 3 [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. Definitions. As used in 40 CFR 60.590 to 60.593, "administrator" means the Secretary of the Natural Resources and Environmental Protection Cabinet.

Section 2. (1) 40 CFR 60.590 to 60.593, (40 CFR 60 Subpart GGG), Standards of performance for equipment leaks of VOC in petroleum refineries, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993, is incorporated by reference.

(2) The material incorporated by reference may be obtained, inspected, or copied at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

(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.

(3) 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.

[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 **3.** [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.

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

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.**600-60.604** [, Subpart HHH], 42 USC 7411

STATUTORY AUTHORITY: KRS 224.10-100, **224.20-100, 224.20-110, 224.20-120, 40 CFR 60.600-60.604, 42 USC 7411**

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 **incorporated by reference** [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 **3** [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. Definitions. As used in 40 CFR 60.600 to 60.604, the following terms shall be defined as provided in this section:

(1) "Administrator" means the Secretary of the Natural Resources and Environmental Protection Cabinet.

(2) "State" means the Commonwealth of Kentucky.

Section 2. (1) 40 CFR 60.600 to 60.604, (40 CFR 60 Subpart HHH), Standards of performance for synthetic fiber production facilities, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993, is incorporated by reference.

(2) The material incorporated by reference may be obtained, inspected, or copied at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

(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.

(3) 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.

[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 3. [~~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.

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

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~~] 60.620-60.625 [~~, Subpart JJJ~~], 42 USC 7411

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 60.620-60.625, 42 USC 7411

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 incorporated by reference [~~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 2 [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. (1) 40 CFR 60.620 to 60.625, (40 CFR 60 Subpart JJJ), Standards of performance for petroleum drycleaners, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993, is incorporated by reference.

(2) The material incorporated by reference may be obtained, inspected, or copied at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

(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.

(3) 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.

[~~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 2. [~~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.

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

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~~] 60.630-60.636 [~~, Subpart KKK~~], 42 USC 7411

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 60.630-60.636, 42 USC 7411

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 incorporated by reference [~~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 2 [4] of this administrative regulation. Delegation of implementation and enforce-

ment 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. (1) 40 CFR 60.630 to 60.636, (40 CFR 60 Subpart KKK), Standards of performance for equipment leakes of VOC from onshore natural gas processing plants, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993, is incorporated by reference.

(2) The material incorporated by reference may be obtained, inspected, or copied at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

(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.

(3) 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.

~~[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 **2.** ~~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.

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

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~~ 60.640-60.648 ~~, Subpart LLL~~, 42 USC 7411

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 60.640-60.648, 42 USC 7411

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 **incorporated by reference** ~~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 3 ~~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. Definitions. As used in 40 CFR 60.640 to 60.648, the following terms shall be defined as provided in this section:

(1) "Administrator" means the Secretary of the Natural Resources and Environmental Protection Cabinet.

(2) "EPA" means the U.S. EPA.

(3) "State" means the Commonwealth of Kentucky.

Section 2. (1) 40 CFR 60.640 to 60.648, (40 CFR 60 Subpart LLL), Standards of performance for onshore natural gas processing: SO_2 emissions, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993, is incorporated by reference.

(2) The material incorporated by reference may be obtained, inspected, or copied at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

(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.

(3) 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.

[~~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 **3.** [~~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.

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

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.**680-60.685** [~~, Subpart PPP~~], 42 USC 7411
STATUTORY AUTHORITY: KRS 224.10-100**, 224.20-100, 224.20-110, 224.20-120, 40 CFR 60.680-60.685, 42 USC 7411**
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 **incorporated by reference** [~~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 **3** [**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. Definitions. As used in 40 CFR 60.680 to 60.685, the following terms shall be defined as provided in this section:

(1) "Agency" means the U.S. EPA.

(2) "State" means the Commonwealth of Kentucky.

Section 2. (1) 40 CFR 60.680 to 60.685, (40 CFR 60 Subpart PPP), Standards of performance for wool fiberglass insulation manufacturing plants, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1993, is incorporated by reference.

(2) The material incorporated by reference may be obtained, inspected, or copied at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

(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.

(3) 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.

[~~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 **3.** **[**~~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.

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

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.**700-60.708** **[**~~, Subpart RRR~~**]**, 42 USC 7411, Federal Register, 58 FR 45962-45973, August 31, 1993

STATUTORY AUTHORITY: KRS 224.10-100**, 224.20-100, 224.20-110, 224.20-120, 40 CFR 60.700-60.708, 42 USC 7411**

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 **incorporated by reference** **[**~~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. Definitions. As used in 40 CFR 60.700 to 60.708, the following terms shall be defined as provided in this section:

(1) Except as provided in subsection (2) of this section, "administrator" means the Secretary of the Natural Resources and Environmental Protection Cabinet.

(2) As used in 40 CFR 60.708, "administrator" means the administrator of the U.S. EPA.

(3) "State" means the Commonwealth of Kentucky.

Section 2. (1) 40 CFR 60.700 to 60.708, (40 CFR 60 Subpart RRR), Standards of performance for volatile organic compound (VOC) emissions from synthetic organic chemical manufacturing (SOCMI) reactor processes, as published in the Federal Register, 58 FR 45962-45973, August 31, 1993, is incorporated by reference.

(2) The material incorporated by reference may be obtained, inspected, or copied at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

(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.

(3) 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.

[~~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.

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

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.**730-60.737** [~~, Subpart UUU~~], 42 USC 7411, Federal Register, 58 FR 40591, July 29, 1993

STATUTORY AUTHORITY: KRS 224.10-100, **224.20-100, 224.20-110, 224.20-120, 40 CFR 60.730-60.737, 42 USC 7411**

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 **incorporated by reference** [~~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. Definitions. As used in 40 CFR 60.730 to 60.737, the following terms shall be defined as provided in this section:

(1) Except as provided in subsection (2) of this section, "administrator" means the Secretary of the Natural Resources and Environmental Protection Cabinet.

(2) As used in 40 CFR 60.737(a), "administrator" means the administrator of the U.S. EPA.

(3) "Agency" means the U.S. EPA.

(4) "State" means the Commonwealth of Kentucky.

Section 2. (1) 40 CFR 60.730 to 60.737, (40 CFR 60 Subpart UUU), Standards of performance for calciners and dryers in mineral industries, 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, is incorporated by reference.

(2) The material incorporated by reference may be obtained, inspected, or copied at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

(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.

(3) 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.

[~~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.

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

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.**1-63.15** [~~, Subpart A~~], 42 USC 7401, 7412, 7414, 7416, 7601, Federal Register, 59 FR 12430-12459, March 16, 1994

STATUTORY AUTHORITY: KRS 224.10-100, **224.20-100, 224.20-110, 224.20-120, 40 CFR 63.1-63.15, Federal Register 59 FR 12430-12459, March 16, 1994, 42 USC 7401, 7412, 7414, 7416, 7601**

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 **incorporated by reference** [~~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. Definitions. As used in 40 CFR 63.1 to 63.15, the following terms shall be defined as provided in this section:

(1) "State" means the Commonwealth of Kentucky.

(2) "State permitting authority" means the Natural Resources and Environmental Protection Cabinet.

Section 2. (1) 40 CFR 63.1 to 63.15, (40 CFR 63 Subpart A), General provisions, as published in the Federal Register, 59 FR 12430-12459, March 16, 1994, is incorporated by reference.

(2) The material incorporated by reference may be obtained, inspected, or copied at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

(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.

(3) 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.

[~~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.

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

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~~] 63.300 to 63.313 [~~, 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, 224.20-100, 224.20-110, 224.20-120, 40 CFR 63.300-63.313, Federal Register 58 FR 57911-57935, October 27, 1993, 59 FR 1992, January 13, 1994, 42 USC 7401, 7412, 7414, 7416, 7601

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 incorporated by reference [~~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. Definitions. As used in 40 CFR 63.300 to 63.313, the following terms shall be defined as provided in this section:

(1) Except as provided in subsection (2) of this section, "administrator" means the Secretary of the Natural Resources and Environmental Protection Cabinet.

(2) As used in 40 CFR 63.304(b)(3), 63.309(a)(5), and 63.313, "administrator" means the administrator of the U.S. EPA.

(3) "Enforcement" or "implementing agency" means the NaturalResources and Environmental Protection Cabinet.

(4) "State" means the Commonwealth of Kentucky.

(5) "State permitting authority" means the Natural Resources and Environmental Protection Cabinet.

Section 2. (1) 40 CFR 63.300 to 63.313, (40 CFR 63 Subpart A), National emission standards for coke oven batteries, as published in the Federal Register, 58 FR 57911-57935, October 27, 1993, and as amended at 59 FR 1992, January 13, 1994, is incorporated by reference.

(2) The material incorporated by reference may be obtained, inspected, or copied at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

(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.

(3) 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.

[~~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.

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

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.**320-63.325** [~~, 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**, 224.20-100, 224.20-110, 224.20-120, 40 CFR 63.320-63.325, Federal Register, 58 FR 49376-49380, September 22, 1993, 58 FR 66289, December 20, 1993, 42 USC 7412**

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 **incorporated by reference** [~~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. Definitions. As used in 40 CFR 63.320 to 63.325, the following terms shall be defined as provided in this section:

(1) Except as provided in subsection (2) of this section, "administrator" means the Secretary of the Natural Resources and Environmental Protection Cabinet.

(2) As used in 40 CFR 63.325, "administrator" means the administrator of the U.S. EPA.

(3) "State" means the Commonwealth of Kentucky.

Section 2. (1) 40 CFR 63.320 to 63.325, (40 CFR 63 Subpart M), National perchloroethylene air emission standards for drycleaning facilities, as published in the Federal Register, 58 FR 49376-49380, September 22, 1993, and as amended at Federal Register, 58 FR 66289, December 20, 1993, is incorporated by reference.

(2) The material incorporated by reference may be obtained, inspected, or copied at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

(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.

(3) 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.

[~~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.

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

405 KAR 16:010. General provisions.

RELATES TO: KRS 350.020, 350.090, 350.093, 350.151, 350.405, 350.410, 350.440, 350.445, 350.450, 350.465, 30 CFR Parts 730-733, 735, 816.59, 816.79, 816.99, 816.131-.132, 917, 30 USC 1253, 1255

STATUTORY AUTHORITY: KRS Chapter 13A, 350.020, 350.028, 350.465, 30 CFR Parts 730-733, 735, 816.59, 816.79, 816.99, 816.131-.132, 917, 30 USC 1253, 1255

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and administrative regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during surface mining activities and for restoration and reclamation of surface areas affected by mining activities. This administrative regulation contains general performance standards for maximizing coal recovery, protection of underground mining, prevention and correction of landslides, temporary cessation of operations, [~~and~~] permanent abandonment of operations, and protection of **unmined barriers of coal left by underground mining** [~~underground mine outcrop barriers~~] [~~pillars~~].

Section 1. Applicability. The provisions of this chapter are applicable to all surface mining activities conducted under 405 KAR Chapters 7 through 24. The provisions of this chapter also apply to those special categories of surface mining activities for which performance standards are set forth under 405 KAR 20:030 through 405 KAR 20:080 except to the extent that a provision of those administrative regulations specifically exempts a particular category from a particular requirement of this chapter.

Section 2. Coal Recovery. Surface mining activities shall be conducted so as to maximize the utilization and conservation of the coal, while utilizing the best appropriate technology currently available to maintain environmental integrity, so that reaffecting the land in the future through surface coal mining operations is minimized.

Section 3. Protection of Underground Mining. No surface mining activity shall be conducted within 500 feet of any point of either an active or abandoned underground mine, unless:

(1) If any of the workings of the underground mine are active, the nature, timing, and sequence of the surface mining activity are jointly approved by the cabinet, the MSHA, and the Kentucky Department of Mines and Minerals; and

(2) For both active and abandoned underground mines, the surface mining activity results in improved resource recovery, abatement of water pollution, or elimination of hazards to the health and safety of the public.

Section 4. Slide and Erosion Barriers. An undisturbed natural barrier shall be provided beginning at the elevation of the lowest coal seam to be mined and extending from the outslope for a minimum distance of fifteen (15) feet or greater distance as the cabinet may determine is necessary to assure stability. The barrier shall be retained in place to prevent slides and erosion.

Section 5. Slides. At any time a slide occurs which may have a potential adverse effect on property, health, safety, or the environment, the person who conducts the surface mining activities shall notify the cabinet by the fastest available means and comply with any remedial measures required by the cabinet.

Section 6. Permanent Abandonment of Operations. (1) Notice required. On or before the date of permanent abandonment of operations, the permittee shall provide written notice to the cabinet that permanent [~~such~~] abandonment is intended.

(2) Prior to permanent abandonment, and prior to removal of necessary equipment from the site, all affected areas shall be closed, backfilled, and otherwise permanently reclaimed in accordance with the requirements of KRS Chapter 350, the administrative regulations of this Title, and the permit.

(3) All equipment, underground openings, structures, or other facilities not required for monitoring shall be removed and the affected areas reclaimed unless the cabinet approves the retention of the [~~such~~] equipment, openings, structures, or other facilities as compatible with the postmining land use or as beneficial to environmental monitoring.

Section 7. Temporary Cessation of Operations. (1) Notice required. Prior to a temporary cessation of operations which the permittee intends to last for thirty (30) days or more, or as soon as it is known to the permittee that an existing temporary cessation will last beyond thirty (30) days, the permittee shall provide written notice to the cabinet that [~~such~~] temporary cessation is anticipated. The notice shall state to what extent equipment will be removed from the site during the temporary cessation, and shall state the approximate date on which the permittee intends that operations will be resumed.

(2) Temporary cessation shall not relieve a permittee of the obligation to comply with 405 KAR 16:070, Section 1(1)(g) and the surface and groundwater monitoring requirements of 405 KAR 16:110, and the obligation to comply with all applicable conditions of the permit during the cessation.

(3) During temporary cessations, equipment and facilities necessary to environmental monitoring or to compliance with performance standards shall be made secure to the extent practicable.

Section 8. Protection of **Unmined Barriers of Coal Left by Underground Mining** [~~Underground Mine Outcrop Barriers~~]. (1) Coal shall not be removed from an **unmined barrier of coal** [~~outcrop barrier~~] left by an underground mine **where the underground workings dip toward and approach the land surface**, unless the cabinet has approved the proposed coal removal under this section.

(2) The cabinet shall approve the proposed coal removal if it determines that the removal meets all other applicable requirements of 405 KAR Chapters 7-24 and KRS Chapter 350 and also meets at least one (1) of paragraphs (a)-(e) of this subsection:

(a) The removal will not adversely affect the stability of the **unmined barrier of coal** [~~outcrop barrier~~];

(b) The removal will completely eliminate or significantly reduce existing underground workings;

(c) The removal will eliminate or significantly reduce an existing

or potential threat to the health or safety of the public resulting from the existing underground workings;

(d) The removal will eliminate or significantly reduce existing or potential adverse impacts to the quantity or quality of groundwater or surface water resulting from the existing underground workings; or

(e) The **unmined barrier of coal** [~~outcrop barrier~~] is not necessary to protect the health or safety of the public or to protect the quantity or quality of groundwater or surface water. [~~Protection of Outcrop Barrier Pillars. (1) Coal shall not be removed by auger mining, contour mining, or other surface mining activities, from an outcrop barrier pillar left by an underground mine, unless the cabinet approves the proposed coal removal.~~

~~(2) The cabinet may approve the proposed coal removal if it determines that:~~

~~(a) The removal will completely eliminate existing underground workings;~~

~~(b) The removal will eliminate or significantly reduce an existing or potential threat to the health or safety of the public resulting from the existing underground workings; or~~

~~(c) The removal will eliminate or significantly reduce existing or potential adverse impacts to the quantity or quality of groundwater or surface water resulting from the existing underground workings.~~]

PHILLIP J. SHEPHERD, Secretary
APPROVED BY AGENCY: October 14, 1994
FILED WITH LRC: October 14, 1994 at noon

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

405 KAR 18:010. General provisions.

RELATES TO: KRS 350.020, 350.090, 350.093, 350.151, 350.410, 350.440, 350.465, 30 CFR Parts 730-733, 735, 817.59, 817.99, 817.131-.132, 917, 30 USC 1253, 1255, 1266

STATUTORY AUTHORITY: KRS Chapter 13A, 350.020, 350.028, 350.151, 350.465, 30 CFR Parts 730-733, 735, 817.59, 817.99, 817.131-.132, 917, 30 USC 1253, 1255, 1266

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and administrative regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during underground mining activities and for restoration and reclamation of surface areas affected by underground mining activities. This administrative regulation contains general performance standards for maximizing coal recovery, prevention and correction of landslides, temporary cessation of operations, [~~and~~] permanent abandonment of operations, and **protection against the sudden release of water accumulated in underground workings to the land surface** [~~outcrop barriers for protection against water blowouts~~] [~~pillars~~].

Section 1. Applicability. The provisions of this chapter are applicable to all underground mining activities including coal processing plants, conducted under Title 405, Chapters 7 through 24. The provisions of this chapter also apply to those special categories of underground mining activities for which performance standards are set forth under 405 KAR 20:020 through 405 KAR 20:080, except to the extent that a provision of those administrative regulations specifically exempts a particular category from a particular requirement of this chapter.

Section 2. Coal Recovery. Underground mining activities shall be conducted so as to maximize the utilization and conservation of the coal, while utilizing the best appropriate technology currently available to maintain environmental integrity, so that reaffecting the land in the future through surface coal operations is minimized.

Section 3. Slides. At any time a slide occurs which may have a potential adverse effect on property, health, safety, or the environment, the permittee shall notify the cabinet by the fastest available means and comply with any remedial measures required by the cabinet.

Section 4. Permanent Abandonment of Operations. (1) Notice required. On or before the date of permanent abandonment of operations, the permittee shall provide written notice to the cabinet that permanent [~~such~~] abandonment is intended.

(2) Prior to permanent abandonment, and prior to removal of necessary equipment from the site, all affected areas shall be closed, backfilled, and otherwise permanently reclaimed in accordance with the requirements of KRS Chapter 350, the administrative regulations of this Title, and the permit.

(3) All equipment, underground openings, structures, or other facilities not required for monitoring shall be removed and the affected areas reclaimed unless the cabinet approves the retention of the [~~such~~] equipment, openings, structures, or other facilities as compatible with the postmining land use or as beneficial to environmental monitoring.

Section 5. Temporary Cessation of Operations. (1) Notice required. Prior to a temporary cessation of operations which the permittee intends to last for thirty (30) days or more, or as soon as it is known to the permittee that an existing temporary cessation will last beyond thirty (30) days, the permittee shall provide written notice to the cabinet that [~~such~~] temporary cessation is anticipated. The notice shall state to what extent equipment will be removed from the site during the temporary cessation, and shall state the approximate date on which the permittee intends that operations will be resumed.

(2) Temporary cessation shall not relieve a permittee of the obligation to comply with 405 KAR 18:070, Section 1(1)(g) and the surface and groundwater monitoring requirements of 405 KAR 18:110, and the obligation to comply with all applicable conditions of the permit during the cessation.

(3) During temporary cessations, equipment and facilities necessary to environmental monitoring or to compliance with performance standards shall be made secure to the extent practicable.

Section 6. **Protection Against Sudden Release of Water Accumulated in Underground Workings to the Land Surface.** [~~Outcrop Barriers for Protection Against Water Blowouts.~~] (1) Except where surface openings are approved in the permit, an unmined barrier of coal shall be left where the underground workings dip toward and approach the land surface. The cabinet shall waive this requirement if it determines that the proposed operation meets all other applicable requirements of 405 KAR Chapters 7-24 and KRS Chapter 350 and also meets either paragraph (a) or (b) of this subsection:

(a) The applicant has demonstrated in the permit application to the satisfaction of the cabinet, based upon the geologic and hydrologic conditions in the permit area, that accumulation of water in the underground workings cannot reasonably be expected to occur; or

(b) Adequate measures to prevent accumulation of water in the underground workings have been included in the permit application and have been approved by the cabinet.

(2) If an **unmined barrier of coal** [~~outcrop barrier~~] is required under subsection (1) of this section, it shall be of sufficient width to prevent failure and sudden release of water **accumulated in underground workings to the land surface.**

(a) The cabinet may determine on a case-by-case basis the width of **the unmined barrier of coal** [~~outcrop barrier~~] that shall be required to comply with this subsection.

(b) The width of the **unmined barrier of coal** [~~outcrop barrier~~] shall not be less than the width given by the following formula: W = 50 + H, where W is the minimum width in feet and H is the maximum hydrostatic head in feet that can build up on the **unmined barrier of coal** [~~outcrop barrier~~]. The cabinet shall approve, for the purpose of protecting against **the sudden release of water accumulated in underground workings to the land surface** [~~water blowouts~~], a width less than the minimum width determined by this formula if the applicant has demonstrated in the permit application to the satisfaction of the cabinet that the lesser width will achieve the purpose of this subsection. [~~Outcrop Barrier Pillars. (1) Except where entries and ventilation shafts are approved, an unmined section of coal shall be left at each area where the coal seam approaches the land surface, to create an outcrop barrier pillar.~~

~~(2) The outcrop barrier pillar shall be of sufficient width to support the overburden and to prevent failure and sudden release of water due to water pressure against the unmined coal. The cabinet may determine on a case by case basis the width of outcrop barrier pillar that shall be required to comply with this subsection; except if the coal seam dips toward the land surface, the width of the outcrop barrier pillar shall not be less than the width given by the following formula: W = 50 + H, where W is the minimum width in feet and H is the maximum hydrostatic head in feet that can build up on the outcrop barrier.~~]

PHILLIP J. SHEPHERD, Secretary
APPROVED BY AGENCY: October 14, 1994
FILED WITH LRC: October 14, 1994 at noon

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Carriers
Division of Motor Vehicle Enforcement
(As Amended)

601 KAR 1:025. Transporting hazardous materials by air or highway[~~; permit~~].

RELATES TO: KRS 174.400 through 174.435, 49 CFR 107, 130, 171-180

STATUTORY AUTHORITY: KRS 174.410(2), 174.430(1), 49 CFR Parts 130, 171-180

NECESSITY AND FUNCTION: KRS 174.410(2) provides that the Secretary of the Transportation Cabinet, in consultation with the Secretary of the Natural Resources and Environmental Protection Cabinet and the Secretary of the Cabinet for Human Resources, shall adopt by reference or in its entirety, the federal hazardous materials transportation regulation, 49 CFR (1978), as amended, to effectively carry out the intent of KRS 174.400 through 174.435 relating to the transportation of hazardous materials by air or highway. House Bill 448 passed by the 1994 General Assembly repealed the requirement for a permit for transporters of hazardous material in Kentucky. [~~KRS 174.430(1) provides that the Secretary of the Transportation Cabinet is authorized to fix a reasonable fee, by administrative regulation, to be paid by applicants for a general permit to transport radioactive materials through or within the Commonwealth or to transport other hazardous materials within the Commonwealth, and for the renewal of such permit.~~] This administrative regulation implements these statutory provisions.

Section 1. The hazardous materials transportation regulations adopted and issued by the United States Department of Transportation relating to the following subjects shall govern the transportation of hazardous materials within Kentucky if the transportation of hazardous material is by air or highway:

(1) Title 49, Code of Federal Regulations, Part 107, effective July 1, 1994. Part 107 sets forth the requirements for a national registration of the transporters of hazardous materials.

(2) Title 49, Code of Federal Regulations, Part 130 effective June 16, 1993. Part 130 sets forth general information, regulations and definitions applicable to oil spill prevention and response plans;

(3) [~~(2)~~] Title 49, Code of Federal Regulations, Part 171 effective September 30, 1994 [~~October 1, 1993~~]. Part 171 sets forth general information, regulations and definitions applicable to all hazardous materials transportation;

(4) [~~(3)~~] Title 49, Code of Federal Regulations, Part 172 effective September 30, 1994 [~~October 1, 1993~~]. Part 172 lists and classifies those materials which the United States Department of Transportation has designated as hazardous materials for purposes of transportation and prescribes the requirements for the following:

(a) Shipping papers;

(b) Package marking; and

(c) Labeling and transport vehicle placarding applicable to the shipment and transportation of those hazardous materials;

(5) [~~(4)~~] Title 49, Code of Federal Regulations, Part 173 effective September 30, 1994 [~~October 1, 1993~~]. Part 173 sets forth the general requirements which shippers are required to meet for shipments and packaging;

(6) [~~(5)~~] Title 49, Code of Federal Regulations, Part 175 effective October 1, 1993. Part 175 includes requirements in addition to those contained in Parts 171, 172, and 173 which are applicable to aircraft operators transporting hazardous materials aboard, attached to or suspended from civil aircraft;

(7) [~~(6)~~] Title 49, Code of Federal Regulations, Part 177, effective October 1, 1993. Part 177 includes requirements in addition to those contained in Parts 171, 172, and 173 which are applicable to private contract or common motor carriers transporting hazardous materials on public highways;

(8) [~~(7)~~] Title 49, Code of Federal Regulations, Part 178 effective September 30, 1994 [~~October 1, 1993~~]. Part 178 prescribes the manufacturing and testing specifications for packaging and containers used for the transportation of hazardous materials; and

(9) [~~(8)~~] Title 49, Code of Federal Regulations, Part 180, effective September 30, 1994 [~~October 1, 1993~~]. Part 180 prescribes requirements pertaining to the maintenance, reconditioning, repair, inspection and any other function having an effect on the continuing qualification and use of a packaging used to transport hazardous materials.

Section 2. (1) "Part II, Department of Transportation Research and Special Programs Administration: Cargo Tanks, Miscellaneous Requirements: Final Rule" published in the November 3, 1994 Federal Register is incorporated by reference as a part of this administrative regulation. This document contains amendments to 49 CFR Part 171, 173, 178, and 180 relating to requirements for the manufacture, qualification, and maintenance of cargo tank motor vehicles. These changes shall be implemented January 5, 1995 and shall govern cargo tank motor vehicles used for the transportation of hazardous materials. Compliance with the changes is authorized on the effective date of this administrative regulation if prior to January 5, 1994.

(2) The material incorporated by reference may be viewed, copied, or obtained from the Staff Assistant to the Transportation Cabinet Secretary, Room 1003, 501 High Street, Frankfort, Kentucky 40622. The telephone number is (502) 564-4890. The working hours are 8 a.m. to 4:30 p.m. eastern time on weekdays.

[~~Section 2. (1) Applicants for an annual general permit to transport radioactive materials through or within the Commonwealth or to transport other hazardous materials within the Commonwealth, and for the renewal of this permit, shall pay to the Transportation Cabinet a fee of twenty five (25) dollars.~~

(2) The applicant for a general permit shall submit his application to the Department of Vehicle Regulation in the form prescribed in subsection (3) of this section by the department. The department shall make the forms available to any applicant.

(3) The front page of the form shall read as follows:

TC 95-1
Kentucky Transportation Cabinet
Department of Vehicle Regulation
Division of Motor Carriers
P. O. Box 2007
Frankfort, Kentucky 40602
Application For Permit For The Transportation of Hazardous Materials And/Or Radioactive Materials (This application shall be accompanied by a $25 filing fee)
CARRIER NAME:
STREET:
CITY:STATE:ZIP:
1. Type of Carrier:Private:For Hire:
2. Classification of Hazardous or Radioactive Materials Transported:

INTERSTATE	INTRASTATE
Radioactive Material	Hazardous Material
Radioactive Waste	Hazardous Waste
	Radioactive Material
	Radioactive Waste

3. Individual associated with carrier who is designated to be contacted in event of emergency:

NAME: PHONE NUMBERS:
During Business Hours ( )
After Business Hours ( )
TITLE:
ADDRESS (if different from above):

4. Description of emergency procedures which the carriers shall follow in the event of an emergency:

I, the undersigned official of the above company, state that the above information is true and correct.

NAME_____ OFFICIAL TITLE_____

(4) The back page of the form shall inform the applicant of the basic requirements for application for a permit and shall contain the following:

TC 95-1

GENERAL INFORMATION REGARDING KENTUCKY'S
HAZARDOUS/RADIOACTIVE MATERIAL
Transportation Permit

The following information generally outlines the regulations of the Division of Motor Carrier's hazardous radioactive materials transportation requirements. If you have specific questions, contact the Division of Motor Carriers at the address or the telephone number below.

A general permit may be issued to any carrier who transports radioactive materials, either interstate or intrastate, and any carrier who transports hazardous materials intrastate in Kentucky. Needed definition follow:

"CARRIER" means a person engaged in the commercial transportation of passenger or property by land as a common, contract or private carrier or civil aircraft: except for those transporting passengers or property by pipelines, railways, or waterways.

"HAZARDOUS MATERIAL" means a substance designed as hazardous by the *Federal Hazardous Materials Transportation Act (49 U.S.C. 1801, et seq.) or the federal regulations adopted pursuant thereto.

Exception: Hazardous material shall not include agricultural wastes, coal mining wastes (as defined in 401 KAR 30:010, Section 1), utility waste (fly ash, bottom ash, scrubber sludge), sludge from water treatment and sewage treatment facilities, cement kiln dust, gas and oil drilling muds, oil production brines or waste oil.

"RADIOACTIVE MATERIAL" means any material or combination of materials which spontaneously emit ionizing radiation.

The provisions of this permit do not apply to hazardous materials shipped by or for the U.S. government for military or national security purposes.

Vehicles used in the transportation of fuels to end users are also exempt from these requirements.

TO OBTAIN THIS PERMIT, THE FOLLOWING PROCEDURE SHALL BE FOLLOWED:

(1) Complete and return the application (TC 95-1) to the Kentucky Transportation Cabinet, Division of Motor Carriers, with the required $25 yearly fee. A COPY OF THIS APPLICATION IS ON THE REVERSE SIDE.

(2) Applicant shall have on file with the Division an approved certificate of public liability and property damage insurance in the minimum amounts set forth in KRS 281.655.
These minimum limits are:

(a) Petroleum or Petroleum Products Less than 10,000 lbs. - $100,000/300,000/50,000

(b) All other hazardous/radioactive material as defined in KRS 174.405 - $1,000,000 SINGLE LIMIT COVERAGE

*The cabinet has adopted, by reference, the federal hazardous materials transportation regulations, 49 CFR (1978), as amended, in their entirety. These parts pertaining to railways, pipeline and waterways are specifically excluded.

The cabinet may issue a permit based upon the information contained in the application. A COPY OF THIS PERMIT SHALL BE CARRIED IN THE TRANSPORTING VEHICLE WHILE IN THE COMMONWEALTH OF KENTUCKY. Each carrier shall be assigned only one permit, and you are given permission to photostat a copy for each vehicle operating under your authority and your permit. The general permit shall be renewed annually.

This permit does not preclude or encompass any other document required by Kentucky law. A carrier shall comply with all other applicable requirements for the transportation of hazardous materials within the Commonwealth.

PLEASE ADDRESS ALL MAIL TO:
KENTUCKY DEPARTMENT OF VEHICLE REGULATION
DIVISION OF MOTOR CARRIERS
QUALIFICATIONS/PERMITS BRANCH
POST OFFICE BOX 2007
FRANKFORT, KENTUCKY 40602
Phone: (502) 564-4540]

NORRIS BECKLEY, Commissioner
DON C. KELLY, P.E., Secretary
APPROVED BY AGENCY: August 15, 1994
FILED WITH LRC: September 15, 1994 at 11 a.m.

ADMINISTRATIVE REGULATIONS AMENDED AFTER HEARING OR WRITTEN COMMENTS RECEIVED

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

415 KAR 1:050. Definitions.

RELATES TO: KRS 224.60-120, 224.60-130, 224.60-140, 40 CFR Part 280

STATUTORY AUTHORITY: KRS 224.60-120, 224.60-130

NECESSITY AND FUNCTION: KRS 224.60-120 and 224.60-130 require the Petroleum Storage Tank Environmental Assurance Fund Commission to adopt regulations to establish the policy guidelines and procedures to administer the Petroleum Storage Tank Environmental Assurance Fund. This regulation defines essential terms used in connection with the regulations of the commission in this chapter. 1992 Kentucky Acts Chapter 450 amended the statutory provisions for the fund. [~~This regulation repeals the prior regulations of the commission.~~]

Section 1. Definitions. [~~Unless otherwise specifically defined in KRS Chapter 224 or otherwise clearly indicated by their context terms in the Petroleum Storage Tank Environmental Assurance Fund Commission regulations shall have the meanings given in this regulation.~~]

(1) "Abandoned" means a prior owner, of the tank, has relinquished all connections with or concern in ownership with no intention to return or claim again and that the **current** owner seeking assistance from the fund acquired the property where the tank is located without knowledge of the tank's existence. Physical acts by the owner or operator, applying for assistance, will be considered in determining the applicants knowledge of the tank's existence.

(2) " Assets" shall have the meaning in KRS 224.60-120(3);

(3) [~~(2)~~] "Bodily injury and property damage" shall have the meaning in KRS 224.60-115;

(4) [~~(3)~~] "Cabinet" **shall have the same meaning as in KRS 224.60-115(2);** [~~means the Underground Storage Tank Branch or other branch or division of the Natural Resources and Environmental Protection Cabinet;~~]

(5) [~~(4)~~] "Cathodic protection" means a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrical chemical cell;

(6) [~~(5)~~] "Claim" shall have the meaning in KRS 224.60-115(4);

(7) "Closed" means a tank which ceased to operate prior to December 22,1988;

(8) [~~(7)~~] [~~(6)~~] "Commission" means the Petroleum Storage Tank Environmental Assurance Fund Commission;

(9) [~~(8)~~] "Contract" means the **legally binding,** written agreement for performance of corrective action entered into by an owner or operator and a contractor certified pursuant to 415 KAR 1:114.

(10) [~~(9)~~] [~~(7)~~] "Corrective action" shall have the meaning in KRS 224.60-115(5);

(11) [~~(10)~~] "Corrective action plan" means a [~~long term~~] remediation proposal employing corrective action technologies to obtain site closure, **as required, in writing, by the cabinet.** [~~(Not depending solely on excavation and removal of contaminated soil.)~~]

(12) [~~(11)~~] [~~(8)~~] "Corrosion protection" means a method of corrosion protection that complies with the requirements of 401 KAR 42:030;

(13) [~~(12)~~] [~~(9)~~] "Currently exist" means an existing petroleum storage tank that has or does contain petroleum, and includes a petroleum storage tank that has been permanently closed by filling with an inert solid material;

(14) [~~(13)~~] [~~(10)~~] "Currently in use" means a petroleum storage tank which contains petroleum or petroleum products and is in use for commercial purposes, [~~or~~] storage of petroleum, or is in compliance when temporarily closed under the requirements of **cabinet administrative regulations** [~~401 KAR 42:070~~];

(15) [~~(14)~~] [~~(11)~~] "Drinking water supply" means a groundwater source or a surface water source of a private water supply, a public water system, or a semipublic water system as defined in 401 KAR 8:010;

(16) [~~(15)~~] [~~(12)~~] "Eligibility" means compliance with the criteria for eligibility established in this chapter;

(17) [~~(16)~~] [~~(13)~~] "Entry level" means the amount of financial responsibility determined by the commission to be paid by the owner or operator of a petroleum storage tank prior to being eligible for participation in the fund;

(18) [~~(17)~~] [~~(14)~~] "Extent of environmental harm" means the extent of horizontal and vertical contamination due to a release from a petroleum storage tank, including contamination of a surface or underground drinking water supply, the potential for exposure posing a threat to human health or the environment, and the amount of contamination released;

(19) [~~(18)~~] [~~(15)~~] "Facility" shall have the meaning in KRS 224.60-115(7);

(20) [~~(19)~~] [~~(16)~~] "Federal regulation" shall have the meaning in KRS 224.60-115(8);

(21) [~~(20)~~] [~~(17)~~] "Financial ability" means the ability of a petroleum storage tank owner or operator to pay the entry level to the fund based upon a consideration of the assets and income of the owner or operator;

(22) [~~(21)~~] [~~(18)~~] "Guarantor" shall have the meaning in KRS 224.120(4);

(23) [~~(22)~~] [~~(19)~~] "Maintenance" means the normal operational upkeep to prevent a petroleum storage tank system from releasing petroleum or petroleum products;

(24) [~~(21)~~] "Maximum contaminant level" means the maximum permissible level of a contaminant in water established pursuant to the regulations of the cabinet or applicable federal regulations;

(25) [~~(23)~~] [~~(20)~~] "Net worth" shall have the meaning in KRS 224.60-120(3);

(26) [~~(25)~~] [~~(22)~~] "Newly discovered tanks" mean petroleum storage tanks at a facility that would not have been discovered by the owner or operator by the exercise of ordinary diligence;

[~~(23) "Nonretail facility" means a facility that does not sell petroleum products from petroleum storage tanks to the general public;~~]

(27) [~~(26)~~] [~~(24)~~] "Occurrence" shall have the meaning in KRS 224.115(12);

(28) [~~(27)~~] "Operation" with respect to a UST or UST system means a UST or UST system currently being used for the storage and dispensing of [~~a regulated~~] petroleum **or petroleum products** [~~substance~~].

(29) [~~(28)~~] [~~(25)~~] "Original invoice" means the original or a duplicate original of an invoice;

(30) [~~(29)~~] "Permanently closed" means a UST or UST system that was closed after December 22, 1988 pursuant to the requirements of **cabinet administrative regulations** [~~40 CFR 280 Subpart G or a UST or UST system closed prior to December 22, 1988 in accordance with the requirements of the Kentucky Fire Marshal, applicable industry standards at the time of closure and closed in such manner as to prevent any future use of the UST or UST system~~].

(31) [~~(30)~~] "Petroleum storage tank" shall have the meaning in

KRS 224.60-115(15);

(32) [(31)] [(26)] "Petroleum storage tank operator" or "operator" shall have the meaning in KRS 224.60-115(15);

(33) [(32)] [(27)] "Petroleum storage tank owner" or "owner" shall have the meaning in KRS 224.60-115(17);

(34) [(33)] [(28)] "Ranking system" means the system for determining financial ability and extent of environmental harm established by these regulations;

(35) [(34)] [(29)] "Release" shall have the meaning in KRS 224.60-115(19);

(36) [(32)] "Release detection" means a method of determining whether a release of petroleum has occurred from a petroleum storage tank system into the environment or into the interstitial space between the petroleum storage tank system and a secondary barrier or secondary containment around it that complies with the requirements of **401 KAR 42:040** [40 CFR 280 Subpart D];

(37) [(35)] [(30)] "Retail facility" means a facility that sells petroleum products to the general public from petroleum storage tanks;

(38) [(37)] [(33)] "Repair" means to restore a petroleum storage tank or system component that has caused a release of petroleum to comply with the regulations of the cabinet;

(39) [(38)] [(31)] "Statistically significant increase" means that use of a statistical procedure approved by the cabinet demonstrates that a level of a petroleum constituent in a drinking water supply significantly exceeds background;

(40) [(39)] "Temporary closure" means taking a UST or UST system out of operation pursuant to the requirements of **401 KAR 42:070E** [40 CFR 280.70];

(41) [(40)] [(34)] "Upgrade" means the addition or retrofit of some system such as cathodic protection, lining, or spill and overflow controls to improve the ability of a petroleum storage tank system to prevent the release of product, or the replacement of tanks with new tanks.

[Section 2. These definitions are intended to be consistent with the definition of terms in the waste management regulations of the cabinet and in applicable federal regulations.]

JACK B. HALL, Executive Director
APPROVED BY AGENCY: November 10, 1994
FILED WITH LRC: November 11, 1994 at 10 a.m.

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

415 KAR 1:060. Financial responsibility account.

RELATES TO: KRS 224.60-120, 224.60-130, 224.60-140, 40 CFR Part 280

STATUTORY AUTHORITY: KRS 224.60-120, 224.60-130

NECESSITY AND FUNCTION: The 1992 Kentucky General Assembly amended KRS 224.60-130 to direct the commission to establish a financial responsibility account within the fund which may be used by petroleum storage tank owners and operators to demonstrate financial responsibility as required by state and federal administrative regulations for the payment of the costs of corrective action and third-party liability. This regulation establishes the eligibility requirements for the financial responsibility account, and establishes the procedure for eligible storage tank owners and operators to receive a certification of eligibility for this account.

Section 1. Applicability. An owner or operator of a facility with petroleum storage tanks in operation meeting the following requirements shall be eligible to participate in the financial responsibility account.

(1) The owner or operator of a facility for which a certification of eligibility was issued by the commission, pursuant to 415 KAR 1:020 (1991), **415 KAR 1:060E (1992)** or 415 KAR 1:**060** [160] (1993), prior to the effective date of this administrative regulation **may** [shall] be [pursuant to 415 KAR 1:020 (1991) is] eligible to participate in the financial responsibility account for costs of corrective action or third-party liability incurred at that facility if the requirements of subsection (2)[(a), (b), (d), (e) and (f)] of this section and Section 5 of this administrative regulation are met.

(2) The owner or operator of a facility that was not issued a certificate of eligibility, prior to the effective date of this administrative regulation [for the facility pursuant to 415 KAR 1:020 (1991)] shall:

(a) Register the tanks with the cabinet as required by KRS 224.60-105;

(b) Have release detection as required by 401 KAR 42:040, or be permanently closed in compliance with **401 KAR 42:070E** [40 CFR 280.71] or temporarily closed in compliance with **401 KAR 42:070E** [40 CFR 280.70] [401 KAR 42:070];

(c) Not have a release for which corrective action is required at the time of certification;

(d) Have corrosion protection as required by 401 KAR 42:030;

(e) Have paid all annual fees required to be paid pursuant to KRS 224.60-150; [and]

(f) Have tanks "in operation" on or after the compliance dates set forth in 40 CFR 280.91 and be mandated by 40 CFR 280.90 to demonstrate financial responsibility as specified under 40 CFR 280.93; and

(g) Have demonstrated financial responsibility, as required, in the amount of entry level to the fund established in Section 6 of this administrative regulation.

Section 2. Eligibility for Payment. (1) An owner or operator may be eligible for payment from the financial responsibility account if:

(a) A certificate of eligibility for the facility is issued to the owner or operator pursuant to Section 3(2) of this administrative regulation; and [or the owner or operator was issued a certificate of eligibility prior to the effective date of this administrative regulation pursuant to 415 KAR 1:020 (1991);]

(b) The owner or operator has maintained compliance with the provisions of 401 KAR 42:030 and 42:040; and

(c) The owner or operator performs corrective action consistent with the requirements of 401 KAR 42:050, 42:060E and 42:070E, or as directed by the cabinet.

(2) An owner or operator issued a certificate of eligibility pursuant to 415 KAR 1:020 (1991), **415 KAR 1:060E (1992)** or 415 KAR 1:060 (1993) may be eligible for payment of costs of corrective action and third-party liability for bodily injury or property damage incurred on or after April 9, 1990 upon reissuance of a certificate of eligibility pursuant to this administrative regulation. An owner or operator performing ongoing corrective action and participating in the financial responsibility account under a previously issued certificate of eligibility shall not be denied a certificate of eligibility, pursuant to this administrative regulation, if the requirements of Sections 1(2)(a), (b), (d), (e), (f), (g) and 5 of this administrative regulation are met;

(3) An owner or operator issued a certificate of eligibility pursuant to Section 3(2) of this administrative regulation may be eligible for payment of costs of corrective action and third-party liability for bodily injury or property damage incurred after the date of issuance of the certificate.

Section 3. Certificate of Eligibility. (1) Compliance with the requirements of Section 1(2) of this administrative regulation shall be demonstrated by an owner or operator by filing with the commission a copy of the Eligibility and State Financial Responsibility Affidavit form dated July 1994 [October 1992,] hereby incorporated by reference. Copies of this form may be obtained [copied] and inspected at the Petroleum Storage Tank Environmental Assurance Fund

Commission, 911 Leawood Drive [~~59 Fountain Place~~], Frankfort, Kentucky 40601, (502) 564-5981. The business hours of the commission are from 8 a.m. to 4:30 p.m. eastern time Monday through Friday. The owner or operator shall certify under oath that all of the requirements of Section 1(2) of this administrative regulation have been met.

(2) If an owner or operator demonstrates compliance with Section 1(2) of this administrative regulation, a certificate of eligibility for participation in the financial responsibility account shall be issued by the commission.

[~~(3) An owner or operator issued a written notification of eligibility by the commission pursuant to 415 KAR 1:020 (1991) is eligible to participate in the financial responsibility account for facilities that comply with the requirements of Section 1(1) of this administrative regulation without the issuance of a new certificate of eligibility pursuant to this administrative regulation.~~]

Section 4. Maintenance of Eligibility. To maintain eligibility for participation in and reimbursement from the financial responsibility account, the owner or operator shall maintain compliance with the eligibility requirements established in Sections 2 and 5 of this administrative regulation.

Section 5. Degree of Compliance After a Release is Detected. If a release is detected at a facility determined to be eligible for participation in the financial responsibility account, the owner or operator shall:

(1) Report the release to the cabinet immediately after the discovery of the release as required by KRS 224.01-400. [~~For the purpose of potential eligibility for participation in the financial responsibility account [fund], in no event shall the report of the release be made to the cabinet more than seven (7) [thirty (30)] days after discovery~~]; and [~~,~~]

(2) Implement initial abatement procedures required by 401 KAR 42:060E within twenty (20) days after detection of the release, or as directed in writing by the cabinet; and

(3) Comply with the requirements of 401 KAR 42:060E as directed in writing by the cabinet.

Section 6. Entry Level to the Financial Responsibility Account. (1) The entry level for participation in the financial responsibility account for an owner or operator of five (5) or less tanks shall be established and maintained at $1,000 [~~10,000~~] per occurrence for taking corrective action and [~~$10,000 per occurrence for~~] compensating third parties for bodily injury and property damage.

(2) The entry level for participation in the financial responsibility account for an owner or operator of six (6) to ten (10) [~~or more~~] tanks shall be established and maintained at $5,000 [~~25,000~~] per occurrence for taking corrective action and $5,000 [~~25,000~~] per occurrence for compensating third parties for bodily injury and property damage.

(3) The entry level for participation in the financial responsibility account for an owner or operator of eleven (11) or more tanks shall be established and maintained at $25,000 per occurrence for taking corrective action and $25,000 per occurrence for compensating third parties for bodily injury and property damage.

Section 7. Financial Responsibility for the Entry Level Amount. (1) The owner or operator shall certify financial responsibility in an amount equal to the required entry level amount by using one (1) or any combination of the options listed in subsection (2) of this section. This certification shall be provided to the commission on the Eligibility and State Financial Responsibility Affidavit form.

(2) Financial responsibility for the amount of the entry level may be demonstrated by:

(a) Commercial or private insurance from a carrier within A.M. best rating of B+, or better, authorized to contract business in the Commonwealth of Kentucky;

(b) Participation in a risk retention group qualified to do business in the Commonwealth and who shall furnish any financial reports as may be required by the commission;

(c) A guarantor with a [~~direct or indirect~~] controlling interest in the owner or operator. The guarantor shall furnish proof as may be required by the commission in order to demonstrate state financial responsibility;

(d) A surety bond from a surety company that is listed with the U.S. Treasury Department or the Kentucky Department of Insurance. Under the terms of the bond, the surety shall become liable under the bond when the owner or operator fails to perform;

(e) An irrevocable standby letter of credit by an entity that has authority to issue letters of credit in Kentucky, and whose letter of credit operation is regularly examined by a federal or Kentucky agency. The letter of credit shall be drawn to cover "taking corrective action" and indemnification of third parties for liability arising from owning or operating petroleum storage tanks; and

(f) Qualification as a self-insurer with prior approval of the commission if the owner or operator has certified to the commission the following:

1. The owner or operators' annual year-end financial statements; and

2. The owner or operators' net worth is in excess of the entry level amount required for participation in the financial responsibility account.

Section 8. Change of Eligibility. An owner or operator shall report any change in the eligibility requirements contained in this administrative regulation to the commission within ten (10) days of the change.

Section 9. Newly Discovered Tanks. (1) The discovery of unregistered tanks at a facility during the performance of corrective action due to a release from a registered tank shall not affect eligibility to participate in the financial responsibility account.

(2) The costs of corrective action for releases from newly discovered tanks found during the performance of corrective action for registered tanks shall be paid from the financial responsibility account if the other eligibility requirements of this administrative regulation are met.

(3) The number of newly discovered tanks shall not increase the entry level to the financial responsibility account.

Section 10. Loss of Eligibility. (1) If at any time, prior to a release, the commission determines that an owner or operator has not maintained compliance with the eligibility requirements of this administrative regulation, the commission shall notify the owner or operator of the noncompliance.

(2) A facility shall be deemed ineligible to receive payment from the financial responsibility account under a certificate of eligibility issued pursuant to this administrative regulation, if the owner or operator failed to maintain compliance with the eligibility requirements of this administrative regulation and a release occurs during the period of noncompliance.

(a) An owner or operator may be determined eligible for payment of the costs of corrective action, from the petroleum storage tank account, 415 KAR 1:070, if the actions necessary to bring the facility into compliance with cabinet regulations.

(b) If the commission places the facility in the petroleum storage tank account then the commission shall deny eligibility of reimbursable remediation costs in the following amounts:

1. Failure to maintain compliance with release detection as required by 401 KAR 42:040, five (5) percent of their average adjusted gross income not to exceed $25,000;

2. If the facility is referred by the cabinet to the Division of Waste Management Enforcement Branch or the Cabinet's Department of Law for failure to report the release, as required by KRS 224.01-400, five (5) percent of their adjusted gross income not to exceed $25,000;

3. If the facility is referred by the cabinet to the Division of Waste Management Enforcement Branch or the Cabinet's Department of Law for failure to comply with cabinet direction for corrective action as required by 401 KAR 42:060E, five (5) percent of their adjusted gross income not to exceed $25,000.

4. The owner or operator shall not be eligible for payment of the costs of third party liability.

(3) A facility shall [~~may~~] be deemed ineligible to receive payment from the financial responsibility account, pursuant to a previously approved assistance agreement or a certificate of eligibility issued pursuant to this administrative regulation, [~~in the event of a release~~] if the owner or operator failed to maintain compliance with the eligibility requirements of this administrative regulation during the ongoing corrective action and a release occurs during the period of noncompliance [~~with the eligibility requirements of this administrative regulation~~].

(a) An owner or operator may be determined eligible for payment of the costs of corrective action, from the petroleum storage tank account, 415 KAR 1:070, **if the facility is brought into compliance with cabinet administrative regulations** [~~if the actions necessary to bring the facility into compliance are made to the satisfaction of the cabinet~~].

(b) If the commission places the facility in the petroleum storage tank account then the commission shall deny eligibility of a percentage of the [~~total~~] reimbursable remediation costs in the following amounts:

1. Failure to maintain compliance with release detection as required by 401 KAR 42:040, ten (10) percent;

2. **If the facility is referred by the cabinet to the Division of Waste Management Enforcement Branch or the Cabinet's Department of Law for** failure to report **a** [~~the~~] release as required by KRS 224.01-400 [~~401 KAR 42:050~~], ten (10) percent;

3. **If the facility is referred by the cabinet to the Division of Waste Management Enforcement Branch or the Cabinet's Department of Law for failure to comply with cabinet direction for corrective action as required by 401 KAR 42:060,** [~~Failure to comply with cabinet direction for corrective action as required by 401 KAR 42:060,~~] ten (10) percent.

4. The owner or operator shall not be eligible for payment of the costs of third-party liability [~~for releases occurring before the facility is brought back into compliance~~].

(4) [~~(3)~~] An owner or operator may be determined ineligible to receive payment from the financial responsibility account if the owner or operator has intentionally submitted false or inaccurate information to the commission, and shall be required to repay any monies falsely received.

(5) [~~(4)~~] The commission shall have the right to recover the money paid to an owner or operator, or a contractor when:

(a) The amount was paid due to an error of the commission; or

(b) The amount was paid due to a mistake, error, or inaccurate information in the claim submitted by the owner or operator or in an invoice submitted by a contractor; or

(c) A person has obtained payment from the commission by fraud or intentional misrepresentation.

(6)[[~~(5)~~] [~~A facility issued a certificate of eligibility for the financial responsibility account pursuant to Section 3(2) of this administrative regulation shall not be eligible to participate in the petroleum storage tank account.~~

~~(6)~~] An owner or operator issued or reissued a certificate of eligibility for the financial responsibility account pursuant to this administrative regulation [~~pursuant to 415 KAR 1:020 (1991)~~] may be eligible to participate in the petroleum storage tank account [~~for facilities that do not qualify for eligibility in the financial responsibility account if the eligibility requirements of 415 KAR 1:070 are met.~~]

(7) [~~(6)~~] [~~(7)~~] Costs of corrective action incurred prior to April 9, 1990 shall not be paid from the financial responsibility account.

Section 11. Account Balance. (1) The unobligated balance of the financial responsibility account shall not be less than $1,500,000 to ensure a $1,000,000 reserve balance adequate to meet federal financial responsibility requirements for participants in the account and a $500,000 reserve balance for emergency abatement action by the cabinet pursuant to KRS 224.60-135. When funds are withdrawn for emergency abatement actions by the cabinet, the commission shall replace the amount immediately.

(2) If the unobligated balance of the financial responsibility account is $1,500,000, or less, or the obligation [~~payment~~] of a claim shall cause the unobligated balance of the fund to be less than $1,500,000, the commission shall immediately suspend the obligation [~~payment~~] of claims until the unobligated balance is greater than $1,500,000. Obligations submitted for approval [~~Claims approved for payment~~] by the commission at the time of suspension shall be obligated [~~paid~~] in accordance with the date of initial submission [~~final approval~~] of the obligation [~~claims~~] when the suspension is lifted.

JACK B. HALL, Executive Director
APPROVED BY AGENCY: November 10, 1994
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PETROLEUM STORAGE TANK ENVIRONMENTAL ASSURANCE FUND COMMISSION (Amended After Hearing)

415 KAR 1:070. Petroleum storage tank account.

RELATES TO: KRS 224.60-120, 224.60-130, 224.60-140, 40 CFR Part 280

STATUTORY AUTHORITY: KRS 224.60-120, 224.60-130

NECESSITY AND FUNCTION: The 1992 Kentucky General Assembly amended KRS 224.60-130 to direct the commission to establish a petroleum storage tank account within the fund which may be used to pay the costs of corrective action due to a release of contamination from a petroleum storage tank. This administrative regulation establishes the eligibility requirements for the petroleum storage tank account.

Section 1. Applicability. (1)(a) This administrative regulation does not apply to releases from petroleum storage tanks removed from the ground before January 1, 1974;

(b) Costs of corrective action for releases from petroleum storage tanks removed from the ground after January 1, 1974 **or tanks closed in place** [~~and before December 22, 1988~~] may be eligible for payment by the petroleum storage tank account if the eligibility requirements of Section 2 of this administrative regulation are met;

(c) Costs of corrective action for releases from petroleum storage tanks currently existing and temporarily [~~permanently~~] closed after December 22, 1988 [~~before January 1, 1974~~] may be eligible for payment by the petroleum storage tank account if the eligibility requirements of Section 3 [2] of this administrative regulation are met; and

(d) [~~Costs of corrective action for releases from petroleum storage tanks currently existing and permanently closed after January 1, 1974 and before December 22, 1988 may be eligible for payment by the petroleum storage tank account if the requirements of Section 2 of this administrative regulation are met;~~

~~(e) Costs of corrective action for releases from petroleum storage tanks currently existing and permanently closed after December 22, 1988 may be eligible for payment by the petroleum storage tank account if the eligibility requirements of Section 2 of this administrative regulation are met;~~

~~(f) Costs of corrective action for releases from petroleum storage tanks removed from the ground after December 22, 1988 may be eligible for payment by the petroleum storage tank account if the~~

~~eligibility requirements of Section 2 of this administrative regulation are met;~~

~~(g) Costs of corrective action for releases from petroleum storage tanks currently existing and temporarily closed after December 22, 1988 may be eligible for payment by the petroleum storage tank account if the eligibility requirements of Section 3 of this administrative regulation are met; and~~

~~(h)~~] Costs of corrective action for releases from petroleum storage tanks currently in use which are not eligible for participation in the financial responsibility account may be eligible for payment by the petroleum storage tank account if the eligibility requirements of Section 4 of this administrative regulation are met.

(2) Prior to applying for payment from the petroleum storage tank account for corrective action costs incurred at a facility the owner or operator shall have:

(a) Registered the tanks at the facility with the cabinet as required by KRS 224.60-105;

(b) Paid all annual fees as required by KRS 224.60-150;

(c) Submitted the Eligibility and State Financial Responsibility Affidavit form to the commission to certify eligibility for the petroleum storage tank account;

(d) Filed a notice of intent with the cabinet to permanently close the petroleum storage tanks at the facility or to make a change-in-service to comply with the requirement of 401 KAR 42:020.

(3) Payment from the petroleum storage tank account shall only be made for the costs of corrective action and shall not be made for costs to upgrade the facility.

Section 2. Eligibility Requirements for the Classes of Tanks Described in Section 1(1)(b)[~~, (c), (d), (e) and (f)~~] of this Administrative Regulation. An owner or operator of a facility of the class[~~es~~] described in Section 1(1)(b)[~~, (c), (d), (e) and (f)~~] of this administrative regulation may be eligible for participation in the petroleum storage tank account if the following eligibility requirements are met:

(1)(a) A release of petroleum is detected at the facility after April 9, 1990; or

(b) Corrective action costs associated with a release are incurred after April 9, 1990;

(2) The release has been reported to the cabinet; and

(3) The owner or operator takes corrective action consistent with the requirements of 401 KAR 42:050, 42:060E and 42:070E, or as directed by the cabinet.

Section 3. Eligibility Requirements for the Class of Tanks Described in Section 1(1)(c) [~~(g)~~] of this Administrative Regulation. (1) An owner or operator of a facility of the class described in Section 1(1)(c) [~~(g)~~] of this administrative regulation may be eligible for participation in the petroleum storage tank account if the following eligibility requirements are met:

(a)1. A release of petroleum is detected at the facility after April 9, 1990; or

2. Corrective action costs associated with a release are incurred after April 9, 1990;

(b) The release has been reported to the cabinet;

(c) The owner or operator takes corrective action consistent with the requirements of 401 KAR 42:050, 42:060E and 42:070E, or as directed **in writing** by the cabinet; and

(d) The owner or operator has filed a notice of intent with the cabinet to permanently close the petroleum storage tanks at the facility or to make a change in service to comply with the requirements of 401 KAR 42:020.

(2) If the owner or operator elects to upgrade the facility, the petroleum storage tanks at the facility shall not be used to store a regulated substance until the upgrade is completed.

[~~(3) Payment from the petroleum storage tank account shall only be made for the costs of corrective action and shall not be made for costs to upgrade the facility.~~]

Section 4. Eligibility Requirements For the Class of Tanks Described in Section 1(1)(d) [~~(h)~~] of this Administrative Regulation. An owner or operator of a facility currently in use which is not in compliance with the requirements of 401 KAR 42:011 through 401 KAR 42:070E, and 401 KAR 42:090 may be eligible for participation in the petroleum storage tank account if the following eligibility requirements are met:

(1)(a) A release of petroleum is detected at the facility after April 9, 1990; or

(b) Corrective action costs associated with a release are incurred after April 9, 1990;

(2) The release has been reported to the cabinet;

(3) The owner or operator is taking the actions necessary to bring the facility into compliance with applicable administrative regulations of the cabinet; and

(4) The owner or operator takes corrective action consistent with the requirements of 401 KAR 42:060 and 42:070, or as directed **in writing** by the cabinet.

Section 5. Entry Level For Participation in the Petroleum Storage Tank Account. (1) The entry level for participation in the petroleum storage tank account for an owner or operator of five (5) or less tanks shall be established and maintained at $1,000 per occurrence for taking corrective action.

(2) The entry level for participation in the petroleum storage tank account for an owner or operator of six (6) to ten (10) tanks shall be established and maintained at $5,000 per occurrence for taking corrective action.

(3) The entry level for participation in the petroleum storage tank account for an owner or operator of eleven (11) or more tanks shall be established and maintained at $25,000 per occurrence for taking corrective action.

(4) An owner or operator of a facility of the class described in Section 1(1)(c) and (d) of this administrative regulation is not required to pay an entry level for participation in the petroleum storage tank account if the facility is taken permanently out of service.

(5) The entry level payments contained in subsections (1), (2) and (3) of this section shall apply retroactively to any facility involved in corrective action that had not been issued a closure letter by the cabinet prior to July 14, 1994.

[~~(1)(a) An owner or operator of a facility of the class described in Section 1(1)(b) through (d) of this administrative regulation is not required to pay an entry level for participation in the petroleum storage tank account if the facility was a retail facility and the facility is permanently out of service.~~

~~(b) An owner or operator of a facility of the class described in Section 1(1)(b) through (d) of this administrative regulation shall pay an entry level for participation in the petroleum storage tank account if the facility was a nonretail facility. The entry level is:~~

~~1. $10,000 for an owner or operator of five (5) or less tanks; or~~

~~2. $25,000 for an owner or operator of six (6) or more tanks.~~

~~(2)(a) An owner or operator of a facility of the class described in Section 1(1)(c) and (f) of this administrative regulation is not required to pay an entry level for participation in the petroleum storage tank account if the facility is a retail facility and the facility is taken permanently out of service.~~

~~(b) An owner or operator of a facility of the class described in Section 1(1)(c) and (f) of this administrative regulation shall pay an entry level for participation in the petroleum storage tank account if the facility is a nonretail facility, or the facility will continue in service. The entry level is:~~

~~1. $10,000 for an owner or operator of five (5) or less tanks; or~~

~~2. $25,000 for an owner or operator of six (6) or more tanks.~~

~~(3)(a) An owner or operator of a facility of the class described in Section 1(1)(g) of this administrative regulation is not required to pay an entry level for participation in the petroleum storage tank account if the facility is a retail facility and the facility is taken permanently out~~

~~of service.~~

~~(b) An owner or operator of a facility of the class described in Section 1(1)(g) of this administrative regulation shall pay an entry level for participation in the petroleum storage tank account if the facility is a nonretail facility or the facility will continue in service. The entry level is:~~

~~1. $10,000 for an owner or operator of five (5) or more tanks; or~~

~~2. $25,000 for an owner or operator of six (6) or more tanks.~~

~~(4)(a) An owner or operator of a facility of the class described in Section 1(1)(h) of this administrative regulation is not required to pay an entry level for participation in the petroleum storage tank account if the facility is a retail facility and the facility is taken permanently out of service.~~

~~(b) An owner or operator of a facility of the class described in Section 1(1)(h) of this administrative regulation shall pay an entry level for participation in the petroleum storage tank account if the facility is a nonretail facility or the facility will continue in service. The entry level is:~~

~~1. $10,000 for an owner or operator of five (5) or less tanks; or~~

~~2. $25,000 for an owner or operator of six (6) or more tanks.~~

~~(5) An owner or operator of a nonretail facility who meets the requirement of 415 KAR 1:090, Section 3(2)(a) as to financial ability may request the commission to waive the payment of an entry level required by this section on the basis of financial hardship, if the facility is taken permanently out of service.~~]

Section 6. Ineligibility. (1)(a) The commission may determine that an owner or operator is not eligible for participation in the petroleum storage tank account if the owner or operator willfully or recklessly violated the requirements of 401 KAR Chapter 42 at the facility for which a claim is made.

(b) **If the commission makes a determination that a facility should be ineligible for participation in the petroleum storage tank account** the commission shall [~~may~~] **disallow twenty (20) percent of the total allowable reimbursable remediation costs** [~~require an owner or operator to pay twenty (20) percent of the reimbursable remediation costs, an entry level for participation in the petroleum storage tank account~~] if the owner or operator willfully or recklessly violated the requirements of 401 KAR Chapter 42[~~, instead of making a determination that the facility is not eligible for participation as provided in paragraph (a) of this subsection~~].

(c) The owner or operator of a facility placed in the petroleum storage tank account by the commission pursuant to 415 KAR 1:060, Section 10(2) shall be denied eligibility for reimbursement as delineated in 415 KAR 1:060, Section 10(2)(a), (b), and (c).

(2) An owner, operator with an assistance agreement [~~or contractor~~] may be determined ineligible to receive payment from the petroleum storage tank account if the owner or operator has [~~intentionally~~] submitted false or inaccurate information to the commission, and shall be required to repay any monies falsely received.

(3) The commission shall have the right to recover the money paid to an owner or operator, or a contractor when:

(a) The amount was paid due to an error of the commission; or

(b) The amount was paid due to a mistake or inaccurate information in the claim submitted by the owner or operator or in an invoice submitted by a contractor; or

(c) A person has obtained payment from the commission by fraud or intentional misrepresentation.

Section 7. Permanent Closure of Tanks. Prior to receiving final payment from the petroleum storage tank account, an owner or operator of tanks being permanently closed shall demonstrate that each tank has been removed from the ground or filled with an inert solid material in conformance with the applicable administrative regulations of the cabinet, and that closure of the facility has been approved by the cabinet.

Section 8. Newly Discovered Tanks. (1) The discovery of unregistered tanks at a facility during the performance of corrective action due to a release from a registered tank shall not affect eligibility to participate in the petroleum storage tank account.

(2) The costs of corrective action for releases from newly discovered tanks found during the performance of corrective action for registered tanks shall be paid from the petroleum storage tank account if the other eligibility requirements of this administrative regulation are met.

(3) The number of newly discovered tanks shall not increase the entry level to the fund.

Section 9. Applicable Costs. (1) Costs of corrective action incurred prior to April 9, 1990 shall not be payable from the petroleum storage tank account.

(2) Costs of corrective action incurred at a facility on or after April 9, 1990 may be payable from the petroleum storage tank account if the eligibility requirements of this administrative regulation are met.

(3) **Costs incurred at a facility for sight investigation or corrective action at the written direction of the cabinet.** [~~Costs incurred at a facility for site investigation or corrective action at the direction of the cabinet at a facility that is later classified as a nonregulated tank shall be reimbursed if the requirements of this administrative regulation are met.~~]

JACK B. HALL, Executive Director
APPROVED BY AGENCY: November 10, 1994
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PETROLEUM STORAGE TANK ENVIRONMENTAL ASSURANCE FUND COMMISSION (Amended After Hearing)

415 KAR 1:080. Claims procedures.

RELATES TO: KRS 224.60-120, 224.60-130, 224.60-140, 40 CFR Part 280

STATUTORY AUTHORITY: KRS 224.60-120, 224.60-130

NECESSITY AND FUNCTION: KRS 224.60-130 requires the commission to establish the procedures necessary to administer the fund. This administrative regulation establishes the procedures to be followed by a petroleum storage tank owner or operator who is certified as eligible to participate in the financial responsibility account or is eligible to participate in the petroleum storage tank account to make a claim to the commission for reimbursement or payment of the costs of corrective action.

Section 1. Assistance Agreement. (1) An owner or operator eligible to participate in the financial responsibility account or the petroleum storage tank account shall apply for an assistance agreement with the commission.

(2) Application shall be made on the Assistance Agreement form dated October 1992, hereby incorporated by reference. This form may be inspected and obtained [~~copied~~] and inspected at the Petroleum Storage Tank Environmental Assurance Fund Commission, 911 Leawood Drive [~~59 Fountain Place~~], Frankfort, Kentucky 40601, (502) 564-5981. The business hours of the commission are from 8 a.m. to 4:30 p.m. eastern time Monday through Friday. The eligible owner or operator shall demonstrate:

(a) The eligibility requirements of 415 KAR 1:060 or 415 KAR 1:070 have been met; and

(b) A release from an eligible facility has occurred and has been reported to the cabinet.

(3) If the owner or operator meets the requirements of subsection (2) of this section the commission may enter into an assistance agreement and establish the amount to be obligated by the appropri-

ate account based upon the approved contract. [bid. The assistance agreement may be used as a guarantee of payment to a contractor performing corrective action to the extent of the approved amount.]

(a) Reimbursement pursuant to an assistance agreement is restricted to documented costs approved by the commission.

(b) The assistance agreement may be used as a guarantee of payment by the owner or operator to a contractor performing corrective action to the extent of the amount obligated and approved by the commission.

(4) **The commission may amend** the assistance agreement [may be amended] upon application by the eligible owner or operator, upon a demonstration that the amendment is necessary to guarantee payment of eligible costs of corrective action[,] and that the additional costs are necessary to comply with the administrative regulations of the cabinet. Payment shall not exceed the amount obligated by the commission.

(5) Payment under the terms of the assistance agreement may be made when the eligible owner or operator submits a claim form, and a certification by the certified contractor that the costs were consistent with the bid and necessary to comply with the administrative regulations of the cabinet. The requirement for a certified contractor shall be enforced after March 1, 1995 pursuant to 415 KAR 1:114 (1994).

Section 2. Submittal of Claim. (1) A petroleum storage tank owner or operator eligible for participation in the fund shall submit a claim for reimbursement or payment from the fund for the costs of corrective action on the claim form established by the commission dated October 1992, hereby incorporated by reference. This form may be inspected and obtained [copied] and inspected at the Petroleum Storage Tank Environmental Assurance Fund Commission, 911 Leawood Drive [59 Fountain Place], Frankfort, Kentucky 40601, (502) 564-5981. The business hours of the commission are from 8 a.m. to 4:30 p.m. eastern time Monday through Friday. The claim shall contain:

(a) Original invoices for all costs for which payment is sought;

(b) A copy of the contract executed by [bid proposal submitted to] the owner or operator **and** [by] the person contracting to perform the corrective action;

(c) Documentation that the release has been reported to the cabinet; and

(d) Laboratory analysis substantiating the necessity of the corrective action to be or having been performed **except for initial abatement and free product recovery as required by 401 KAR 42:060E**; and

(e) Documentation to establish that the owner or operator has complied with the administrative regulations or written directions of the cabinet.

(2) Commission staff may require additional information to determine the eligibility of a cost for payment.

(3)(a) Commission staff shall review all claims within ninety (90) days of submission, unless an extension of time is agreed to by the applicant;

(b) If the claim [application] is determined to be **deficient** [incomplete], **the** commission staff shall notify the applicant, by certified mail, of the deficiencies. Supplemental information to correct the deficiencies shall be submitted by the applicant and received by the commission within fifteen (15) days of the notice of receipt by the applicant. The commission may grant the applicant a thirty (30) day extension if the written request is received, by the commission, within fifteen (15) days of receipt of the notice of deficiency; [The applicant shall submit supplemental information to correct the deficiencies within fifteen (15) days of receipt of notice;]

(c) If the applicant fails to correct the deficiency or to supply the additional information required by commission staff, that portion of the claim shall be denied.

(4) The commission shall issue a determination pursuant to KRS 224.60-140(7) as to whether the costs submitted in the claim are eligible for payment [and the amount of payment shall be obligated in the appropriate account].

(5) The claim may be submitted with the application for an assistance agreement.

(6) An owner or operator of a facility, covered by a fund obligation, shall submit to the commission, a copy of all reports required by administrative regulation or requested, in writing, by the cabinet detailing the status of remedial action at the facility, including site check, site investigation, corrective action plans, quarterly reports, closure assessment reports, site classification documents and any correspondence with the cabinet addressing remedial measures or regulatory requirements pertaining to the facility.

(a) **A copy of** the documents **listed in this subsection** shall be included with a claim for reimbursement. If a claim for reimbursement was not filed for costs incurred by the owner or operator at the facility in a calendar quarter, **a copy of** the documents **listed in this subsection** shall be due no later than the last working day of the calendar quarter; and

(b) Failure to submit the documents to the commission in three (3) consecutive calendar quarters shall result in the disallowance of ten (10) percent of the **remaining** [total] reimbursable costs [or the remainder of the current obligation] and no additional obligation shall be made.

Section 3. Contracts. [Bids from Contractors.] (1) Effective [after] July 14, 1993, an owner or operator contracting for the performance of corrective action, including permanent closure, change-in-service, release investigation, site check, or site investigation, shall obtain a[n executed] contract [bid proposals] from one (1) certified [at least three (3)] contractor[s] to be eligible for reimbursement or payment from the fund. The contract [bid proposals] shall be obtained prior to commencing the activity except emergency response measures as directed by the cabinet. The contract [bid proposal] shall set forth the unit costs, in compliance with the requirements of 415 KAR 1:110, for the performance of the activity, including, but not limited to, the costs of personnel, sampling, removal, treatment or disposal of contamination, and other necessary expenses to comply with the provisions of 401 KAR Chapter 42.

(2) A copy [Copies] of the contract [bid proposals] shall be submitted with an application for assistance agreement.

(3) **An owner or operator who has submitted** an application for assistance received prior to this administrative regulation shall be required to submit a copy of a [signed] contract setting forth the **scope of the services to be performed detailing the** unit costs to be eligible **for continued** [to receive] reimbursement or payment from the fund.

Section 4. Signatures. (1) A claim form or an application for [an] assistance [agreement] shall be signed by an eligible owner or operator as follows:

(a) For a corporation by a principle executive officer of at least the level of vice-president or the duly authorized representative or agent of the executive officer if the representative or agent is responsible for overall operation of the facility, or a person whom the board of directors designates by means of a corporate resolution;

(b) For a partnership, sole proprietorship or individual, by a general partner, the proprietor or individual respectively; or

(c) For a municipality, state or federal agency by either a principle, executive officer or ranking elected official.

(2) The authorized representative shall make the following certification on a claim form:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision, that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based upon my inquiry of those individuals immediately responsible for obtaining the information, I believe that this submitted information, is true, accurate,

and complete. I certify that all costs are necessary and were actually incurred in the performance of corrective action. I further certify that, if not the owner or operator, I am authorized by the owner or operator as an agent to make this certification.

(3) The authorized representative of an owner or operator signing the certification shall submit documentary evidence as requested by the commission staff to substantiate the legality of the authorized representatives power of agency.

Section 5. Criteria For Approval of a Claim. (1) Commission staff shall review all claims in the order in which they are received.

(2) The claims shall be reviewed to determine whether:

(a) The corrective action activities comply with the administrative regulations of the cabinet;

(b) The costs are necessary, reasonable and consistent with the requirements of 401 KAR Chapter 42;

(c) The claim form is properly completed and accurate, and all necessary information has been supplied.

[~~(d) The claim is received within one (1) year from completion of the corrective action for which payment is sought.~~]

(3) All claims from owners or operators for a facility eligible to participate in the petroleum storage tank account shall be ranked as provided in 415 KAR 1:090.

Section 6. Payment. (1) Claims shall be reviewed by the commission staff to determine eligibility for payment and compliance with the administrative regulations of the commission.

(2) Requests for payment under an assistance agreement may be submitted thirty (30) [~~sixty (60)~~] days following initiation of corrective action. Subsequent requests for payment may be made [~~, and~~] at thirty (30) [~~sixty (60)~~] day[~~s~~] intervals thereafter, if the payment request exceeds $1,000, until completion of the authorized activities. Upon request, the executive director [~~commission~~] may submit [~~approve~~] interim payments to the commission at more frequent intervals or for amounts below the $1,000 payment request threshold. Each request shall be reviewed by commission staff to determine eligibility for payment and compliance with the administrative regulations of the commission.

(3) All payments shall be subject to approval of the commission.

Section 7. Payment Procedures. (1)(a) When an owner or operator has submitted a claim for payment by the commission, payment shall be made by a check written to the eligible owner or operator, or to a third party designated in **a restricted** [~~an~~] assistance agreement.

(b) [~~(a)~~] A request for an interim partial payment shall be accompanied by documentation required by Section 2(6) of this administrative regulation; or

(c) [~~(b)~~] A final payment shall be accompanied by a closure letter issued by the cabinet; or

(d) [~~(c)~~] A one (1) time payment in full shall be accompanied by a closure letter issued by the cabinet.

(2) Prior to payment being issued, the eligible owner or operator shall submit documentary evidence verifying [~~verify~~] that an amount equal to the entry level has been paid by the owner or operator.

Section 8. Eligible Costs. Payment for costs of corrective action shall be limited to reasonable costs, expenses and other obligations incurred for corrective action or site investigation as the result of release into the environment from a petroleum storage tank.

(1) Eligible costs shall include:

(a) Testing to determine tightness of tanks and lines in response to a suspected release due to tank or delivery line failure **if a release is detected or upon written direction of the cabinet**;

(b) Removal, treatment, and disposal of petroleum products from petroleum storage tank systems necessary to perform site investigation or corrective action;

(c) [~~Removal, treatment, and disposal of petroleum products from petroleum storage tank systems, liquids, and soils;~~

~~(d)~~] Performance of site checks, and site investigation to assess the ~~e~~xtent of contamination caused by release from a petroleum storage tank system in compliance with the administrative regulations of the cabinet or pursuant to the written directions of the cabinet;

(d) [~~(e)~~] Preparation of corrective action plans;

(e) [~~(f)~~] Necessary monitoring of the environment performed pursuant to the written direction of the cabinet or in compliance with the administrative regulations of the cabinet;

(f) [~~(g)~~] Necessary laboratory services to analyze samples taken as part of the site check, site investigation, corrective action, or maintenance of the corrective action system **where a release has occurred at the facility or at the written direction of the cabinet**;

(g) [~~(h)~~] Restoration or replacement of a private or public drinking water supply;

(h) [~~(i)~~] Removal, treatment, and disposal of contaminated liquids and soils resulting from corrective action;

(i) [~~(j)~~] The costs of materials purchased to perform the site check, site investigation or corrective action, including but not limited to, bailers, sample containers, and similar equipment;

(j) [~~(k)~~] The costs of implementation of corrective action technologies such as soil venting or bioremediation, and groundwater treatment systems, if **accepted** [~~approved~~] by the cabinet for the facility;

(k) [~~(l)~~] Costs for replacing blacktop or concrete if removal was necessary to perform the corrective action;

(l) [~~(m)~~] Attorney fees integral to the performance of site corrective action, such as preparation of off-site access agreements; and

(m) [~~(n)~~] Other costs requested by the applicant and approved by the commission, demonstrated to be necessary to the performance of a site check, site investigation or corrective action, or maintenance of the corrective action system.

(n) Purchases of capital equipment in excess of $1,000 if the lease or rental for the equipment will exceed the purchase price. Prior approval for purchases of capital equipment in excess of $1,000 shall be obtained from the commission or their appointed delegate.

(2) The following costs shall not be eligible for payment or reimbursement from the fund:

(a) Replacement, repair, maintenance, or retrofitting of tanks or piping;

(b) New or replacement fill material for tanks and piping;

(c) Equipment such as drill rigs **and** [~~,~~] earth moving equipment[~~, and pumps~~];

(d) Loss of business, income or profits;

(e) Attorneys fees related to:

1. Any judicial or administrative litigation;

2. Consultation on regulatory regulations;

3. Consultation on Petroleum Storage Tank Environmental Assurance Fund regulations;

4. Preparation or submittal of commission documentation; and

5. Any other services determined by the commission not to be integral to the performance of corrective action. [~~unless demonstrated to be integral to the performance of corrective action;~~]

(f) Decreased property values for the facility;

(g) Facility improvements;

(h) Payment of the owner or operator's personnel for overtime or staff time in planning or implementing a site check, site investigation or corrective action plan;

(i) Aesthetic improvements to the facility;

(j) Interest on overdue accounts and loans;

(k) Costs covered by insurance payable to the owner or operator;

(l) Contractor surcharges implemented because the owner or operator failed to act in a timely fashion;

(m) Any work performed that is not in compliance with safety codes;

(n) Any costs associated with releases from aboveground tanks

or aboveground piping;

(o) Contractor markup expenses for in-stock materials;

(p) Contractor markup expenses for personnel costs;

(q) Rush laboratory fees unless directed by the cabinet;

(r) Costs and cost recovery for governmental emergency services.

(s) Preparation and implementation of corrective action plans when a written notice of termination is issued by the cabinet.

(t) Payment from the fund shall only be made for the costs of corrective action required by the cabinet's administrative regulations or at written direction of the cabinet and shall not be made for costs to upgrade the facility.

(u) Cost of any party or parties employed to act as a suragate or stand-in for the owner or operator of the facility.

Section 9. Delegation to Executive Director. The commission may delegate responsibility for the approval of a claim, an assistance agreement, or the payment of a claim to the executive director.

Section 10. Subrogation. Prior to making payment of a claim, the commission shall acquire by subrogation the rights of the person receiving payment to recover the amounts paid by the commission for the performance of corrective action from the person responsible or liable for the release.

JACK B. HALL, Executive Director

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

415 KAR 1:090. Ranking system.

RELATES TO: KRS 224.60-120, 224.60-130, 224.60-140, 40 CFR Part 280

STATUTORY AUTHORITY: KRS 224.60-120, 224.60-130

NECESSITY AND FUNCTION: The amendments to KRS 224.60-130 enacted by the 1992 Kentucky General Assembly require the commission to establish a ranking system to be used for the distribution of amounts from the petroleum storage tank account for the purpose of corrective action. In promulgating the administrative regulations the commission shall consider the financial ability of the petroleum storage tank owner or operator to perform corrective action and the extent of damage caused by release into the environment from a petroleum storage tank. This administrative regulation establishes the criteria for ranking sites according to the extent of damage to the environment and the financial ability of the petroleum storage tank owner or operator to perform corrective action.

Section 1. Applicability. An owner or operator of petroleum storage tanks eligible to participate in the petroleum storage tank account 415 KAR 1:070 shall not be classified pursuant to this administrative regulation for reimbursement if:

(1) The owner or operator, an individual, with an interest in only one (1) facility, or has five (5) or fewer tanks, whose average **adjusted gross** [net] income for the five (5) year period, prior to application for assistance from the fund, is less than $50,000; or

(2) The owner or operator **of tanks** abandoned or [permanently] closed [the tanks] prior to December 22, 1988 and **including facilities** [the facility was not] under the direction of the implementing agency pursuant to **401 KAR 42:080E** [40 CFR 280.73] at the time the release is detected.

Section 2. [1.] Priority for Environmental Damage. (1) The ranking of a facility to determine priority for the distribution of amounts from the petroleum storage tank account based upon the extent of damage caused or threatened by a release of petroleum into the environment from a petroleum storage tank at the facility shall be based upon the Petroleum Underground Storage Tank System Facility Classification Outline (1994) incorporated by reference pursuant to 401 KAR 42:080E [, the study to be completed [performed] for the commission pursuant to KRS 224.60-137] and the administrative regulations [to be] adopted by the cabinet [to] establishing standards for corrective action for release into the environment from a petroleum storage tank.

(2) [Until the study is completed and the administrative regulations establishing standards for corrective action required by KRS 224.60-137 have been adopted by the cabinet,] Priority for distribution of amounts from the petroleum storage tank account due to the extent of environmental harm shall be given to those facilities:

(a) First, where the release of petroleum to the environment has contaminated a domestic use well, domestic use spring, [or] domestic use well head protection area, as defined in 401 KAR 42:080, [or] a drinking water supply**, or a utility conduit** in amounts in excess of a maximum contaminant level for petroleum constituents, or a statistically significant increase over background for petroleum constituents which do not have a maximum contaminant level, or the facility has been determined to be the source of fumes in an occupied building;

(b) Second, where the facility has encountered groundwater and is required to meet the levels specified in Groundwater Table 2 of the Petroleum Underground Storage Tank System Facility Classification Outline, as established in 401 KAR 42:080E, for releases of petroleum which pose a direct threat of contamination to a domestic use well, domestic use spring, domestic use well head protection area, [or] a drinking water supply **or a utility conduit**; or [release of petroleum poses a direct threat of contamination to a drinking water supply due to the hydrogeologic characteristics of the facility and the surrounding area, the proximity, quality and current or future uses of nearby surface and groundwater, and the potential for migration of the petroleum constituents, and contamination of the drinking water supply is very likely to occur unless corrective action is immediately undertaken;]

(c) Third, where areas outside the facility's property boundary have been impacted by a release [and the facility is required to close under Class V of the Petroleum Underground Storage Tank System Facility Classification Outline, as established in 401 KAR 42:080E or its superseding administrative regulation], but has not contaminated a domestic use well, spring or well head protection area, does not pose a threat to a domestic use well, domestic use spring, domestic use well head protection area, [or] drinking water supply**, or a utility conduit** and has not been determined to be a source of fumes in occupied buildings. [the release of petroleum has contaminated off-site property and poses a threat to human health or the environment.]

(3) The owner or operator of the facility shall submit information to the commission to establish that the release from the facility is within a category established in subsection (2) of this section. The information shall be submitted on the classification guide contained in the Petroleum Underground Storage Tank System Facility Classification Outline, **(January 1994),** as established in 401 KAR 42:080E or its superseding administrative regulation[, (January 1994),] **for BTEX contamination and on the Environmental Harm Ranking Form, (October 1992), for other contamination.** [Environmental Harm Ranking Information form dated October 1992, hereby incorporated by reference, and shall be certified by a registered professional geologist or a registered professional engineer. This form may be copied and inspected at the Petroleum Storage Tank Environmental Assurance Fund Commission, 59 Fountain Place, Frankfort, Kentucky 40601, (502) 564-5981. The business hours of the commission are from 8 a.m. to 4:30 p.m. eastern time Monday through Friday.]

Section 3. [2.] Priority for Financial Ability. (1) To determine the financial ability of an owner or operator to perform corrective action, the commission shall consider the following factors:

(a) Whether the facility is owned by a public or private person;

(b) Whether the owner or operator liable for the cost of corrective action is an individual. Only individuals who own or operate a single facility shall receive consideration as to financial ability. Each individual shall certify that they do not have an ownership or operating interest in another facility;

(c) Whether the owner or operator is a partnership. Only a partnership that is the owner or operator of a single facility shall receive consideration as to financial ability. Each partner shall certify that they do not have an ownership or operating interest in another facility; and

(d) Whether the owner or operator of the facility is a corporation which is a subsidiary, affiliate or parent of another corporation. Only a closely held corporation which is not a subsidiary, affiliate or parent corporation and is the owner or operator of a single facility shall receive consideration as to financial ability. The officers, directors and shareholders of the corporation shall certify that they not have an ownership or operating interest in another facility.

(2) An individual or partnership with an ownership or operating interest in more than one (1) facility may receive consideration as to financial ability if it is demonstrated that the individual or partnership has no sources of income other than revenue from the ownership or operation of the facilities and is unable to pay the entry level for participation in the petroleum storage tank account.

(3) A corporation that is not a subsidiary, affiliate, or parent of another corporation that is the owner of more than one (1) facility may receive consideration as to financial ability if the profits of the corporation are the sole source of revenue of the shareholders of the corporation, and it is demonstrated that the corporation has insufficient revenue to pay the entry level for participation in the petroleum storage tank account.

Section 4. [3.] Demonstration of Financial Ability [to Pay Entry Level]. (1) To demonstrate financial ability, the individual, partnership or corporation shall submit to the commission the last five (5) years of income tax returns **[and a financial statement]** for the person, partnership or corporation.

(2) Priority for reimbursement from the petroleum storage tank account on the basis of financial ability shall be given to:

(a) First, **an individual [a]** partnership or corporation whose average **adjusted gross [net]** income for the five (5) year period is less than $50,000, [or] a public entity with an annual revenue and income of less than $100,000, or an entity registered and recognized by the federal government as a tax exempt nonprofit organization;

(b) Second, an individual, partnership, or a corporation whose average **adjusted gross [net]** income for the five (5) year period is less than $100,000 but more than $50,000 or a public entity with annual revenue or income of less than $250,000 but more than $100,000;

(c) Third, an individual, partnership or a corporation whose average net income for the five (5) year period is more than $100,000 or a public entity with an annual revenue and income of more than $250,000.

(3) Partnerships who are applicants for consideration as to financial ability shall submit the name and Social Security number of all partners.

(4) Subchapter S or closely held C Corporations who are applicants for consideration as to financial ability shall submit the name and Social Security number of all officers, directors and shareholders in the corporation.

(5) A public entity who is an applicant for consideration as to financial ability shall submit its annual budget for the last five (5) years to demonstrate financial ability.

(6) The commission may require that additional information be submitted to determine the financial ability of an applicant.

Section 5. The commission shall have the right to recover the amounts paid to persons receiving consideration for financial ability if the information submitted to the commission is inaccurate or misrepresented.

Section 6. Priority For Payment or Reimbursement From the Petroleum Storage Tank Account. Reimbursement or payment of the costs of corrective action from the petroleum storage tank account shall be paid in order of priority according to the following:

(1) An owner or operator of a facility that meets the conditions of Section 1(1) of this administrative regulation shall have their claims paid first;

(2) An owner or operator of a facility that meets the conditions of Section 1(2) of this administrative regulation shall have their claims paid second;

(3) [(1)] An owner or operator of a facility that meets the conditions of Section 2 [1](2)(a) of this administrative regulation and whose financial ability is in the category listed in Section 4 [3](2)(a) of this administrative regulation shall have their claims paid third [first];

(4) [(2)] An owner or operator of a facility that meets the conditions of Section 2 [1](2)(b) [(a)] of this administrative regulation and whose financial ability is in the category listed in Section 4 [3](2)(a) [(b)] of this administrative regulation shall have their claims paid fourth [second];

(5) [(3)] An owner or operator of a facility that meets the conditions of Section 2 [1](2)(c) [(a)] of this administrative regulation and whose financial ability is in the category listed in Section 4 [3](2)(a) [(c)] of this administrative regulation shall have their claims paid fifth [third];

(6) [(4)] An owner or operator of a facility that meets the conditions of Section 2 [1](2)(a) [(b)] of this administrative regulation and whose financial ability is in the category listed in Section 4 [3](2)(b) [(a)] of this administrative regulation shall have their claims paid sixth [fourth];

(7) [(5)] An owner or operator of a facility that meets the conditions of Section 2 [1](2)(b) of this administrative regulation and whose financial ability is in the category listed in Section 4 [3](2)(b) of this administrative regulation shall have their claims paid seventh [fifth];

(8) [(6)] An owner or operator of facility that meets the conditions of Section 2 [1](2)(c) of this administrative regulation and whose financial ability is in the category listed in Section 4 [3](2)(b) [(a)] of this administrative regulation shall have their claims paid eighth [sixth];

(9) [(7)] An owner or operator of a facility that meets the conditions of Section 2 [1](2)(a) [(c)] of this administrative regulation and whose financial ability is in the category listed in Section 4 [3](2)(c) [(b)] of this administrative regulation shall have their claims paid ninth [seventh];

(10) An owner or operator of a facility that meets the conditions of Section 2(2)(b) of this administrative regulation and whose financial ability is in the category listed in Section 4(2)(c) of this administrative regulation shall have their claims paid tenth;

(11) An owner or operator of a facility that meets the conditions of Section 2(2)(c) of this administrative regulation and whose financial ability is in the category listed in Section 4(2)(c) of this administrative regulation shall have their claims paid 11th;

(12) [(8)] Claims in categories (1) through (11) of this section [(7)] shall be paid in order of **their category ranking. Within each category the claims shall be paid by** the date of receipt of the claim;

(13) [(9)](a) All other claims of **nongovernment entities [private persons]** for reimbursement or payment of the costs of corrective action from the petroleum storage tank account shall be paid based upon financial ability determined as provided in Section 4 [3] of this administrative regulation, and in order of the date of receipt of the claim;

(b) An individual, partnership or corporation with an average net income more than $100,000 is not required to submit income tax

returns and shall be paid after the claims addressed by subsections (1) through (13)(a) of this section in order of receipt of the claim;

(14) [(10)](a) Claims from organizational units of the executive branch of the Commonwealth of Kentucky, as set forth in KRS Chapter 12 shall have their claims paid last in order of the date of receipt of the claim.

(b) A claim from a county, a municipality, or an administrative body that is not an organizational unit of the executive branch, shall be paid based upon financial ability as determined in Section 4 [3](2) of this administrative regulation, in order of receipt of the claim, and shall be ranked in the same manner as a claim from a private person.

Section 7. Payment of Certain Classes of Claims. The commission may determine that only specified classes of claims as described in Section 6 of this administrative regulation will be paid.

JACK B. HALL, Executive Director
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PETROLEUM STORAGE TANK ENVIRONMENTAL ASSURANCE FUND COMMISSION
(Amended After Hearing)

415 KAR 1:120. Hearings.

RELATES TO: KRS 224.60-120, 224.60-130, 224.60-140, 40 CFR Part 280
STATUTORY AUTHORITY: KRS 224.60-120, 224.60-130
NECESSITY AND FUNCTION: KRS 224.60-130(2)(f) requires the commission to hear complaints brought regarding the payment of claims from the fund. This administrative regulation establishes hearing procedures to be followed in the hearing of those complaints.

Section 1. Requests for Reconsideration or Hearing. (1) Any person not previously heard in connection with a determination of the commission or the executive director denying eligibility for participation in the fund or payment of a claim, who considers himself aggrieved by such determination, [Any person aggrieved by a determination of the commission or the executive director denying eligibility for participation in the fund or payment of a claim] may request in writing that the determination be reconsidered. The writing shall set forth the grounds for the request and shall be accompanied by any documentation or other competent evidence related to the disputed issue that was not previously considered by the commission staff. The right to request a reconsideration of the determination shall be limited to a period of thirty (30) days after the applicant has had actual notice of the commission's action. The commission staff shall evaluate the documents and other competent evidence after receipt of the request. The commission staff shall resubmit the claim to the commission if the documentation or evidence, accompanying the request for reconsideration, warrants reconsideration of a prior recommendation on the issue. If the reconsideration, by the commission staff or the commission, fails to resolve the applicant's concerns the applicant may request a hearing on the determination pursuant to subsection (2) of this section.

(2) **Any person not previously heard in connection with a determination of the commission or the executive director denying eligibility for participation in the fund or payment of a claim, who considers himself aggrieved by such final determination,** [Any person aggrieved by a determination or the reconsideration of a determination of the commission or the executive director denying eligibility for participation in the fund or payment of a claim] may request in writing that a hearing be conducted by the commission. The writing shall set forth the grounds for the request and the relief sought. The commission, the executive director or a person designated by the commission shall be the hearing officer. The right to request a hearing shall be limited to a period of thirty (30) days after the applicant has had actual notice of the action, or could reasonably have had notice. **A subsection (1) of this section reconsideration is not required prior to requesting a hearing pursuant to this subsection. Requests for reconsideration under subsection (1) of this section shall not prejudice the right of a party to seek a hearing under this subsection, except as specifically set out in this administrative regulation.** Unless the request is frivolous, the commission shall schedule a hearing before the commission not less than twenty-one (21) days after receipt of the request.

(3) [(2)] The notice of hearing shall include a statement of the time, place, and nature of the hearing; the legal authority for the hearing; reference to the statutes and administrative regulations involved; and a short statement of the reason for the granting of the hearing.

(4) Upon receipt of notice of hearing, by the hearing officer [commission], summons shall issue upon petition directing the commission to send all pertinent portions of the commission file related to the determination before the hearing officer, properly bound to the clerk of the administrative hearing office after certifying that such record is the total content of commission file documents pertaining to the issue before the hearing officer and that said record is the basis for the commission's determination. The hearing officer shall review the commission record the commission's determination.

Section 2. The Burden of Persuasion. The person requesting the hearing shall have the burden of persuasion to establish a case for the relief sought. [(1)] The standard to meet the burden is a preponderance of the evidence.

Section 3. Documentary Evidence. [(2)] Documentary evidence which is existing or obtained by any party during the time a claim is pending before the commission, and is not submitted to the commission, by such party, prior to the [its] determination or reconsideration by the commission [which is withheld by such party until the claim is forwarded to the Office of Administrative Hearings] shall not be admitted into the hearing record in the absence of extraordinary circumstances, unless by agreement of the parties [such admission is requested by the commission].

Section 4. [3.] Prehearing Conference. Prior to the formal hearing, and upon seven (7) days written notice to all parties, delivered personally or by certified mail with return receipt requested, the hearing officer may hold a prehearing conference to consider simplification of the issues, admissions of fact and documents which will avoid unnecessary proof, limitations of the number of witnesses and such other matters as will aid in the disposition of the matter. Disposition of the matter may be made at the prehearing conference by stipulation, agreed settlement, consent order, or default for nonappearance.

Section 5. [4.] Administrative Hearing Procedure. (1) Any party to a hearing may be represented by counsel, may make oral or written argument, offer testimony, cross-examine witnesses, or take any combination of such actions. A hearing officer shall preside at the hearing in accordance with reasonable administrative practice.

(2) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. When necessary to ascertain facts not reasonably susceptible of proof under judicial rules of evidence, evidence not admissible thereunder may be admitted (except where precluded by statute) if it is a type commonly relied upon by reasonably prudent men in the conduct of their affairs. Hearing officers shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of

the parties will not be prejudiced substantially, any part of the evidence may be received in written form. Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original. A party may conduct cross-examinations required for a full and true disclosure of the facts.

(3) The hearing officer shall provide for the hearing to be stenographically, mechanically or electronically recorded. It is within the hearing officer's discretion to require official transcripts. The record of such hearing, consisting of all pleadings, motions, rulings, documentary and physical evidence received or considered, a statement of matters officially noticed, questions and offers of proof, objections and rulings thereon, proposed findings and recommended order, and legal briefs, shall be open to public inspection and copies thereof shall be made available to any person upon completion of the hearing process upon payment of the actual cost of reproducing the original except as provided in KRS 224.10-210 or 224.10-212, and 400 KAR 1:060. The commission may cause the mechanical recording of the testimony to be transcribed. When certified as a true and correct copy of the testimony by the hearing officer, the transcript shall constitute the official transcript of the evidence.

(4) The hearing officer shall within thirty (30) days of the closing of the hearing record, make a report and a recommended order to the commission. The **recommended** order shall contain the appropriate findings of fact and conclusions of law. If the commission finds upon written request of the hearing officer that additional time is needed, then the commission may grant a reasonable extension. The hearing officer shall serve a copy of his report and recommended order upon all parties. The parties may file within fourteen (14) days of service of the hearing officer's report and recommended order exceptions to the recommended order. The commission may remand the matter to the hearing officer for further deliberation, adopt the report and recommended order of the hearing officer, or **refuse to adopt the report and recommended order of the hearing officer and** issue its own written order based on the **record as a whole** [~~report and recommended order~~].

(5) After completion of the hearing and filing of exceptions, the commission shall notify the applicant in writing, certified mail with return receipt requested, of the final decision of the commission. If any extension of time is granted by the commission for a hearing officer to complete his report, the commission shall notify all parties at the time of the granting of the extension.

(6) The commission shall not grant extensions of time to the hearing officer for more than thirty (30) days for any one (1) extension, and no more than two (2) such extensions shall be granted.

(7) A final order of the commission shall be based on substantial evidence appearing in the record as a whole and shall set forth the decision of the commission and the facts and law upon which the decision is based.

(8) There shall be no ex parte communications between a hearing officer and parties to the action.

(9) Any person aggrieved by a final order of the commission may have recourse to the Franklin Circuit Court [~~courts of jurisdiction~~].

JACK B. HALL, Executive Director
APPROVED BY AGENCY: November 10, 1994
FILED WITH LRC: November 11, 1994 at 10 a.m.

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

603 KAR 4:040. TODS signs; placement on public roads other than interstates or parkways.

RELATES TO: KRS 189.337
STATUTORY AUTHORITY: KRS 189.337
NECESSITY AND FUNCTION: KRS 189.337 requires the Department of Highways to establish standards for the placement of signs within highway right-of-way of a public road. The Transportation Cabinet has promulgated 603 KAR 5:050 which deals with all traffic control devices by incorporating the Manual on Uniform Traffic Control Devices by reference. The Manual on Uniform Traffic Control Devices allows for the erection of tourist oriented directional signs (TODS) to provide directional information for tourist activities offering goods and services that are of significant interest to the traveling public within certain parameters, but requires each jurisdiction to establish policies for those areas not covered in the manual. This administrative regulation sets forth the criteria to be followed in the erection and maintenance of TODS.

Section 1. Definitions. (1) "Clear zone" means the area between the edge of the driving-lane of a public road and an imaginary line running parallel to the road but thirty (30) feet (9.12 meters) away from the road.

(2) "Contractor" means the entity selected by the Department of Highways pursuant to KRS Chapter 45A and 600 KAR 1:101 to administer the tourist oriented directional signs 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 information panels and TODS.

(3) **"Contractor year" means a one (1) year period beginning January 1, of each calendar year.**

(4) "Cover" means a protective shield over a TODS sign which prohibits viewing of the sign.

(5) [~~(4)~~] "Department" means the Kentucky Department of Highways.

(6) [~~(5)~~] "Eligibility distance" means the distance from the at-grade intersection of the state highway at the point where the directional sign is located to the entrance driveway to the business.

(7) [~~(5)~~] "Illegal sign" means an advertising device which has been determined to be illegal according to the provisions of 603 KAR 3:080.

(8) [~~(6)~~] "Information panel" means an official sign placed within the highway right-of-way with the legend "TOURIST ACTIVITIES" and space for one (1) or more individual TODS to be attached to it.

(9) [~~(7)~~] "Interstate or parkway" means a highway that has fully-controlled access as defined in 603 KAR 5:025.

(10) [~~(8)~~] "Motorist service" means a place of business or a business location providing gas, food, lodging, or camping facilities or a combination thereof.

(11) [~~(9)~~] "MUTCD" means the Federal Highway Administration's Manual On Uniform Traffic Control Devices incorporated by reference in 603 KAR 5:050.

(12) [~~(10)~~] "Public road" means all state-maintained roads other than interstate or parkway highways.

(13) [~~(11)~~] "Tourist activity" means a public or private activity which provides a tourist attraction or motorist service to the traveling public.

(14) [~~(12)~~] "Tourist attraction" means:

(a) A cultural, historical, recreational, agricultural, educational or entertainment activity; or

(b) A commercial activity which is unique and local or indigenous in nature.

(15) [~~(13)~~] "Tourist oriented directional sign" or "TODS" means an individual tourist information sign **paid for and owned by the tourist activity and fabricated to the standards set forth in this administrative regulation and** located on an information panel on the right-of-way of a public road. The TODS may provide the official name, directional information, and distance to a specific tourist activity.

Section 2. General Provisions. The Department of Highways shall control the erection and maintenance of information panels and TODS in accordance with the MUTCD and the provisions of this administrative regulation.

Section 3. Applications and Contracts for TODS. (1) An application for an activity or business to place a TODS sign on an information panel shall be made on "Application for Highway Tourist Oriented Directional Signing (TODS)" 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.

(2) The notice by an activity or business to the Department of Highways' contractor of the number, type, and placement of each TODS shall be on "TODS Program Billing Information" 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 contract to be entered into between the participating activity or business and the Department of Highways' contractor shall be the "Highway TODS Program Agreement" form prepared by the Kentucky Logo Sign Group, Inc. in May, 1994. 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.

(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. The telephone number is 1-800-469-5646. The forms may also be viewed, copied, or obtained from the **State Highway Engineer's Office, Permits** [~~Division of Traffic~~], 501 High Street, Mail code **11-2** [~~1-3~~], Frankfort, Kentucky 40622. The telephone number is (502) 564-**4105** [~~3020~~] and the hours of operation are 8 a.m. through 4:30 p.m. eastern time on weekdays.

Section 4. Information Panels for TODS. (1) General requirements for information panels.

(a) The information panels shall be located to:

1. Take advantage of natural terrain;
2. Have the least impact on the scenic environment; and
3. Avoid visual conflict with other signs within the highway right-of-way.

(b) Information panels for TODS shall not be erected:

1. On interstates or parkways;
2. On the on/off ramps of interstates or parkways;
3. At a grade-separated juncture of two (2) highways or on public roads with a grade separation;
4. Where there is insufficient space to locate both other traffic control devices and the information panels; and
5. On those sections of public road with a speed limit of forty-five (45) miles (seventy-two and four-tenths (72.4) kilometers) per hour or less**, except an information panel and TODS may be allowed regardless of the speed limit for activities which have purchased a tourist attraction logo pursuant to 603 KAR 4:035**.

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

(d) An information panel may be located laterally outside the normal longitudinal alignment of other traffic control signs, but shall be erected within the highway right-of-way.

(e) The location of any other traffic control device shall at all times take precedence over the location of an information panel.

(2) Intersection approach information panels.

(a) Information panels may be erected at the approach of an intersection on a public road.

(b) Each intersection approach information panel shall be located at least 200 feet (sixty and eight-tenths (60.8) meters) from the intersection.

(c) An intersection approach information panel shall be spaced at least 200 feet (sixty and eight-tenths (60.8) meters) from any other traffic control device including another intersection approach information panel.

(d) **A** [~~1. More than three (3) information panels shall not be installed on an approach to an intersection.~~

~~2.~~] Separate information panel **shall** [~~s may~~] be installed for **each of the directions of traffic on an approach to an intersection at which TODS will be placed for the** identification of tourist activities**. The directions of traffic are the following:**

1. [~~which involve~~] A right turn;

2. A left turn;

3. [~~or~~] No turn **if** [~~, i.e.,~~] the activity or business is located ahead if allowed by the provisions set forth in Section 6 of this administrative regulation.

(e) [~~3.~~] In the direction of traffic, the order of placement for separate information panels shall be for facilities to the left, to the right and straight ahead.

(f) [~~4.~~] If the AHEAD sign is used **pursuant to the provisions of Section 6 of this administrative regulation**, an attempt shall be made to locate it to the far right corner of the intersection, but it shall not obstruct the driver's critical viewing of other traffic control devices.

[~~(e) Intersection approach information panels shall not be installed at an intersection if advance information panels have been installed.~~]

(3) Advance information panels.

(a) Advance information panels may be installed only in situations where sight distance, intersection vehicle maneuvers or other vehicle operation characteristics require advance notification of the service to reduce vehicle conflicts and improve highway safety;

(b) The last of the advance information panels to be driven past shall be located at least one-half (1/2) mile (eight-tenths (0.8) kilometers) from the intersection.

(c) Advance information panels shall have a minimum of 800 feet (243.2 meters) between the panels.

(d) **A** [~~1. More than three (3) advance information panels shall not be installed prior to the approach to an intersection.~~

~~2.~~] separate advance information panel **shall** [~~s may~~] be installed for **each of the directions of traffic on an prior to the approach to an intersection at which TODS will be placed for the** identification of tourist activities**. The directions of traffic are the following:**

1. [~~which involve~~] A right turn;

2. A left turn;

3. [~~or~~] No turn **if** [~~, i.e.,~~] the activity or business is located ahead **and** if allowed by the provisions set forth in Section 6 of this administrative regulation.

(e) [~~3.~~] In the direction of traffic, the order of placement for separate advance information panels shall be for facilities to the left, to the right and straight ahead.

(f) [~~4.~~] If the AHEAD sign is used **pursuant to the provisions of Section 6 of this administrative regulation**, an attempt shall be made to locate it to the far right corner of the intersection, and it shall not obstruct the driver's critical viewing of other traffic control devices.

[~~(e) Advance information panels shall not be installed at an intersection if intersection approach information panels have been installed.~~]

Section 5. TODS Design and Composition. (1) Each TODS shall:

(a) Be rectangular in shape;

(b) Have a white legend and border on a blue background;

(c) Have reflective legends, arrows, backgrounds and borders;

(d) Contain the name of the business in not more than two (2) lines of legend which shall not include promotional advertising.

(2) Each TODS on an intersection approach information panel shall have:

(a) A separate directional arrow as set forth in Section 2D-8 of the MUTCD;

(b) The distance to the activity or business shown beneath the arrow;

(c) Arrows pointing to the right at the extreme right of the TODS; and

(d) Arrows pointing to the left or up at the extreme left of the TODS.

(3)(a) The arrangement of the tourist oriented directional signs on the advance information panel shall be the same as the arrangement on the intersection information panel except the directional arrows and distance shall be omitted.

(b) The appropriate legend NEXT RIGHT, NEXT LEFT, or AHEAD in letters of the same sign legends should be placed on the information panels above the TODS.

(c) The legend "RIGHT X MILE", "LEFT X KILOMETERS", or similarly worded legend may be used when there are intervening minor roads.

(4) More than four (4) TODS shall not be installed on a single information panel.

(5) TODS shall be arranged vertically on an information panel when appropriate located so that the right turn signs are closer to the intersection. When not more than four (4) TODS are to be installed on an approach to an intersection, the TODS may be combined on the same information panel with the TODS for left turns placed above the TODS for right turns.

(6) The standard lettering for tourist oriented directional signs shall be in upper case letters of the type provided in the "Standard Alphabets for Highway Signs and Pavement Markings" book. Capital letters shall be six (6) inches (152.4 millimeters) in height. Spacing between characters shall conform to the tables in the metric edition of "Standard Alphabets for Highway Signs and Pavement Markings" published in 1977 by the U.S. Department of Transportation. This document is incorporated by reference as a part of this administrative regulation.

(7)(a) A TODS sign shall not exceed seventy-two (72) inches (1828.8 millimeters) wide and eighteen (18) inches (457.2 millimeters) tall.

(b) The TODS signs on the same information panel shall all be the same width.

(c) The directional arrow with the distance to the activity or business underneath shall not exceed sixteen (16) inches (406.4 millimeters) wide and sixteen (16) inches (406.4 millimeters) tall.

(d) There shall be a one (1) inch (twenty-five and four-tenths (25.4) millimeters) white border surrounding the sign and separating the directional arrow and legend.

(e) There shall be a one (1) inch (twenty-five and four-tenths (25.4) millimeters) spacing between the border and legend and two (2) inch (fifty and eight-tenths (50.8) millimeters) spacing between lines of legend.

(f) The maximum length of the legend shall be five feet four inches (5'4") (1.64 meters) per line.

(8) Clearance of panels should be governed by Sections 2A and 2D of the MUTCD.

(9) The document incorporated by reference **in subsection (6) of this section** as a part of this administrative regulation may be viewed or copied at the Kentucky Logo Sign Group, Inc., Suite 6, State National Bank Building, 305 Ann Street, Frankfort, Kentucky 40601. The telephone number is 1-800-469-5646. The document may also be viewed or copied from the **Office of the State Highway Engineer, Permits** [~~Division of Traffic~~], 501 High Street, Mail code **11-2** [~~1-3~~], Frankfort, Kentucky 40622. The telephone number is (502) 564-**4105** [~~3020~~] and the hours of operation are 8 a.m. through 4:30 p.m. eastern time on weekdays. The document may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. by referring to document number 620-809/71.

Section 6. AHEAD Signing. (1) The legend "AHEAD" may be used in lieu of the up directional arrow set forth in Section 5(2)(d) of this administrative regulation.

(2) Signing for tourist activities in the AHEAD direction shall be considered only under the following circumstances:

(a) There is signing for a similar facility in either the right or left direction;

(b) Through traffic is not the normal traffic pattern; or

(c) The visibility of the establishment is obscured until a motorist is within 800 feet (243.2 meters) of the entrance.

Section 7. Tourist Activity Eligibility. A tourist activity shall meet the following requirements to qualify for tourist oriented directional signing. A TODS sign shall not be erected until the tourist activity or site has been approved in accordance with this administrative regulation.

(1) A tourist activity shall be of significant interest to the traveling public. The types of activities or sites which are of significant interest to the traveling public are gas, food, lodging, camping, and tourist attractions, if at least one-third (1/3) of the income or visitors at the tourist activity are derived during the normal business season from visitors not residing within twenty (20) miles (32.18 kilometers) of the activity.

(2) The tourist activity shall be open to the general public during regular and reasonable hours, and not by appointment or reservation only.

(3) Approval shall not be granted if the tourist activity is using an illegal sign any place in the Commonwealth of Kentucky.

(4) Each tourist activity shall comply with all applicable local, state, and federal statutes and regulations including those prohibiting discrimination based on race, religion, color, sex, age, disability, or national origin. Each tourist activity identified on a tourist oriented directional sign shall provide assurance of its conformance with all applicable federal, state or local laws and regulations. If a tourist activity is in noncompliance of any of these laws or regulations, it may be considered ineligible for participation in this program and its signs may be removed, with no return of any fees.

(5) The tourist activity shall be conducted in an appropriate building or area. The activity shall not be conducted in a building principally used as a residence unless there is a convenient, separate and well-marked entrance or the tourist activity is a bed and breakfast lodging. The building or area shall be maintained in a manner consistent with standards generally accepted for that type of business or activity.

(6) Any tourist activity which operates on a seasonal basis shall make provisions for removing or covering its TODS sign during the off season with the contractor. The tourist activity shall **in writing** notify the department's contractor at least thirty (30) days before the opening or closing occurs.

(7) A TODS shall not be displayed which would misinform the traveling public or is unsightly, badly faded, or in a state of dilapidation. In these instances the business shall make arrangements for a new TODS.

(8) The department shall have no responsibility for business lost due to TODS or information panels becoming temporarily out of service.

(9) The display of the tourist activity sign on the department's TODS structure shall not be considered an endorsement or recommendation by the State of Kentucky on behalf of the tourist activity.

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

(a) Be in continuous operation at least twelve (12) hours per day, six (6) days a week, twelve (12) months a year;

(b) Provide regular and unleaded fuel, oil, air and water;

(c) Have restroom facilities, drinking water, and telephone available to the traveling public;

(d) Have an eligibility distance of three (3) miles (4.83 kilometers) or less.

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

(a) Be in continuous operation to serve two (2) meals a day, twelve (12) hours a day, six (6) days a week, **anytime the TODS sign is displayed; [~~and twelve (12) months a year;~~]**

(b) Provide a telephone and restroom facilities for the traveling public; and

(c) Have an eligibility distance of three (3) miles (4.83 kilometers) or less.

(12) To qualify for a "LODGING" TODS sign, a business shall:

(a) Have off-street parking and at least two (2) rooms for sleeping accommodations;

(b) Be in **[~~continuous~~]** operation **anytime the TODS sign is displayed [~~year round~~]**;

(c) Have an eligibility distance of fifteen (15) miles (24.14 kilometers) or less; and

(d) Have a private bathroom for each sleeping room with the exception of bed and breakfast establishments.

(13) To qualify for a "CAMPING" TODS sign, a business shall:

(a) Have a minimum of ten (10) individual campsites and parking space for each;

(b) Have modern sanitary facilities and telephone available to its guests;

(c) Be in continuous operation for the time the sign is displayed; and

(d) Have an eligibility distance of fifteen (15) miles (24.14 kilometers) or less.

(14) To qualify for a "TOURIST ATTRACTION" TODS sign, a business or activity shall:

(a) Be open a minimum of eight (8) hours a day, five (5) days a week, one (1) of which is a weekend, any time the TODS sign is displayed;

(b) Have adequate parking for the facility with a minimum of fifteen (15) spaces;

(c) Be listed on the state or national Register of Historic Sites if the tourist attraction is a historic site; and

(d) Have an eligibility distance of fifteen (15) miles (24.14 kilometers) or less.

Section 8. Bumping. If a nonparticipating tourist activity becomes qualified nearer the intersection than one which already has a tourist activity sign displayed on a fully utilized information panel, the new tourist activity may apply to have its sign displayed at the beginning of the next contract year. The tourist activity farther from the intersection shall have its TODS removed at the end of the contract year if the closer tourist activity has applied to have its sign displayed and has been approved for the program, except under the following circumstances:

(1) A tourist attraction shall not be replaced by a motorist service;

(2) A seasonal tourist attraction shall not be replaced by a year-round motorist service;

(3) A year-round tourist attraction shall not be replaced by a seasonal tourist attraction; and

(4) A year-round motorist service shall not be replaced by a seasonal motorist service. [~~and~~

~~(2) A year-round activity shall not be replaced by a seasonal activity.~~]

Section 9. Changes. (1) When a participation business changes ownership, a new contract shall be signed at no additional cost to the business for the remainder of the contract year.

(2) When a participating business is sold and the new owner changes its name, if the new owner wants to continue on the program, a new application and contract shall be completed. This is considered a new business and the applicant shall pay the annual fee, prorated according to time remaining in the contract year.

(3) If a participating business changes its name, a new application and contract **may [~~shall~~]** be completed.

(4) If a participating business changes its name only, a new application and contract shall not be required.

(5) A reinstallation fee shall be charged for the placement of **a [~~the~~]** new TODS**, if needed**.

Section 10. Fees. (1) The qualifying business shall pay to the department's contractor an annual fee of **$216 [~~$150~~]**, in advance, for each TODS placed on the right-of-way.

(2) The annual fee for the first year shall accompany the initial application.

(3) The first year's annual fee may be prorated on a monthly basis with each portion of a month the TODS is in place on the information panel requiring payment of one-twelfth (1/12) of the fee.

(4) The yearly renewal fee shall be due forty-five (45) days prior to the annual renewal date.

(5) The payment of the initial or renewal fee guarantees that the TODS will be displayed for one (1) contract year or portion of the first contract year as long as the business does not violate any part of its agreement with the Department of Highways' contractor and is approved by the Transportation Cabinet.

(6) **If the signs for a seasonal tourist activity are removed or covered by the department's contractor, a fee of $200 shall be charged for the removal or covering of all of the TODS for the specific business.**

(7) If the signs for a tourist activity are removed **[~~from an intersection~~]** for any reason, a fee of **200 [~~$100~~]** shall be charged for the reinstallation of all of the TODS **[~~at that intersection~~]** for the specific business.

(8) The fee for the reinstallation, removal, or covering of TODS shall be paid to the department's contractor within thirty (30) days of the postmarked date of the invoice.

(9) **[~~(7)~~]** The tourist activity shall be responsible for damages to **its** TODS signs caused by acts of vandalism or natural causes which require repair or replacement of the TODS.

Section 11. Revocation or Suspension. The contract between the department's contractor and the tourist activity may be revoked or suspended if:

(1) The activity no longer meets the eligibility requirements set forth in this administrative regulation;

(2) The owner or responsible operator of the activity willfully makes a false, deceptive, or fraudulent statement in its application or in other information submitted for review;

(3) The owner or responsible operator of the activity or an agent thereof revises or modifies a TODS sign erected by the department or its agents;

(4) The owner or responsible operator of the business or activity has engaged in a deceptive or fraudulent business practice;

(5) An illegal billboard advertising device advertising the business is located in the state of Kentucky; **[~~or~~]**

(6) Payment is not received on time or **is** otherwise delinquent;

(7) The owner or responsible operator of the business or activity fails to notify the department's contractor of its seasonal closing; or

(8) The owner or responsible operator of the business or activity is a habitual violator of the provisions of this administrative regulation.

Section 12. Measurements. (1) Measurements taken to determine the qualifications or priority of tourist activities shall be from the juncture of the center line of the highway, measured between the center edges of the main traveled way of the route on which the sign is to be placed and the center line of the crossroad.

(2) Measurements for the qualification of tourist activities for display of TODS 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 to the particular tourist activity.

Section 13. TODS Contract. (1)(a) A TODS contract between a particular tourist activity and the department's contractor shall be approved by the Transportation Cabinet prior to the erection of the TODS.

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

(c) Failure to comply with any of the requirements set forth herein including nonpayment by the participating tourist activity shall be cause for the revocation of the TODS contract.

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

(2) If the Department of Highways or its contractor determines that a tourist activity does not comply with the requirement of this administrative regulation, the Department of Highways' contractor shall notify the tourist activity in writing of the violations.

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

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

Section 15. Appeal of the 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 regulation 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 of the Department of Highways, 501 High Street, Frankfort, Kentucky 40622; and

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

(3) Upon request 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 recommendations 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, Commissioner of Highways
DON C. KELLY, P.E., Secretary
APPROVED BY AGENCY: November 2, 1994
FILED WITH LRC: November 4, 1994 at 9 a.m.

PROPOSED AMENDMENTS RECEIVED THROUGH NOON, NOVEMBER 15, 1994

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(Proposed Amendment)

105 KAR 1:120. Participation of agencies.

RELATES TO: KRS 78.510(3), 78.530, 78.532, 78.535, 78.780
STATUTORY AUTHORITY: KRS 61.645(9)(e), 78.510(3), 78.780
NECESSITY AND FUNCTION: KRS Chapters 61 and 78 provide for participation of local government entities in the County Employees Retirement System (CERS). This administrative regulation sets out the procedures and requirements for participation.

Section 1. Definitions. (1) "Alternate plan" means the plan under which an employer purchases service credit for its employees by paying an actuarial cost of the service in a lump sum or by annual installments.

(2) "Board" is defined by KRS 78.510(2).

(3) "CERS" is defined by KRS 78.510(1).

(4) "Standard plan" means the plan under which the employer does not purchase service credit for its employees.

Section 2. (1) An agency may participate in CERS if the board determines that the agency:

(a) Meets the definition of county in KRS 78.510;

(b) Is qualified to establish and maintain a governmental plan as defined in 26 USC 414(d) and 92 USC 1002(32);

(c) Satisfactorily completes the trial period established by the provisions of this administrative regulation; and

(d) Complies with the provisions of applicable statutes and administrative regulations.

(2) Prior to board approval of an agency that has elected to participate in CERS, the agency shall serve a three (3) month trial period, during which it shall:

(a) Report contributions; and

(b) Comply with the provisions of applicable statutes and administrative regulations governing:

1. Employee participation; and

2. Reporting of contributions.

(3) The board may deny participation if it determines that:

(a) An agency has failed to comply with the provisions of subsection (1) of this section; or

(b) Its participation will have:

1. An adverse impact on the tax qualification of CERS, pursuant to applicable federal law and regulation; or

2. A significant adverse impact on the actuarial soundness of CERS.

(4) If the board denies an agency's request to participate in CERS, it shall refund to the agency and its employees the contributions paid by them to CERS during the agency's trial period.

Section 3. [~~(1) Except as provided in subsection (2) of this section,~~] The effective date of participation shall be the first day of:

(1) [~~(a)~~] The month during which the order required by KRS 78.530(1) is adopted; or

(2) [~~(b)~~] Any month subsequent to the month during which the order required by KRS 78.530(1) was adopted.

[~~(2) If the agency elects the alternate participation plan, the effective date of participation fixed in its order shall not be less than ninety (90) days from the date the agency approved the order.~~]

Section 4. If an agency wishes to participate under [~~elects~~] the alternate participation plan, it shall request the Kentucky Retirement Systems to conduct an actuarial study to determine the cost of purchasing past service for eligible employees prior to adoption of an order to participate.

Section 5. An agency shall designate a person to be responsible for compliance with applicable statutes and the reporting requirements established in:

(1) 105 KAR 1:130;
(2) 105 KAR 1:140;
(3) 105 KAR 1:150;
(4) 105 KAR 1:160;
(5) 105 KAR 1:170;
(6) 105 KAR 1:210; and
(7) 105 KAR 1:250.

Section 6. The annual installment to amortize the cost of the employees' service under the alternate plan shall not be less than ten (10) percent of the total annual payroll for nonhazardous employees and fifteen (15) percent of the total annual payroll for hazardous employees included in the alternate plan. The payment shall be due each year on the first day of the month in which participation began.

JOHN D. ROBEY, Chairman

APPROVED BY AGENCY: October 24, 1994

FILED WITH LRC: November 15, 1994 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 1994, at 9 a.m. at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by December 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 this 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 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: Pamala S. Johnson, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, KY 40601, (502) 564-4646.

REGULATORY IMPACT ANALYSIS

Agency Contact: Pamala S. Johnson

(1) Type and number of entities affected: This administrative regulation applies to local government agencies which desire to participate in the County Employees Retirement System.

(2) Direct and indirect costs or savings to those affected: No cost is associated with this administrative regulation.

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. Does not affect cost of doing business.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: Participation in the system is voluntary. Paper-

work requirements of this administrative regulation are a one-time event upon initial participation.

1. First year following implementation:

2. Second and subsequent years:

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: There is not additional cost or savings to the retirement system.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There is no increase in paperwork.

(4) Assessment of anticipated effect on state and local revenues: This administrative regulation has no effect on local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Administrative expenses of the County Employees Retirement System are paid from the employer contributions. However, the amendment to this regulation has no cost impact.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No public comments received. Does not affect economic activities.

(b) Kentucky: No public comments received. Does not affect economic activities.

(7) Assessment of alternate methods; reasons why alternatives were rejected: The amendment to this administrative regulation simply standardizes the effective date of participation.

(8) Assessment of expected benefits: Deletion of the 90-day delay in effective date of participation for agencies considering participation in CERS under the alternate participation plan allows greater flexibility in selecting a participation date.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There are no effects on public health or the environment.

(b) State whether a detrimental effect on environment and public health would result if not implemented:

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute or administrative regulation in conflict.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments: This amendment was proposed to eliminate potential problems for an agency which might not be able to obtain the actuarial cost of alternate participation within the 90 days allowed.

TIERING: Was tiering applied? Tiering does not apply. The procedure for participation is the same for all eligible local government entities.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation relates to voluntary participation in CERS by local government entities.

3. State the aspect or service of local government this administrative regulation will affect. This administrative regulation sets out the procedures for initiating participation and the primary conditions under which participation may be denied.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This administrative regulation does not have a financial impact on local governments.

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(Proposed Amendment)

105 KAR 1:140. Contribution reporting.

RELATES TO: KRS 16.505 to 16.652, 61.510 to 61.705, 78.510 to 78.852

STATUTORY AUTHORITY: KRS 61.645(9)(e)

NECESSITY AND FUNCTION: Employers participating in the Kentucky Employees Retirement System, County Employees Retirement System and State Police Retirement System are required to report creditable compensation and contributions to the retirement systems and other information that the Board of Trustees may require. This regulation sets out the reporting requirements for all participating agencies.

Section 1. (1) Each employer shall report the creditable compensation and contributions of its employees at least once per month on the Summary of Wages Earned, Form 3, dated June 1991, or in a format acceptable to the retirement system. Employers who report on magnetic diskette or tape may report on a semimonthly basis. Employers shall report only the creditable compensation earned during the period for which the report is prepared and shall report only the employee and employer contributions on the basis of this creditable compensation.

(2) The creditable compensation reported shall also include severance pay, bonus pay or other lump sum payments to the employee in connection with an employer assisted service purchase which shall be averaged by the retirement system over the employee's entire period of service with the employer and all years of creditable compensation adjusted equally.

Section 2. If creditable compensation in excess of actual compensation is reported, the employer shall request a refund of the excess employer and employee contributions. The retirement system shall remit the excess employer and employee contributions to the employer in the form of checks made payable to the employer and employee. The employer shall distribute the employee's check to the employee if the amount is due the employee or shall redeposit the check into the account from which the funds were drawn.

Section 3. If creditable compensation less than actual creditable compensation paid is reported, the employer shall report the deficiency by pay period to the retirement system along with the employer and employee contributions owed as a result of the deficiency. The employer may report the additional creditable compensation by letter or other form which shall include:

(1) The Social Security number, name and gross creditable compensation of the employee by pay period.

(2) The total employer and employee contributions required on the additional creditable compensation and the computation of both amounts.

(3) The signature of the individual authorized by the agency to report contributions to the retirement system.

Section 4. If an expense allowance is paid to a county official by the state, the state shall withhold the employee contributions applicable to the amount and remit it to the retirement system on behalf of the county. The county shall report the employer contributions on the Expense Allowances Quarterly Report, Form 3-E dated July 1991.

Section 5. An employer may change the name or address of an employee by submitting [~~on its reports. The employer shall submit within thirty (30) days of the change~~] a letter or personnel document effecting the change signed by a personnel or payroll official.

Section 6. Each employer shall provide to the retirement system, upon request and in the form prescribed by the retirement system, information relating to all employee wages, employment status or other employment related information. Upon request, each employer shall make all relevant records related to its employees available to the retirement system during regular working hours.

Section 7. The forms required by this regulation are incorporated by reference and may be obtained from the retirement office at Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky between the hours of 8 a.m. and 4:30 p.m. Monday through Friday.

JOHN D. ROBEY, Chairman

APPROVED BY AGENCY: October 24, 1994

FILED WITH LRC: November 15, 1994 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 1994, at 9 a.m. at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by December 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 this 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 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: Pamala S. Johnson, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, KY 40601, (502) 564-4646.

REGULATORY IMPACT ANALYSIS

Agency Contact: Pamala S. Johnson

(1) Type and number of entities affected: This amendment will impact those agencies participating in KERS, CERS or SPRS which provide a bonus or other pay to assist employees in the purchase of service credit and the employees who make the purchase.

(2) Direct and indirect costs or savings to those affected: The amendment is intended to save the employee money. The actual amount will depend on the individual's age, salary and amount of service to be purchased.

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: There are no changes in reporting or paperwork requirements for the affected agencies.

1. First year following implementation:

2. Second and subsequent years:

(3) Effects on the promulgating administrative body: There is no impact on the retirement system.

(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: This does not increase reporting or paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: This amendment does not impact local government revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Administrative expenses of the retirement systems are paid through employer contributions. This amendment has no cost.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No public comments received.

(b) Kentucky: No public comments received.

(7) Assessment of alternate methods; reasons why alternatives were rejected: Many agencies join under the standard plan, which means that no retirement credit is given to employees for work prior to the date the agency joins. If the agency does not purchase the service prior to the participation date, the employee may make the purchase on his own behalf. However, the cost, especially for employees with many years of service, can be very high. Agencies have expressed an interest in giving employees a "bonus" to assist in the purchase of service credit. The treatment of such payments is not specifically addressed in the statutes. If the "bonus" is treated as creditable compensation for retirement purposes only in the year in which it is received, it must be used in determining the cost of the service purchase, since the purchase is based on the employee's age and salary at the time of the purchase. The greater the salary, the greater the cost of the service. This creates a "Catch-22" situation: the agency's payment to assist its employees in the purchase of service credit drives up the cost of the service, making the service unaffordable to the employee.

(8) Assessment of expected benefits: This amendment, by treating payments made solely for the purpose of assisting with service purchases differently from regular wages, allows the employer to assist in the service purchase and keeps the service purchase at an affordable level, while still giving the employee some credit in his creditable compensation for the additional money received.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This amendment has no impact on public health or the environment.

(b) State whether a detrimental effect on environment and public health would result if not implemented:

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No retirement statute or regulation conflicts with 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:

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? Tiering was not applied. The amendment is intended to offer an equal benefit to all affected individuals.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this administrative regulation will affect. This amendment relates to retirement benefits of local government employees.

3. State the aspect or service of local government this administrative regulation will affect. This amendment will provide a means for local government agencies to assist employees in the purchase of service credit.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This amendment to the administrative regulation does not have a direct cost or savings to local governments. The amendment provides a mechanism for those agencies which have sufficient funds to assist employees in the purchase of service credit.

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(Proposed Amendment)

105 KAR 1:150. Installment purchase procedures.

RELATES TO: KRS 16.645(20), 61.552(16), 78.545(35)

STATUTORY AUTHORITY: KRS 61.645(9)(e)

NECESSITY AND FUNCTION: The statute provides that an employee participating in the Kentucky Retirement Systems may purchase service credit by payroll deducted installments. This administrative regulation sets out the process and forms related to this option.

Section 1. Installment payment plans shall be allowed for the employees of an agency that has certified its willingness to deduct and remit installment payments on all employees participating in the Kentucky Retirement Systems. The certification shall be made on the Employer Certification Form, Form 113, dated June 1991, provided by the retirement system.

Section 2. The retirement system shall calculate the monthly payment necessary to pay the cost of the service being purchased. The employee may select a payment period of not less than one (1) year and not more than five (5) years in accordance with the statutory requirement. The monthly payment options offered to the employee shall not exceed the limitations for annual additional contributions in 26 USC 415. The retirement system shall provide an IPS Option Selection Form, Form 114, dated June 1991, to the employee showing his payment options and providing a space for selecting the option of his choice. The employee shall return the completed form to the retirement system by its due date. If the employee returns the form after the date, the cost shall be recalculated for a date not less than thirty (30) days following and returned to the employee.

Section 3. Upon receipt of the completed form, the retirement system shall print an Installment Service Purchase Agreement, Form 115, dated February 1994 [~~July 1992~~], and return the form to the employee. The agreement shall contain an authorization for withholding the installment payments and shall show the amount of the installment payment, the date the payments shall begin, the date the payments shall end, the total payments and the total service purchased. An amortization schedule shall be attached. The employee shall sign and return the agreement by its due date. The retirement system shall notify the employer of the date to begin deductions by providing a copy of the completed agreement.

Section 4. The employer shall remit the installments to the retirement system as required by the agreement, but shall be solely responsible for withholding sufficient amounts from the employee to allow the payment of the installments. The installments shall only be remitted to the retirement systems along with the employer's contribution report. If the employee is not employed twelve (12) months each year, the agency shall withhold sufficient funds to allow the agency to remit the required deductions with the contribution reports during any months in which the employee is not paid. The retirement system shall not accept personal checks from the employee as payment for these deductions.

Section 5. The amount required to purchase one (1) month of service credit shall be calculated by dividing the total of the installment payments due under the agreement by the number of months of service credit being purchased. Upon receipt of installment payments equal to this amount, the retirement system shall credit one (1) month of service credit to the member's account.

Section 6. The employee shall notify the retirement system in writing if he desires to terminate the installment agreement. Upon receipt of the notice from the employee, the retirement system shall notify the employee and his employer of the date to stop deductions.

Section 7. The total amounts received from the employee, including monthly payments and lump sum down payments or remaining balance payments shall be subject to the limitations for annual additional contributions in 26 USC 415. Amounts received in excess of these limitations shall be refunded to the employee, or his beneficiary, and the service credit associated with the amounts in excess of the limitations shall not be added to the employee's service credit.

Section 8. The retirement system may refuse to allow new installment agreements for employees of an agency which fails to deduct and remit the installment payments in accordance with the terms of this administrative regulation.

Section 9. [~~8.~~] The forms required by this administrative regulation are incorporated by reference and may be obtained from the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky between the hours of 8 a.m. and 4:30 p.m. Monday through Friday.

JOHN D. ROBEY, Chairman

APPROVED BY AGENCY: October 24, 1994

FILED WITH LRC: November 15, 1994 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 1994, at 9 a.m. at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by December 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 this 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 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: Pamala S. Johnson, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, KY 40601, (502) 564-4646.

REGULATORY IMPACT ANALYSIS

Agency Contact: Pamala S. Johnson

(1) Type and number of entities affected: Employees eligible to make service purchase under the installment purchase procedures contained in KRS 61.552. There are currently 118,000 contributing employees in KERS, CERS and SPRS.

(2) Direct and indirect costs or savings to those affected: For most employees making service purchases through the installment purchase plan, there will not be an impact. For employees who had intended to place a large down payment on the purchase or who wanted to combine service purchases into a large installment plan, there will be an increase in cost, because the federal restriction in Section 415 of the Internal Revenue Code will force these employees to spread the purchase over a larger number of years and the cost of the service increases with age and salary in most cases.

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. There is no impact on the cost of living.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. There is no impact on the cost of doing business.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: There is no increase in reporting or paperwork.

1. First year following implementation:

2. Second and subsequent years:

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: There are no savings or costs associated with this regulation.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Additional reports are required to check service purchases to assure compliance with the limitations.

(4) Assessment of anticipated effect on state and local revenues: This regulation will have no impact on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: All administrative expenses are paid from employer contributions. This regulation will not measurably increase administrative expenses.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No public comments received. This regulation will not impact economic activities.

(b) Kentucky:

(7) Assessment of alternate methods; reasons why alternatives were rejected: Compliance with federal internal revenue rules is necessary to maintain the retirement systems' tax exempt status. Failure to comply may result in loss of tax exempt status and result in higher costs to employers and employees.

(8) Assessment of expected benefits: The benefit derived from this regulation is compliance with federal law and the continuing tax exempt status of the retirement systems.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There is no impact on the public health or environmental welfare.

(b) State whether a detrimental effect on environment and public health would result if not implemented:

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: The statutes governing service purchases do not limit the amount that a member may pay to make the purchase. This regulation restricts the purchases to the amount allowed under federal tax law, which is 25% of salary earned in a plan year or $30,000 whichever is less.

(a) Necessity of proposed regulation if in conflict: This regulation conforms to the federal law, which is necessary for the retirement systems to maintain tax exempt status.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: The federal restriction must be imposed to maintain tax exempt status.

(10) Any additional information or comments:

TIERING: Was tiering applied? Tiering does not apply. The restriction applies universally to all members eligible for service purchases.

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(Proposed Amendment)

105 KAR 1:180. Death before retirement procedures.

RELATES TO: KRS 16.505 to 16.652, 61.510 to 61.705, 78.510 to 78.852

STATUTORY AUTHORITY: KRS 61.645(9)(e)

NECESSITY AND FUNCTION: The statutes provide for the payment of certain benefits upon the death of a member prior to retirement. This administrative regulation sets out the procedures for issuance of benefits where death occurs prior to retirement.

Section 1. After learning of the death of a member prior to retirement, the retirement system shall contact the named beneficiary or estate of the deceased member. The retirement system shall require a Certification of Beneficiary, Form 7, dated July 1991, from the beneficiary named by the member.

Section 2. The following information shall be required before benefits shall be paid:

(1) A copy of the death certificate for the member.

(2) If a beneficiary is deceased, a copy of the death certificate for the beneficiary.

(3)(a) If a beneficiary is a minor child, a copy of the child's birth certificate and an Affidavit of Authorization to Receive Funds on Behalf of Minor, Form 37, dated August 1994.

(b) If dependent children are eligible for payments, the parent or guardian shall provide the names, Social Security numbers and birth certificates of all dependent children. If a dependent child is age eighteen (18) or over, the parent or guardian shall provide the system with a statement of the child's marital status, the name of the school in which the dependent child is enrolled as a full-time student and a copy of the dependent child's class schedule.

(c) The parent or guardian shall notify the system of the death or marriage of a dependent child or if the dependent child ceases to be a full-time student. Upon request, the parent or guardian shall provide a copy of the dependent child's current class schedule.

(4) If a beneficiary is a minor child of divorced parents, a copy of the court appointment of permanent guardianship, conservator or trustee.

(5) If a beneficiary is divorced from the member, a copy of the divorce decree.

(6) If monthly benefits are available to the beneficiary, copies of

the birth certificates of the member and the beneficiary.

(7) If an estate is beneficiary, verification of the name of the individual authorized to manage the financial affairs of the deceased.

Section 3. If the death certificate shows the cause of death to be homicide or the subject of a pending investigation, the retirement office may require additional evidence relating to the cause of death or investigations and arrests by law enforcement agencies and may delay benefits until it deems the cause of death to be fully explained.

Section 4. Upon receipt of the death certificate, the retirement office shall provide to the beneficiary the monthly payment options available on the form Estimated Retirement Allowance, Form 6A, dated July 1991. If the member died in the same month as his effective retirement but prior to the drawing of the first check, the beneficiary shall also be offered the benefits payable to a beneficiary under the option the member selected. If a refund of the account is to be made, the beneficiary shall complete a Form 8, "Refund of Deceased Member's Account", dated July 1992.

Section 5. No payment shall be made until all information, documents and forms required by the retirement system are received.

Section 6. The forms required by this administrative regulation are incorporated by reference and may be obtained from Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky, Monday through Friday between 8 a.m. and 4:30 p.m.

JOHN D. ROBEY, Chairman

APPROVED BY AGENCY: October 24, 1994

FILED WITH LRC: November 15, 1994 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 1994, at 9 a.m. at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by December 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 this 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 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: Pamala S. Johnson, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, KY 40601, (502) 564-4646.

REGULATORY IMPACT ANALYSIS

Agency Contact: Pamala S. Johnson

(1) Type and number of entities affected: Beneficiaries of members who die prior to retirement.

(2) Direct and indirect costs or savings to those affected: There is no cost to those affected.

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: Guardians of minor dependents of the deceased member will be required to complete an affidavit and submit a copy of the court documents making them responsible for the minor. The additional documentation is required once, immediately following the death of the member. No further documentation is required unless guardianship changes.

1. First year following implementation:

2. Second and subsequent years:

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: There is no cost or savings associated with this regulation.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: One additional form for minor beneficiaries is required to be mailed and retained.

(4) Assessment of anticipated effect on state and local revenues: There is no impact on state or local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: All administrative expenses are paid from employer contributions. There is no cost associated with this regulation.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: There is no impact on economic activities.

(a) Geographical area in which administrative regulation will be implemented:

(b) Kentucky:

(7) Assessment of alternate methods; reasons why alternatives were rejected: The additional documentation required by this regulation is necessary to assure that funds designated by the member to go to minor children are sent to the person legally responsible for the child's financial welfare.

(8) Assessment of expected benefits: The retirement systems will have sufficient documentation to assure proper payment of benefits.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There is no impact on the public health or environmental welfare.

(b) State whether a detrimental effect on environment and public health would result if not implemented:

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute or regulation in conflict.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments:

TIERING: Was tiering applied? Tiering does not apply. The requirement applies equally in all cases of minor beneficiaries.

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(Proposed Amendment)

105 KAR 1:190. Qualified domestic relations orders.

RELATES TO: KRS 16.505 to 16.652, 61.510 to 61.705, 78.510 to 78.852

STATUTORY AUTHORITY: KRS 61.645(9)(e)

NECESSITY AND FUNCTION: KRS 61.690(3) requires the retirement systems to honor qualified domestic relations orders which comply with the policy of the Board of Trustees established by this administrative regulation.

Section 1. Definitions. (1) "Alternate payee" means an individual who is named in a qualified domestic relations order to receive a portion of the member's retirement benefits.

(2) "Qualified domestic relations order" (QDRO) means a court order issued incident to an annulment, separation or divorce which establishes an alternate payee's rights to a portion of the member's benefit.

Section 2. A QDRO shall be accompanied by a statement from counsel that the QDRO is current and not superseded by a subsequent QDRO and shall contain the following:

(1) Certification by the clerk of the circuit court in which the QDRO was entered;

(2) The name, Social Security number and last known mailing address of the member and the alternate payee;

(3) The date of marriage and the date of decree of dissolution of marriage;

(4) The correct name of the system or systems to which it applies;

(5) If the member is retired, the percentage of the member's retirement allowance to be paid to the alternate payee or the specific amount to be paid to the alternate payee; and

(6) If the member is not retired, the percentage to be paid to the alternate payee upon the member's retirement, death or withdrawal from the system and whether the percentage pertains to the benefits attributable to the period of marriage, the member's entire period of employment or other specified period.

Section 3. If the retirement system determines that a QDRO does not meet the requirements of Section 2 of this regulation, the retirement system shall do the following:

(1) Notify the participant, alternate payee and their legal counsel, if known, that the QDRO is not in compliance and will not be followed and the necessary changes to be made to the QDRO to bring it into compliance.

(2)(a) If the member is retired, the general manager shall direct the percentage or amount of benefits to be paid to the alternate payee, if determinable from the QDRO, to be withheld from the member's retirement allowance and placed in abeyance until the QDRO is amended.

(b) If the QDRO is not amended to comply with this regulation within eighteen (18) months from the date the QDRO was first received, the percentage or amount of the member's retirement allowance held in abeyance shall be restored to the member's account and paid to the member.

(c) A QDRO or amended QDRO received after the close of the eighteen (18) month period and determined to be in compliance shall only be applied prospectively.

Section 4. A QDRO shall not be effective until received by the retirement system and shall apply only to those monthly retirement allowances that have not been processed by the retirement system by the date of receipt.

Section 5. If the QDRO is received prior to the member's retirement, then upon the member's retirement pursuant to KRS 61.590, the system shall notify the member and the alternate payee of the benefits payable under the QDRO which shall be calculated as follows:

(1) The benefit payment shall be divided between the member and the alternate payee as follows: The alternate payee shall receive the amount computed by multiplying the basic option amount due the member by the percentage allocated to the alternate payee by the terms of the QDRO multiplied by a fraction, the numerator of which shall be the period of service specified in the QDRO and the denominator of which shall be the member's total service credit. The member shall be paid all amounts in excess of the amounts paid to the alternate payee.

(2) If a lump sum payment equal to balance of the member's account is to be made, the percentage determined by this calculation shall be multiplied by the balance of the member's account and the result paid to the alternate payee. The member shall be paid all amounts in excess of the amounts paid the alternate payee.

(3) If a monthly benefit is paid, the options made available to the alternate payee shall be derived from the member's basic option.

(4) Service added for disability under KRS 61.605 or KRS 16.581(2) shall not be included in the member's total service for determining the amount payable to the alternate payee. Purchased service credit for employment or service during the period of marriage shall be included in the calculation under this subsection.

(5) The payment options offered to the alternate payee shall be based on the alternate payee's life expectancy. The alternate payee shall be offered the payment options described in KRS 61.635 which do not provide lifetime benefits to a beneficiary and, if the member's is eligible, the ten (10) year certain option as proved by KRS 16.576(5).

(6) If the alternate payee predeceases the member after the member's retirement, a lump sum, determined actuarially, of the payments remaining to the alternate payee shall be paid to the alternate payee's estate.

(7) The alternate payee shall receive a pro rata share of any increases given recipients under KRS 61.691.

Section 6. (1) If the member dies prior to retirement and prior to the death of the alternate payee, the member's account shall be divided in accordance with the QDRO between the alternate payee and the beneficiary.

(2) If the death benefit is a refund of the member's contribution account, the alternate payee shall only be offered a lump sum payment representing a portion of the member's account calculated in accordance with Section 5 of this administrative regulation.

(3) If the death benefit is calculated under KRS 16.578 or 61.640, the alternate payee shall be allowed to choose a lifetime annuity, a sixty (60) month certain payment, a 120 month payment or an actuarial lump sum payment.

Section 7. If the QDRO is received after the member's retirement, then the alternate payee shall receive the percentage or amount of the member's retirement allowance as stated in the QDRO until the benefit payable to the member or the member's beneficiary ceases under the terms of the payment option previously selected by the member or until the death of the alternate payee.

Section 8. If the alternate payee dies prior to the member's death, retirement or withdrawal of account, no payment shall be made to the alternate payee. [~~an amount shall be paid to the alternate payee's estate in a lump sum. In computing this amount, the member's benefit shall be determined as if the member had applied for benefits on the first day of the month following receipt of the QDRO. If the member was not eligible for monthly benefits on that date, the alternate payee's estate shall receive a portion of the member's contribution account calculated in accordance with Section 5 of this administrative regulation. At the time of the member's actual death, retirement or withdrawal from the system, the member's benefit shall be actuarially reduced to reflect the payment made to the alternate payee's estate.~~]

Section 9. When benefits become payable to the alternate payee, the retirement system shall establish a separate account for the alternate payee which shall consist of the alternate payee's pro rata share of the member's contributions, service and benefit. Once the alternate payee's account has been established, the alternate payee shall not be entitled to further benefits acquired by the member.

Section 10. The payment options shall be offered to the alternate

payee on an Estimate of Monthly Retirement Allowance, Form 6A-QDRO, dated July 1991, incorporated by reference. The form can be obtained from the Kentucky Retirement Systems at its office at 1260 Louisville Road, Frankfort, Kentucky between 8 a.m. and 4:30 p.m. Monday through Friday.

JOHN D. ROBEY, Chairman

APPROVED BY AGENCY: October 24, 1994

FILED WITH LRC: November 15, 1994 at 10 a.m.

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CONTACT PERSON: Pamala S. Johnson, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, KY 40601, (502) 564-4646.

REGULATORY IMPACT ANALYSIS

Agency Contact: Pamala S. Johnson

(1) Type and number of entities affected: Active and retired members whose benefits are divided as part of the property settlement in a divorce action. There are currently fewer than 130 retirement accounts affected by qualified domestic relations orders.

(2) Direct and indirect costs or savings to those affected: There is no cost or savings associated with this regulation. This regulation clarifies the legal obligations of the retirement systems so that the parties may negotiate the settlement.

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: There is no change to compliance or paperwork requirements.

1. First year following implementation:

2. Second and subsequent years:

(3) Effects on the promulgating administrative body: There is no impact on the retirement systems.

(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:

(4) Assessment of anticipated effect on state and local revenues: This regulation does not affect state or local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: All administrative expenses are paid from employer contributions. There is no cost associated with this regulation.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: This regulation does not affect economic activities.

(a) Geographical area in which administrative regulation will be implemented:

(b) Kentucky:

(7) Assessment of alternate methods; reasons why alternatives were rejected: This regulation clarifies that payments to an alternate payee cease upon the alternate payee's death, except where the alternate payee's payment option specifically provides for continuing payments.

(8) Assessment of expected benefits: This regulation is intended to clarify treatment of the retirement benefits under a qualified domestic relations order. The amendment assures that the retirement system will not pay out a greater amount to a nonmember than it would to the member.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There is no impact on the public health or environmental welfare.

(b) State whether a detrimental effect on environment and public health would result if not implemented:

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute or regulation in conflict with this regulation.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments:

TIERING: Was tiering applied? Tiering does not apply. The provisions apply equally for all retirement benefits divided in a divorce.

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(Proposed Amendment)

105 KAR 1:200. Retirement procedures and forms.

RELATES TO: KRS 16.505 to 16.652, 61.510 to 61.705, 78.510 to 78.852

STATUTORY AUTHORITY: KRS 61.645(9)(e)

NECESSITY AND FUNCTION: This administrative regulation sets out the procedures for application for and receipt of retirement benefits by members of the Kentucky Retirement Systems.

Section 1. The member shall submit a Notification of Retirement, Form 6, dated January 1991, to the retirement systems prior to his desired effective retirement date. The member shall designate the beneficiary of his retirement allowance on the form. The form shall be dated and the employee's signature shall be witnessed.

Section 2. The retirement system shall estimate the member's retirement allowance based on the salary reported to the system and information that may be supplied by the member or his employer. The payment options and amounts available to the member shall be printed on the Estimated Retirement Allowance, Form 6A, dated July 1991, and provided to the member with a place to designate his choice of payment options.

Section 3. The member shall designate a desired payment option and sign and date the form. The member's signature shall be witnessed and the form returned to the retirement office. If the member is retiring under early retirement provisions, the member may return the form within six (6) months of his retirement date and retain the effective date of retirement shown on the form. If the member fails

to return the form within six (6) months of his retirement date, the member's notification of retirement shall be considered void and he shall be required to submit a new notification of retirement.

Section 4. The member shall provide the retirement system a copy of his birth certificate and, if a survivorship payment option is selected, a copy of the birth certificate of the beneficiary named on his notification of retirement. If a birth certificate is not available, the retirement system may accept other proof of age accompanied by a letter stating that a birth certificate is not available. The retirement system may accept one (1) or more of the following as proof of age of the member or his beneficiary: age record of the Social Security Administration, immigration and naturalization service records, hospital record, baptismal record, marriage license, birth certificate of child or military discharge.

Section 5. The retirement system shall provide an Authorization for Deposit Form, Form 107, dated December 1993 [~~June 1983~~], to the member to have his monthly retirement allowance deposited to his account in a financial institution. The member and his financial institution shall provide the information and authorizations required for the electronic transfer of funds from the state treasurer's office to the designated financial institution.

Section 6. The retirement office shall provide a Form 103, dated July 1991, to the member to certify service with another agency participating in the Kentucky Retirement Systems for which he may be eligible to purchase credit prior to retirement. The retirement office shall provide the member with the cost of purchasing the service and an estimate of the benefits attributable to the additional service credit. The member shall have the right to purchase the service credit within thirty (30) days following his retirement date.

Section 7. (1) The retirement office shall provide forms [~~effective July 1991 necessary~~] for the selection of medical insurance coverage for the member, [~~himself and~~] his spouse and dependents under the group insurance plan or to waive the right to insurance coverage at the time of retirement. The forms provided are the Kentucky Retirement Systems Health Insurance Coverage Form, dated July 1994, the Kentucky Retirement Systems High & Low Option Coverage Form dated June 1994 and the Waiver of Insurance Coverage dated July 1991.

(2) If the insurance form is received prior to the date the initial retirement check is processed, the insurance coverage shall be effective the first day of the month in which the initial check is processed. If the form is received after the date the initial retirement check is processed, coverage shall be effective the first day of the month following the month in which the initial retirement check is processed.

(3) Members who fail to submit a form selecting medical insurance coverage [~~the forms~~] within thirty (30) days following the first day of the month in which their initial retirement check is processed [~~their effective retirement date~~] shall not be eligible for benefits under the insurance plan until the following open enrollment period.

Section 8. The retirement office shall provide an Income Tax Withholding Preference, Form 17, dated October 1989, to the member to request that federal income taxes be withheld or not withheld from his retirement allowance.

Section 9. The retirement office shall provide a Death Benefit Designation, Form 36, dated August 1994 [~~June 1991~~], to the member to designate a beneficiary for the death benefit provided by the Kentucky Retirement Systems.

Section 10. The forms required by this administrative regulation are incorporated by reference and are available from Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky between the hours of 8 a.m. and 4:30 p.m. Monday through Friday.

JOHN D. ROBEY, Chairman

APPROVED BY AGENCY: October 24, 1994

FILED WITH LRC: November 15, 1994 at 10 a.m.

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CONTACT PERSON: Pamala S. Johnson, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, KY 40601, (502) 564-4646.

REGULATORY IMPACT ANALYSIS

Agency Contact: Pamala S. Johnson

(1) Type and number of entities affected: All members who retire from KERS, CERS and SPRS, approximately 2,200 per year.

(2) Direct and indirect costs or savings to those affected: There is no cost associated with this regulation.

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: No additional forms are required. The amended language does allow an additional form of proof for date of birth where the member is foreign-born.

1. First year following implementation:

2. Second and subsequent years:

(3) Effects on the promulgating administrative body: This regulation does not have an impact on the retirement system. The amendment clarifies the effective date of insurance coverage and specifically names the forms used for insurance coverage. The insurance forms have been amended to include requirements enacted by the 1994 General Assembly relating to coverage of custodial parents of covered dependents and language relating to fraudulent information. The forms for direct deposit of benefits and designation of the death benefit beneficiary have been amended to require additional information to assure more accurate processing.

(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 is no increase in paperwork. Current forms are amended.

(4) Assessment of anticipated effect on state and local revenues: This regulation does not affect state or local revenues.

(5) Source of revenue to be used for implementation and

enforcement of administrative regulation: All administrative expenses are paid from employer contributions. There is no cost associated with the regulation.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: This regulation does not affect economic activities.

(a) Geographical area in which administrative regulation will be implemented:

(b) Kentucky:

(7) Assessment of alternate methods; reasons why alternatives were rejected: This regulation clarifies the effective date of insurance coverage and provides for additional proof of birth where a U.S. birth certificate is not available. Inclusion on the insurance forms of a space for the address of the custodial parent of a dependent child and language related to fraudulent information were required by statute.

(8) Assessment of expected benefits: Foreign-born members will be allowed to use U.S. Immigration documents as proof of birth where a birth certificate is not available. The additional information collected on the form will eliminate problems encountered during processing of the forms.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There is no impact on the public health or environmental welfare.

(b) State whether a detrimental effect on environment and public health would result if not implemented:

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no stature or regulation in conflict.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments:

TIERING: Was tiering applied? A special allowance was made for proof of birth for foreign-born citizens who may not have access to birth certificates and other records available to U.S. natives.

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(Proposed Amendment)

105 KAR 1:210. Disability procedures.

RELATES TO: KRS 16.505 to 16.652, 61.510 to 61.705, 78.510 to 78.852, 344.030, 29 CFR Part 1630, 42 USC 12111(9)

STATUTORY AUTHORITY: KRS 61.645(9)(e)

NECESSITY AND FUNCTION: The statutes provide for disability benefits to members of the retirement systems and for a process of appealing a denial of disability benefits. This administrative regulation describes those procedures.

Section 1. (1) Application for disability benefits shall be made on the Notification of Retirement, Form 6, dated January 1991.

(2) [~~For members in nonhazardous positions,~~] The application shall be received in the retirement office within twelve (12) months [~~365 calendar days~~] of the employee's last day of paid employment in a regular full-time position, which shall consist of 365 calendar days of the employee's last day of paid employment in a regular full-time position. The period shall begin on the day after the last day of paid employment in the regular full-time position and shall end at close of business on the 365th day following. If the last day of the period is a Saturday, Sunday or holiday, then the application shall be valid if received in the retirement office by the close of the next business day following the weekend or holiday. The employer shall certify the last day of paid employment. The application may be submitted prior to the member's last day of paid employment.

[~~(3) For members in hazardous positions, application shall be received prior to the member's date of termination of employment.~~]

Section 2. If the member is eligible to begin drawing early retirement benefits, the member shall be notified of his right to a retirement allowance while his disability application is being processed. Election of early retirement by the member shall not affect his application for disability retirement.

Section 3. [~~If the member is not in a hazardous position,~~] An Employee's Job Description, dated August 1994 [~~1993~~], shall be completed by the member and submitted to the retirement office. The employer shall complete an Employer's Job Description, dated August 1994 [~~1993~~], and submit it to the retirement office. The descriptions shall be on the form provided by the retirement office. The retirement office may require additional details from the member and the employer on the member's job duties.

Section 4. The retirement office shall request the medical records of the member from the physicians or medical facilities named on the application. The member's physicians or medical facilities shall submit copies of all medical records, test results or other information applicable to the member to the retirement office. The member or his physicians may submit a current listing of the member's prescription medications. Statements by the physicians shall not be considered medical evidence unless accompanied by documented medical records or test results. The retirement office shall pay a reasonable fee for the copies. Amounts above that paid by the retirement office for the copies shall be the responsibility of the member.

Section 5. The member shall provide to the retirement system information concerning his status with regard to Workers' Compensation and Social Security disability benefits.

Section 6. When both of the job descriptions and all medical information from at least two (2) physicians or medical facilities that have treated or examined the member have been received, the information shall be submitted to the medical examiner.

Section 7. The medical examiner shall base his determination on the medical evidence contained in the member's retirement file and the member's residual functional capacity and exertional requirements. The medical examiner may contact the member or the member's physicians to request additional medical evidence.

Section 8. The time limits in KRS 61.665 for the member's actions in response to a denial, reduction or discontinuance of benefits shall be counted beginning on the day following receipt of notice by the member from the retirement office and shall continue until close of business on the date the member files the necessary action with the retirement office or the date the time period ends. The period shall toll until the member is in receipt of written notice from the retirement office of further denial. The period to request a formal hearing shall not exceed the cumulative extension of time specified in KRS 61.665(2)(g). When the periods allowed under the statute have been exhausted, the member shall have no further right to appeal to the hearing officer.

Section 9. The member shall make a request for a formal hearing in writing. If the member is unable to attend or desires to reschedule a formal hearing, the member shall send the retirement office a request in writing prior to the date of the hearing, and the hearing officer may reschedule the hearing upon a finding of good cause.

Section 10. The hearing officer may allow the member to

introduce, among other evidence, the determination of Workers' Compensation or Social Security Administration awarding disability benefits to the member. The hearing officer shall only consider competent medical evidence within or attached to the determination and shall not consider any vocational factors.

Section 11. The hearing officer may request a prehearing conference or may consider new medical evidence not already part of the member's retirement file.

Section 12. [~~All parties shall have fourteen (14) calendar days to submit written exceptions to the hearing officer's findings and conclusions to the retirement office, beginning on the day following receipt of the hearing officer's recommended order.~~

~~Section 13.~~] (1) If the member's application for disability is approved, the member's disability benefit shall be paid retroactive to the month following the month of the member's last day of paid employment.

(2) If the member did not receive early retirement benefits, upon the member's selection of a payment option, the retirement office shall pay the member the total monthly retirement allowances owed.

(3) If the member received early retirement benefits, the retirement office shall calculate and pay to the member the difference between the early retirement benefit which was paid to the member and the disability benefit. The member shall not change his payment option.

(4) If benefits are payable to dependent children, as defined in KRS 16.505(17), the following is required:

(a) The parent or guardian shall provide the names, Social Security numbers and copies of the birth certificates of each dependent child.

(b) If a dependent child is a minor, an Affidavit of Authorization to Receive Benefits on Behalf of Minor, Form 37, dated August 1994, shall be completed.

(c) If a dependent child is age eighteen (18) or over, the parent or guardian shall provide the system with a statement of the child's marital status, the name of the school in which the dependent child is enrolled as a full-time student and a copy of the dependent child's class schedule.

(d) The parent or guardian shall notify the system of the death or marriage of a dependent child or if the dependent child ceases to be a full-time student. Upon request, the parent or guardian shall provide a copy of the dependent child's current class schedule.

(5) Any increases provided to recipients under KRS 61.691 shall be applied to the member's disability benefit and payments to dependent children in determining the total retroactive payments owed to the member and dependent children.

Section 13. When a member whose application for disability benefits has been previously denied subsequently submits a disability application accompanied by medical evidence pursuant to KRS 16.582(2)(e) or 61.600(1)(e), a medical examiner shall determine from the evidence if a substantial change has occurred in the member's condition. If the medical examiner determines that a substantial change has occurred, the application shall be processed under the provisions of KRS 61.665. If the medical examiner determines that a substantial change has not occurred, the application shall not be accepted. The member shall have no further administrative proceedings, but may appeal to Franklin Circuit Court.

Section 14. The forms required by this administrative regulation are incorporated by reference and may be obtained from the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky, between the hours of 8 a.m. and 4:30 p.m. Monday through Friday.

JOHN D. ROBEY, Chairman

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PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 1994, at 9 a.m. at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by December 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 this 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 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: Pamala S. Johnson, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, KY 40601, (502) 564-4646.

REGULATORY IMPACT ANALYSIS

Agency Contact: Pamala S. Johnson

(1) Type and number of entities affected: Members of KERS, CERS and SPRS who apply for disability benefits, approximately 607 in fiscal year 1993-94.

(2) Direct and indirect costs or savings to those affected: There is no cost associated with this regulation. The amendments conform to changes enacted by the 1994 General Assembly which made the application procedure the same for hazardous and nonhazardous members.

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: Additional documentation is required where payments are made to dependent children to assure that benefits are sent to the individual responsible for the child's financial affairs.

1. First year following implementation:

2. Second and subsequent years:

(3) Effects on the promulgating administrative body: The disability application and review procedure, which is now the same for hazardous and nonhazardous members, is easier to administer and to explain to members. There is no direct savings associated with the change, but the change should assist the retirement office in providing better service to disability applicants.

(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: The additional forms and reporting requirements for dependent children will assure proper payment of benefits.

(4) Assessment of anticipated effect on state and local revenues: This administrative regulation does not affect state or local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Administrative expenses are paid from employer contributions. There is no cost associated with this regulation.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: This regulation does not affect economic activities.

(a) Geographical area in which administrative regulation will be implemented:

(b) Kentucky:

(7) Assessment of alternate methods; reasons why alternatives were rejected: The regulation has been made to conform to changes in KRS 16.582, 61.600 and 61.665 enacted by the 1994 General Assembly.

(8) Assessment of expected benefits: The additional reporting requirements on dependent children who are receiving benefits will help ensure that the payments are made to the proper guardian and that payments are not made to ineligible individuals.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There is no impact on the public health or environmental welfare.

(b) State whether a detrimental effect on environment and public health would result if not implemented:

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute or regulation is in conflict.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments:

TIERING: Was tiering applied? Tiering does not apply. This regulation makes a universal procedure for KERS, CERS and SPRS disability applicants which is easier for the member to understand and for the system to administer.

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(Proposed Amendment)

105 KAR 1:215. Administrative hearing.

RELATES TO: KRS 16.505 to 16.652, 61.510 to 61.705, 78.510 to 78.852

STATUTORY AUTHORITY: KRS 61.645(16)

NECESSITY AND FUNCTION: The statutes provide that an affected person aggrieved by a decision of the system [~~Board of Trustees~~], which is not a determination relating to disability retirement benefits, may have the right to request an administrative hearing prior to the filing of an appeal in court. This regulation establishes the administrative appeal process.

Section 1. Definition. "Affected person" means a member, retired member or recipient as defined in KRS 16.505, 61.510 and 78.510.

Section 2. When the system takes action which substantially impairs an affected person's benefits or rights under KRS 16.505 to 16.652, 61.510 to 61.705 or 78.510 to 78.852, except action which relates to entitlement to disability benefits, the system shall notify the affected person of the opportunity to request a hearing. The notification shall be contained in the notice of action. An affected person may request a hearing by submitting such request in writing within thirty (30) days after the date of the notice of the opportunity to request a hearing. The request for hearing shall be filed with the general manager of the system at its office in Frankfort. The request for hearing shall contain a short and plain statement of the basis for request.

Section 3. Failure of the affected person to request a formal hearing within the period of time specified shall preclude the affected person from requesting a hearing at a later time.

Section 4. (1) Upon request, the system shall schedule a hearing to be held not more than sixty (60) days after the request for a hearing has been received by the system unless otherwise agreed. The notice of hearing shall be served as described in Section 19 [~~20~~] of this regulation and shall include a statement of the time, place and nature of the hearing.

(2) The hearing officer may request a prehearing conference or may consider new evidence not already part of the affected person's file.

Section 5. The system may, either through review of its records or conference with the affected person, recommend a favorable determination prior to scheduling a hearing. Upon notification of a favorable determination, the affected person may withdraw the hearing request or request that the hearing be scheduled.

Section 6. Any party to a hearing may be represented by counsel, make oral or written argument, offer testimony, orally or by deposition, cross-examine witnesses, introduce direct testimony from an expert approved by the hearing officer through a written report, or take any combination of these actions. Witness testimony may be given by deposition in lieu of personal appearance. An impartial hearing officer appointed and paid by the board shall preside at the hearing, keep order and conduct the hearing. Oaths and affirmations shall be administered by the hearing officer or court reporter. The hearing officer shall permit any party to represent himself. Failure to appear without good cause or failure to comply with any prehearing or interlocutory order of the hearing officer shall be grounds for a default.

Section 7. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. When necessary to ascertain facts not reasonably susceptible of proof under judicial rules of evidence, evidence not admissible thereunder may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonable and prudent persons in the conduct of their affairs. Hearing officers shall give effect to the rules of privilege recognized by law. Objections may be made and shall be noted in the record. When a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form. Upon request, parties shall be given an opportunity to compare any copy with the original. A party may conduct cross-examinations required for a full and true disclosure of the facts. Notice may be taken of generally recognized technical or scientific facts within the system's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The system's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

Section 8. [~~Each formal hearing shall be recorded, and a transcript made available on the motion of any party or by order of the hearing officer. Unless otherwise agreed, the party requesting the transcript shall provide payment for the original, and all others desiring copies shall pay the cost thereof. When certified as a true and correct copy of the testimony by the system, the transcript shall constitute the official transcript of the evidence.~~

~~Section 9.~~] The hearing officer shall prepare findings of fact and conclusions of law based on the evidence appearing in the record as a whole and make a recommendation.

Section 9. [~~10.~~] The hearing officer shall, within thirty (30) days of

the close of the formal hearing make a report and a recommended order to the board. The report and recommended order shall contain the appropriate findings of fact and conclusions of law. If the board finds upon written request of the hearing officer that additional time is needed, then the board may grant a reasonable extension. The hearing officer shall mail postage prepaid, a copy of his report and recommended order to all parties. The parties may file within fourteen (14) days of mailing of the hearing officer's report and recommended order exceptions to the report and recommended order. There shall be no other or further submissions.

Section 10. [~~11.~~] The board shall consider the report and recommended order and any exception filed and pass upon the case within a reasonable time. The board may remand the matter to the hearing officer, adopt the report and recommended order of the hearing officer as the board's final order, or issue their own final order.

Section 11. [~~12.~~] The system shall mail the final decision of the board to the affected person or his legal representative. If any extension of time is granted by the board for a hearing officer to complete his report, the system shall notify the affected person or his legal representative at the time of the granting of the extension.

Section 12. [~~13.~~] The board shall not grant extensions of time to the hearing officer for more than thirty (30) days for any one (1) extension, and no more than two (2) such extensions shall be granted.

Section 13. [~~14.~~] A final order of the board shall be based on substantial evidence appearing in the record as a whole and shall set forth the decision of the board and the facts and law upon which the decision is based.

Section 14. [~~15.~~] There shall be no ex parte communications between the parties or representatives of the parties and the hearing officer regarding an affected person.

Section 15. [~~16.~~] Formal hearings shall be held at the system's office in Frankfort unless another location is determined by the hearing officer.

Section 16. [~~17.~~] All requests for a hearing pursuant to this section shall be made in writing.

Section 17. [~~18.~~] The board may establish an appeals committee whose members shall be appointed by the chairman and who shall have the authority to act upon the recommendations and reports of the hearing officer pursuant to this section on behalf of the board.

Section 18. [~~19.~~] Any affected person aggrieved by a final order of the board may seek judicial review after all administrative appeals have been exhausted by filing suit in the Franklin Circuit Court within the time period prescribed in KRS 61.645(16).

Section 19. [~~20.~~] Any proposed order or order shall be served by one (1) of the following methods:

(1) The system may place a copy of the document to be served in an envelope, and address the envelope to the affected person to be served at the address of the affected person existing in the system files or at the address set forth in written instructions furnished by the affected person or his legal representative. The system shall affix adequate postage and place the sealed envelope in the United States mail as certified mail return receipt requested. The system shall forthwith enter the fact of mailing in the record and make entry when the return receipt is received. If the envelope is returned with an endorsement showing failure of delivery, that fact shall be entered in the record. The system shall file the return receipt or returned envelope in the record. Service by certified mail is complete upon delivery of the envelope. The return receipt shall be proof of the time, place, and manner of service.

(2) The system may cause the document, with necessary copies, to be transferred for service to any person authorized by the board or by any statute or rule to deliver them, who shall serve the documents, and the return endorsed thereon shall be proof of the time and manner of service.

(3) The methods of service specified herein shall be supplemental to and shall be accepted as an alternative to any other method of service specified by other applicable law.

JOHN D. ROBEY, Chairman

APPROVED BY AGENCY: October 24, 1994

FILED WITH LRC: November 15, 1994 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 1994, at 9 a.m. at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by December 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 this 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 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: Pamala S. Johnson, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, KY 40601, (502) 564-4646.

REGULATORY IMPACT ANALYSIS

Agency Contact: Pamala S. Johnson

(1) Type and number of entities affected: Individuals who are aggrieved by a decision of the system and who seek an administrative hearing.

(2) Direct and indirect costs or savings to those affected: There is no cost associated with this regulation. The regulation is being amended to conform with statutory language.

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: There is no change in reporting or paperwork requirements.

1. First year following implementation:

2. Second and subsequent years:

(3) Effects on the promulgating administrative body: There is no impact on the retirement systems.

(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:

(4) Assessment of anticipated effect on state and local revenues: This regulation does not impact state or local revenues.

(5) Source of revenue to be used for implementation and

enforcement of administrative regulation: All administrative expenses are paid from employer contributions. There is no cost associated with this regulation.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: This regulation does not affect economic activities.

(a) Geographical area in which administrative regulation will be implemented:

(b) Kentucky:

(7) Assessment of alternate methods; reasons why alternatives were rejected: The amendments to this regulation reflect changes enacted by the 1994 General Assembly.

(8) Assessment of expected benefits: The hearing officer may request a prehearing conference or may accept new evidence. This further provides for a potential resolution of the issues prior to legal action which is beneficial to the individual. The section governing recording of the hearings is no longer necessary because recording of the hearing is now governed by KRS 61.645.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There is no impact on the public health or environmental welfare.

(b) State whether a detrimental effect on environment and public health would result if not implemented:

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute or regulation in conflict.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments:

TIERING: Was tiering applied? Tiering does not apply. The hearing procedure is the same for all individuals aggrieved by a decision of the system.

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(Proposed Amendment)

105 KAR 1:230. Reemployment after retirement.

RELATES TO: KRS 61.637

STATUTORY AUTHORITY: KRS 61.645(9)(e)

NECESSITY AND FUNCTION: The statute provides that a member who retires and who is reemployed within the same retirement system from which he is drawing a benefit may have his retirement stopped and be required to participate. This administrative regulation sets out the procedures for a member who is reemployed.

Section 1. The retired member or his employer shall notify the retirement system if he accepts any employment with an agency participating in the same retirement system from which he retired. If the member is under a contract, the member shall submit a copy of his contract to the retirement system and the retirement system shall determine if the member is an independent contractor for purposes of retirement benefits. The member shall complete [~~compete~~] and return a Reemployment After Retirement, Form 60, dated August 1994 [~~June 1991~~].

Section 2. If the member is age seventy (70) or will be age seventy (70) during the calendar year, the member may certify that his income will exceed the maximum allowed by the Social Security Administration for a retired person over age sixty-five (65) and that he wishes to have his retirement allowance stopped and become a contributing member. The member may elect to have his payments continue and not contribute to the retirement system.

Section 3. If the member is under age seventy (70), he shall certify whether his anticipated earnings will exceed the maximum allowable by the Social Security Administration for a retired person.

Section 4. Upon receipt of the reemployed member's certification, the retirement system shall notify the employer to withhold or not withhold contributions on the member.

Section 5. The form required by the administrative regulation is incorporated by reference and may be obtained from Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky between the hours of 8 a.m. and 4:30 p.m. Monday through Friday.

JOHN D. ROBEY, Chairman

APPROVED BY AGENCY: October 24, 1994

FILED WITH LRC: November 15, 1994 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 1994, at 9 a.m. at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by December 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 this 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 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: Pamala S. Johnson, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, KY 40601, (502) 564-4646.

REGULATORY IMPACT ANALYSIS

Agency Contact: Pamala S. Johnson

(1) Type and number of entities affected: Retired members who are reemployed in a position covered by the same retirement system from which they retired, fewer than 100 members.

(2) Direct and indirect costs or savings to those affected: There is no cost or savings associated with this regulation. The amendment to this regulation conforms to changes made by the 1994 General Assembly to KRS 61.637.

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: There is no increase or decrease in paperwork. An existing form has been modified.

1. First year following implementation:

2. Second and subsequent years:

(3) Effects on the promulgating administrative body: This regulation does not change procedures and has no cost to the retirement system.

(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: An existing form is modified to conform to statutory changes.

(4) Assessment of anticipated effect on state and local revenues: This regulation does not affect state or local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: All administrative expenses are paid through employer contributions. There is no cost associated with this regulation.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: There is no impact on economic activities.

(a) Geographical area in which administrative regulation will be implemented:

(b) Kentucky:

(7) Assessment of alternate methods; reasons why alternatives were rejected: The amendment to this regulation is to conform to the change in KRS 61.637 enacted by the 1994 General Assembly.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There is no impact on the public health or environmental welfare.

(b) State whether a detrimental effect on environment and public health would result if not implemented:

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute or regulation in conflict.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments:

TIERING: Was tiering applied? This amendment consists of a form modification to conform with the statutory provision. KRS 61.637 has been changed to mirror the federal Social Security provisions governing postretirement earnings which is tiered based on the member's age. Older individuals who return to work are penalized less for exceeding the earnings limitation.

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(Proposed Amendment)

105 KAR 1:240. Death after retirement procedures.

RELATES TO: KRS 16.505 to 16.652, 61.510 to 61.705, 78.510 to 78.852

STATUTORY AUTHORITY: KRS 61.645(9)(e)

NECESSITY AND FUNCTION: Certain benefits are payable upon the death of a recipient. This administrative regulation sets out the information required before benefits are paid.

Section 1. After learning of the death of a recipient, the retirement system shall contact the named beneficiary or estate of the deceased.

Section 2. The retirement system shall require the following information: [~~verification of the death in the form of a copy of the death certificate.~~]

(1) A copy of the recipient's death certificate. If the death certificate shows the cause of death to be homicide or the subject of a pending investigation, the retirement office may also require additional evidence relating to the cause of death or investigations and arrests by enforcement agencies and may delay benefits until it deems the cause of death to be fully explained.

(2) If there is a benefit payable to a beneficiary and the beneficiary is deceased, a copy of the beneficiary's death certificate.

(3) If the beneficiary is a minor child, a copy of the child's birth certificate and an Affidavit of Authorization to Receive Funds on Behalf of Minor, Form 37, dated August 1994.

(4) If the beneficiary is divorced from the recipient, a copy of the divorce decree.

Section 3. If the payments are due an estate, the retirement system shall also require verification of the name of the individual authorized to manage the financial affairs of the deceased.

Section 4. The beneficiary or authorized individual shall sign an affidavit for recipient, dated August 1994 [~~July 1991~~], provided by the retirement system and shall select a payment option, if a choice is available.

Section 5. Payments shall not be made until the affidavit has been completed and all verification submitted.

Section 6. If other evidence of death is submitted, the retirement system may pay the death benefit provided by KRS 61.705 prior to receipt of the death certificate of the member.

Section 7. The form required by this administrative regulation are incorporated by reference and may be obtained from Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky between 8 a.m. and 4:30 p.m. Monday through Friday.

JOHN D. ROBEY, Chairman

APPROVED BY AGENCY: October 24, 1994

FILED WITH LRC: November 15, 1994 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 1994, at 9 a.m. at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by December 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 this 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 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: Pamala S. Johnson, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, KY 40601, (502) 564-4646.

REGULATORY IMPACT ANALYSIS

Agency Contact: Pamala S. Johnson

(1) Type and number of entities affected: This regulation affects the beneficiaries or estates of members who die after retiring from KERS, CERS and SPRS.

(2) Direct and indirect costs or savings to those affected: There should be no significant cost to the beneficiary or estate since the information required by this regulation is information generally needed following a death.

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: The beneficiary or estate is required to submit additional documentation under certain circumstances (death of beneficiary/divorce) and sign an additional form if the beneficiary is a minor child. The documentation is required only once, upon the initial processing. No further documentation is required unless the guardianship of a minor child receiving benefits changes.

1. First year following implementation:

2. Second and subsequent years:

(3) Effects on the promulgating administrative body: There is no impact on the retirement systems.

(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: The additional paperwork required is minimal and only required in certain circumstances (where the beneficiary is deceased, divorced or a minor child).

(4) Assessment of anticipated effect on state and local revenues: This will have no impact on state or local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: All administrative expenses are paid from employer contributions. There is no cost associated with this regulation.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: This regulation does not impact economic activities.

(a) Geographical area in which administrative regulation will be implemented:

(b) Kentucky:

(7) Assessment of alternate methods; reasons why alternatives were rejected: The regulation requires documentation to establish relationship or guardianship before a benefit is paid to assure that the benefit is paid in accordance with retirement statutes.

(8) Assessment of expected benefits: The documentation required will help assure that benefits will be paid the legally eligible individual, or in the case of a minor child, to the proper guardian of that child.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There is no impact on the public health or environmental welfare.

(b) State whether a detrimental effect on environment and public health would result if not implemented:

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute or regulation in conflict.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments:

TIERING: Was tiering applied? Tiering does not apply. The documentation requirements are the same for all beneficiaries in similar circumstances.

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(Proposed Amendment)

105 KAR 1:260. Purchase of out-of-state service credit.

RELATES TO: KRS 61.552

STATUTORY AUTHORITY: KRS 61.645(9)(e)

NECESSITY AND FUNCTION: The statute provides for the purchase of out-of-state service credit for members of the Kentucky Retirement Systems. This administrative regulation sets out the requirements and forms for obtaining credit for this service.

Section 1. Each employee wishing to purchase service credit for out-of-state public service under KRS 61.552(17) and (18) shall request a copy of Form 41, Certification of Out-of-state Service, dated May 1994 [~~August 1992~~].

Section 2. The employee shall mail the form to his former employer and retirement plan for completion. If the employee wishes to purchase hazardous service in CERS, he shall also obtain a copy of the description of his duties in the out-of-state position from his former employer. The employee shall be responsible for obtaining the information requested on the form regarding the period of out-of-state service.

Section 3. The completed form and job description shall be submitted to the retirement office. The retirement system shall determine how much service is eligible for purchase under the statute.

Section 4. Service credit shall be eligible for purchase as hazardous duty if the position is the same as or substantially similar to positions for which hazardous duty credit has been approved under KRS 61.592.

Section 5. The retirement system shall notify the employee of the cost of the service which qualifies for purchase. The cost shall be determined as a delayed contribution payment except that the employee shall pay 100 percent of the total. The cost shall be based on the employee's age rounded to the nearest year and the employee's estimated current rate of pay, final rate of pay or final compensation, whichever is higher. Payment by the employee shall be due on the date shown on the notification unless the employee participates in an installment purchase plan as provided under KRS 61.552(16) and 105 KAR 1:150. No payment shall be allowed if the cost exceeds the limitations on annual additional contributions in 26 USC 415.

Section 6. If the employee's actual rate of pay or final compensation is higher than estimated and results in a difference of $100 or more in the cost of the service, the employee shall be notified and shall pay the additional cost for the service within thirty (30) days of the date on the notification.

Section 7. If the retirement system determines that the service is not eligible for purchase, the retirement system shall notify the employee of the reasons. If additional information is needed to make the determination, the employee shall be responsible for obtaining the additional information.

Section 8. The form required by the administrative regulation is incorporated by reference and may be obtained from the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601-6124, 8 a.m. to 4:30 p.m., Monday through Friday.

JOHN D. ROBEY, Chairman

APPROVED BY AGENCY: October 24, 1994
FILED WITH LRC: November 15, 1994 at 10 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 1994, at 9 a.m. at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by December 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 this 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 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: Pamala S. Johnson, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, KY 40601, (502) 564-4646.

REGULATORY IMPACT ANALYSIS

Agency Contact: Pamala S. Johnson
(1) Type and number of entities affected: Members of KERS, CERS and SPRS who have out-of-state public service which qualifies for purchase under KRS 61.552.
(2) Direct and indirect costs or savings to those affected: There may be an increase in the cost for members who would have purchased service in a lump sum, but who must now spread the purchase over a period of years to fall within the requirements of the federal law.
(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received.
(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received.
(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: There is no increase in paperwork. An existing form is modified to conform to statutory changes.
1. First year following implementation:
2. Second and subsequent years:
(3) Effects on the promulgating administrative body: There is no cost or savings associated with this regulation.
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: The existing form is modified. No additional paperwork is required.
(4) Assessment of anticipated effect on state and local revenues: This regulation does not affect state or local government revenues.
(5) Source of revenue to be used for implementation and enforcement of administrative regulation: All administrative expenses are paid from employer contributions. There is no cost associated with this regulation.
(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: This regulation does not affect economic activities.
(a) Geographical area in which administrative regulation will be implemented:
(b) Kentucky:
(7) Assessment of alternate methods; reasons why alternatives were rejected: The form has been modified to conform to the changes to KRS 61.552. The new language is in compliance with federal law.
(8) Assessment of expected benefits: This regulation does not affect the public health or environmental welfare.
(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky:
(b) State whether a detrimental effect on environment and public health would result if not implemented:
(c) If detrimental effect would result, explain detrimental effect:
(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: The statute governing out-of-state service purchases, KRS 61.552(17) and (18), does not restrict the amount paid toward the purchase. However, federal law places a limitation on these contributions.
(a) Necessity of proposed regulation if in conflict: It is necessary to comply with federal tax law in order to maintain the retirement systems' tax exempt status.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: The federal restriction is specific and must be complied with to assure continued tax exempt status.
(10) Any additional information or comments:
TIERING: Was tiering applied? Tiering does not apply. The restriction applies equally to all individuals purchasing service credit.

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(Proposed Amendment)

105 KAR 1:270. Special federal income tax withholding.

RELATES TO: KRS 16.505 to 16.652, 61.510 to 61.705, 78.510 to 78.852
STATUTORY AUTHORITY: KRS 61.645(9)(e)
NECESSITY AND FUNCTION: This administrative regulation is necessary to comply with the provisions of PL 102-318 regarding direct rollovers of taxable distributions and the withholding of federal income tax. This administrative regulation establishes the procedure for informing affected members of their rights with regard to federal taxation rules and provides forms for members to indicate their preference for federal tax withholding or direct rollover of funds. This administrative regulation also establishes a procedure to issue a check to an alternate payee of a qualified domestic relations order if the alternate payee does not return the form required for federal income tax purposes within a reasonable time.

Section 1. (1) Upon receipt of a request for refund of member contributions from the member or beneficiary who is the spouse, the retirement office shall mail the Form 27, Direct Rollover/Direct Payment Election Form for Refund of Member Contributions, dated August 1994 [~~1993~~], along with a copy of the Special Tax Notice Regarding Plan Payments, dated December 1992, to the individual requesting payment.
(2) The member or beneficiary who is the spouse shall complete the Form 27 and return it to the retirement office. If the member or beneficiary intends to have the eligible portion of the funds rolled over directly into an IRA or other plan, the member or beneficiary shall have the trustee or institution complete the back of the form certifying that the rollover will be accepted.
(3) The refund of contributions shall not be processed until the completed Form 27 is returned by the member or beneficiary to the retirement office.

Section 2. (1) Upon receipt of the Form 6A on which the member or beneficiary who is the spouse has selected the actuarial refund or

a payment option payable for a period of less than ten (10) years, the retirement office shall mail to the member or beneficiary who is the spouse the Form 28, Direct Rollover/Direct Payment Election Form for Actuarial Refunds and Monthly Payments, dated August 1994 [~~1993~~], along with the Special Tax Notice, dated December 1992.

(2) The member or beneficiary who is the spouse shall complete the Form 28 and return it to the retirement office. If the member or beneficiary who is the spouse intends to have the eligible portion of the funds rolled over directly into an IRA or other plan, the member or beneficiary shall have the trustee or institution complete the back of the form certifying that the rollover will be accepted.

(3) The payment options selected by the member or beneficiary who is the spouse shall not be processed until the completed Form 28 is returned to the retirement office.

Section 3. (1) If the alternate payee is eligible for a lump sum portion of the member's contribution account under a qualified domestic relations order, the Form 27 along with a Special Tax Notice shall be mailed to the alternate payee. If the alternate payee selects an actuarial refund or payment option payable for a period of less then ten (10) years, a Form 28 along with a Special Tax Notice shall be mailed to the alternate payee.

(2) The alternate payee shall complete the Form 27 or Form 28 and return it to the retirement office. If the alternate payee intends to have the eligible portion of the funds rolled over directly into an IRA or other plan, the alternate payee shall have the trustee or institution complete the back of the Form 27 or Form 28 certifying that the rollover will be accepted.

(3) The payment of an actuarial refund or a payment option of less than ten (10) years under the qualified domestic relations order shall not be processed until the completed Form 28 is returned to the retirement office. If the payment is a portion of the member's contribution account and the alternate payee does not return the Form 27 within thirty (30) days of receipt of the form, the payment shall be processed and the alternate payee's portion of the refund shall be treated for federal income tax purposes as if the alternate payee had made an election to receive the funds.

Section 4. The forms required by the administrative regulation are incorporated by reference and may be obtained from the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, from 8 a.m. to 4:30 p.m.

JOHN D. ROBEY, Chairman

APPROVED BY AGENCY: October 24, 1994

FILED WITH LRC: November 15, 1994 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 1994, at 9 a.m. at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by December 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 this 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 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: Pamala S. Johnson, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, KY 40601, (502) 564-4646.

REGULATORY IMPACT ANALYSIS

Agency Contact: Pamala S. Johnson

(1) Type and number of entities affected: Individuals electing a refund or lump sum retirement payment from KERS, CERS and SPRS.

(2) Direct and indirect costs or savings to those affected: There is no cost associated with this regulation.

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: Two existing forms are modified.

1. First year following implementation:

2. Second and subsequent years:

(3) Effects on the promulgating administrative body: There is no impact on the retirement systems.

(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: Two existing forms are modified.

(4) Assessment of anticipated effect on state and local revenues: There is no affect on state or local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: There is no cost associated with this regulation.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: There is no affect on economic activities.

(a) Geographical area in which administrative regulation will be implemented:

(b) Kentucky:

(7) Assessment of alternate methods; reasons why alternatives were rejected: This regulation is for form modification only.

(8) Assessment of expected benefits: The forms have been changed to inform the affected individuals that even if they elect to receive the entire payment, federal taxes will be withheld. The addition of a space for the member's Social Security number as well as the recipient's Social Security number will eliminate problems with determining the account affected where the payment is to a beneficiary.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There is no effect on the public health or environmental welfare.

(b) State whether a detrimental effect on environment and public health would result if not implemented:

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute or regulation in conflict.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments:

TIERING: Was tiering applied? Tiering does not apply. The regulation is for minor changes to forms for clarity and ease in processing payments.

GENERAL GOVERNMENT CABINET
Department of Agriculture
Division of Animal Health
(Proposed Amendment)

302 KAR 20:110. Treatment of imported mares.

RELATES TO: KRS 257.070
STATUTORY AUTHORITY: KRS 257.030
NECESSITY AND FUNCTION: To establish a technique for treatment of mares imported into Kentucky from any country listed in 78 Part 9 Code of Federal Regulations 92.2 as a country infected with contagious equine metritis.

Section 1. As used in this regulation, unless the context clearly requires otherwise:
(1) "Mare" means a female horse over 731 days of age.
(2) "Breeding" means natural or artificial insemination of a mare.
(3) "CF test" means a complement-fixation test on equine serum for the detection of specific antibodies of contagious equine metritis (CEM) [~~DFM~~] bacterium.
(4) "Set of cultures" means a culture from the clitoral sinus (if intact), clitoral fossa, cervix [~~and/~~] or endometrium of the uterus.

Section 2. Any mare imported into Kentucky from any country known to be infected with CEM, shall before being used for breeding, be treated by or under the direct supervision of an accredited veterinarian licensed to practice in Kentucky, according to the following procedure:
(1) Pregnant and nonpregnant mares. The veterinarian shall obtain one (1) set of cultures and then follow the prescribed treatment.
(2) For five (5) consecutive days the veterinarian shall aseptically clean and wash external genitalia, vaginal vestibule and clitoral fossa with a solution of not less than two (2) percent chlorhexidine in a detergent base, and then coat the external genitalia and vaginal vestibule with an ointment of not less than [~~that~~] two-tenths (0.2) percent nitrofurazone or other medication approved by the USDA and the Kentucky State Veterinarian [~~nitrofurazone~~] insuring that the clitoral fossa is filled.
(3) [~~(2)~~] After the treatment, the mare shall undergo a seven (7) day rest period.
(4) [~~(3)~~] Nonpregnant mares. The veterinarian shall collect three (3) additional sets of cultures [~~specimens from the clitoral fossa~~] at intervals of not less than seven (7) days. He shall also collect one (1) specimen [~~additional sample~~] from the endometrium of the uterus during estrus. All samples shall be submitted to a [~~state or federal~~] laboratory approved by the USDA's National Veterinary Services Laboratory and the Kentucky State Veterinarian for culture.
(5) [~~(4)~~] Pregnant mares. These mares must remain quarantined on a state approved premise until all tests results are complete on both the mare and foal. The veterinarian shall collect three (3) additional sets of cultures [~~specimens from the clitoral fossa~~] at intervals of not less than seven (7) days. Seven (7) days after foaling, the veterinarian shall collect one (1) specimen from the endometrium of the uterus of the mare and one (1) specimen from the foal. If the foal is female, the specimen is to be collected from the vaginal vestibule; and, if a male, the specimen shall be collected from the prepuce. Each of these specimens shall be submitted to a [~~state or federal~~] laboratory for culture approved by the USDA's National Veterinary Services Laboratory and the Kentucky State Veterinarian for culture.
(6) [~~(5)~~] If positive, the mare must remain under quarantine until three (3) additional specimens from the clitoral fossa are collected by an accredited veterinarian at intervals of not less than seven (7) days. The first set not to be collected less than one (1) year from the last positive and an additional specimen from the endometrium of the uterus during estrus is required.
(7) [~~(6)~~] Imported mares bred in Kentucky will be prophylactically scrubbed and bred last of any group of mares bred during that session. The covering [~~that day, and the~~] stallion will be scrubbed and treated after breeding and will remain out-of-service for a minimum of twelve (12) hours. The imported mare and the next three (3) mares bred to the same stallion will have a CF test, which shall be taken fifteen (15) to forty (40) days after the mare is bred.

ED LOGSDON, Commissioner
APPROVED BY AGENCY: November 15, 1994
FILED WITH LRC: November 15, 1994 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation will be held on Wednesday, December 21, 1994 at 10 a.m. at the Department of Agriculture, 7th Floor Conference Room, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by December 16, 1994, five (5) days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Donna Greenwell Dutton, General Counsel, Department of Agriculture, Capital Plaza Tower, 7th Floor, 500 Mero Street, Frankfort, Kentucky 40601, (502) 564-4696.

REGULATORY IMPACT ANALYSIS

Contact Person: Rusty Ford
(1) Type and number of entities affected: All persons importing mares in Kentucky.
(2) Direct and indirect costs or savings on the:
(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.
(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.
(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:
1. First year following implementation: No additional requirements.
2. Second and subsequent years: No additional requirements.
(3) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs: There will be no increase in reporting and paperwork requirements.
(4) Assessment of anticipated effect on state and local revenues: None
(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Existing personnel will be used for enforcement.
(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: No public comments were received.
(a) Geographical area in which administrative regulation will be implemented: No public comments were received.

(b) Kentucky: No public comments were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: There are no alternative methods.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This amendment changes requirements for quarantine feed lots.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes, possibly.

(9) 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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. It is necessary to treat all persons importing mares in Kentucky equally to control disease in the Commonwealth.

GENERAL GOVERNMENT CABINET
Department of Agriculture
Division of Animal Health
(Proposed Amendment)

302 KAR 20:120. Treatment of imported stallions.

RELATES TO: KRS 257.030

STATUTORY AUTHORITY: KRS 257.030

NECESSITY AND FUNCTION: To establish a technique for treatment of stallions imported into Kentucky from any country outside the continental United States, its territories and possessions.

Section 1. Definitions. As used in this regulation, unless the context clearly requires otherwise:

(1) "Stallion" means a male horse other than gelding over 731 days of age.

(2) "Breeding" means natural or artificial insemination of a mare.

(3) "CF test" means a complement-fixation test on equine serum for the detection of specific antibodies of contagious equine metritis (CEM) [~~DFM~~] bacterium.

(4) "Set of cultures" for female equines means a culture from the clitoral sinus (if intact), clitoral fossa, cervix [~~and~~/]or endometrium of the uterus.

(5) "Set of cultures" for intact male equines means a culture from the urethral fossa, urethra and prepuce.

Section 2. Any stallion imported into Kentucky which at any time after reaching 731 days of age has been [~~from any country~~] outside the continental United States, its territories, [~~and~~] possessions, or Canada shall, before being used for breeding, be treated by or under the direct supervision of an accredited veterinarian licensed to practice in Kentucky, according to the following procedure:

(1) With the stallion in full erection and while wearing disposable gloves and using disposable equipment:

(a) The veterinarian shall collect one (1) set of cultures from the stallion to be cultured for CEM.

(b) Mechanically clean the external genitalia with clean, warm water.

(c) [~~(b)~~] Apply a chlorhexidine-containing surgical scrub liberally and using sufficient water to obtain sudsing, cleanse thoroughly paying particular attention to the urethral fossa/sinus and penetration of the folds of the sheath.

(d) [~~(c)~~] Wash with clean warm water and dry.

(e) [~~(d)~~] Apply an ointment containing not less than two-tenths (0.2) percent nitrofurazone or other medication approved by the USDA and Kentucky State Veterinarian liberally, insuring filling of the urethral fossa/sinus and penetration of the folds of the sheath.

(2) Repeat the treatment daily for five (5) consecutive days.

(3) After completing the treatment procedure, the stallion must undergo a seven (7) day rest period.

(4) The stallion must breed two (2) mares that have been qualified as free of CEM by negative culture of two (2) sets of specimens collected at intervals of not less than seven (7) days apart and a CF test. One (1) [~~The first~~] set of cultures [~~and the blood sample for the CF test~~] must be taken at the time of estrus.

(5) The [~~first~~] two (2) qualified test mares bred by a stallion which has been treated as outlined in subsection (1) of this section shall be cultured from the cervix, clitoral fossa and clitoral sinuses on the second, fourth and seventh day after breeding. During the next estrus, specimens for culture shall be collected from the endometrium of the uterus, clitoral sinus and clitoral fossa. [~~The~~] Two (2) blood samples for the CF test shall be obtained at intervals of not less than seven (7) days and between the 15th and 40th day after breeding. All tests and cultures required by this section shall be conducted at a laboratory approved by the USDA's National Veterinary Services Laboratory and the Kentucky State Veterinarian. [~~the National Veterinary Services Laboratory at Ames, Iowa.~~] If all cultures and tests are negative, the treated stallion may be placed in service for breeding.

[~~Section 3. This regulation shall also apply to:~~

~~(1) Any stallion imported into Kentucky for breeding which has at any time been present in any country outside the continental United States, its territories and possessions, for any purpose other than racing.~~

~~(2) Any imported stallion, whether used for breeding or not, which is or will be present on a breeding facility or establishment after entering Kentucky.~~]

ED LOGSDON, Commissioner

APPROVED BY AGENCY: November 15, 1994

FILED WITH LRC: November 15, 1994 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on Wednesday, December 21, 1994 at 10 a.m. at the Department of Agriculture, 7th Floor Conference Room, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by December 16, 1994, five (5) days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Donna Greenwell Dutton, General Counsel, Department of Agriculture, Capital Plaza Tower, 7th Floor, 500 Mero Street, Frankfort, Kentucky 40601, (502) 564-4696.

REGULATORY IMPACT ANALYSIS

Contact Person: Dr. D. L. Notter, State Veterinarian

(1) Type and number of entities affected: All equine owners in Kentucky.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were

received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: No additional requirements.

2. Second and subsequent years: No additional requirements.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs: There will be no increase in reporting and paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Existing personnel will be used for enforcement.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: No public comments were received.

(a) Geographical area in which administrative regulation will be implemented: No public comments were received.

(b) Kentucky: No public comments were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: There are no alternative methods.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This amendment changes requirements for quarantine feed lots.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes, possibly.

(9) 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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. It is necessary to treat all equine owners the same to control disease in the Commonwealth.

GENERAL GOVERNMENT CABINET
Department of Agriculture
Division of Animal Health
(Proposed Amendment)

302 KAR 20:130. Treatment of contagious equine metritis.

RELATES TO: KRS 257.020

STATUTORY AUTHORITY: KRS 257.030

NECESSITY AND FUNCTION: Establishes the required treatment standards for equines quarantined for the purpose of controlling contagious equine metritis (CEM) within the Commonwealth.

Section 1. Definitions. As used in this administrative regulation, unless the context clearly requires otherwise:

(1) "High risk mare" is a mare that is culture positive [~~and/~~]or complement-fixation (CF) positive after being bred to an infected stallion before stallion was removed from service and treated.

(2) "Medium risk mare" is a mare that is CF negative and culture negative but bred to an infected stallion prior to treatment.

(3) "Infected stallion" is a [~~breeding~~] stallion proven or believed to be a carrier of the CEM organism.

Section 2. Sale and Movement of CEM Infected or Exposed Equines. No CEM high risk, medium risk or imported mares or stallions shall be sold or transported unless authorization from the state veterinarian is obtained prior to such sale or movement.

Section 3. High risk mares quarantined under the provisions of KRS 257.030 shall not be released from quarantine until the state veterinarian [~~shall certify~~] the treatment and conditions prescribed in this regulation have been fully met and all requirements fulfilled.

(1) Surgical removal of clitoral sinuses.

(a) Prior to surgery a culture will be taken from the clitoral fossa.

(b) The excised sinuses will be refrigerated and immediately submitted to a laboratory approved by the USDA's National Veterinary Services Laboratory and the Kentucky State Veterinarian for CEM culture. [~~the Livestock Disease Diagnostic Center, Newtown Pike, Lexington, Kentucky.~~]

(2) Postsurgical treatment is [~~:~~] to be started no sooner than seven (7) days after surgery[~~.~~].

(a) Mechanically clean the external genitalia with clean warm water.

(b) Apply a chlorhexidine-containing surgical scrub liberally and using sufficient water to obtain sudsing, cleanse thoroughly paying particular attention to the clitoral fossa.

(c) Wash with clean warm water and dry.

(d) Apply an [~~Furacin~~] ointment containing not less than two-tenths (0.2) percent nitrofurazone or other medication approved by the USDA and the Kentucky State Veterinarian liberally insuring filling the clitoral fossa.

(e) Repeat the treatment daily for five (5) consecutive days [~~(series of five (5) treatments)~~].

(3) Posttreatment culture requirements are [~~:~~] to be started no sooner than seven (7) days after treatment[~~.~~]. Three (3) consecutive sets of negative cultures will be taken from the endometrium of the uterus and clitoral fossa. These cultures taken at not less than seven (7) day intervals. One (1) endometrial culture shall be taken at estrus.

(4) Prebreeding cultures (to be taken in following year). One (1) set of cultures will be taken from the endometrium of the uterus. Three (3) sets of the clitoral fossa taken no less than at seven (7) day intervals.

(5) A breeding permit shall be obtained from the State Veterinarian's office to allow qualifying high risk mares to enter the breeding shed. High risk mares will be prophylactically scrubbed and bred last of any group of mares bred during that session. The covering stallion will be scrubbed and treated after breeding and will remain out-of-service for a minimum of twelve (12) hours. [~~before being covered, (bred last in line) and the stallion scrubbed and treated after breeding.~~] The high risk mare and the next three (3) mares bred to the same stallion will have a CF test taken fifteen (15) to forty (40) days after the mare is bred.

(6) High risk mares that do not conceive on the first heat period shall have an additional set of cultures taken in early estrus and submitted to the laboratory prior to cover for the subsequent heat period. Laboratory results need not be completed prior to the mare being covered.

(7) High risk mares will not be released until they have had one (1) set of negative cultures taken after January 1st of the following year. The endometrial culture for foaling mares must be taken at not less than seven (7) days after foaling.

Section 4. Medium risk mares quarantined under the provisions of KRS 257.030 shall not be released from quarantine until the state veterinarian certifies [~~shall certify~~] the treatment and conditions prescribed in this regulation have been fully met and all requirements fulfilled.

(1) Surgical removal of clitoral sinuses.

(a) Prior to surgery a culture will be taken from the clitoral fossa.

(b) The excised sinuses will be refrigerated and immediately submitted for culture to the Livestock Disease Diagnostic Center, Newtown Pike, Lexington, Kentucky.

(2) Pretreatment culture requirements. Following surgery three (3) cultures from the clitoral fossa will be required. The first not less than seven (7) days following surgery and each culture taken not less than intervals of seven (7) days (the third culture would therefore be taken no sooner than day twenty-one (21) following surgery).

(3) Treatment.

(a) Mechanically clean the external genitalia with clean warm water.

(b) Apply a chlorhexidine-containing surgical scrub liberally and using sufficient water to obtain sudsing, cleanse thoroughly paying particular attention to the clitoral fossa.

(c) Wash with clean warm water and dry.

(d) Apply an [~~Furacin~~] ointment containing not less than two-tenths (0.2) percent nitrofurazone or other medication approved by the USDA and the Kentucky State Veterinarian liberally insuring filling of the clitoral fossa.

(e) Repeat the treatment daily for five (5) consecutive days [~~(series of five (5) treatments)~~].

(4) Posttreatment culture requirements - cultures to be taken no sooner than seven (7) days after treatment and after January 1st of following year.

(a) Foaling mares. Three (3) cultures from the clitoral fossa at not less than seven (7) day intervals will be required. One (1) endometrial culture shall be taken no less than seven (7) days after foaling. The foal will have one (1) culture; if female, from the vaginal vestibule; if male, from the prepuce.

(b) Barren mares which qualified for breeding during current season will also have One (1) endometrial culture taken during early estrus and three (3) clitoral fossa cultures at not less than seven (7) day intervals.

(5) A breeding permit shall be obtained from the State Veterinarian's office to allow qualifying medium risk mares to enter the breeding shed. Medium risk mares will be prophylactically scrubbed and bred last of any group of mares bred during that session. The covering stallion will be scrubbed and treated after breeding and will remain out-of-service for a minimum of twelve (12) hours. [~~before being covered, bred last in line and the stallion scrubbed and treated after breeding.~~] The medium risk mare and the next three (3) mares bred to the same stallion will have a CF test taken fifteen (15) to forty (40) days after the mare is bred.

Section 5. Stallions quarantined under the provisions of KRS 257.030 shall not be released from quarantine until the state veterinarian certifies that [~~shall certify~~] the treatment and conditions prescribed in this regulation have been fully met and all requirements fulfilled.

(1) The following treatment must be carried out with the stallion in full erection and with the operator wearing disposable gloves and using disposable equipment:

(a) Mechanically clean the external genitalia with clean warm water.

(b) Apply a chlorhexidine-containing surgical scrub liberally and using sufficient water to obtain sudsing, cleanse thoroughly paying particular attention to the urethral fossa/sinus and the folds of the sheath.

(c) Wash with clean warm water.

(d) Apply an [~~Furacin~~] ointment containing not less than two-tenths (0.2) percent nitrofurazone or other medication approved by the USDA and the Kentucky State Veterinarian liberally, insuring filling of the urethral fossa/sinus and penetration of the folds of the sheath.

(e) Repeat the treatment daily for five (5) consecutive days [~~(series of five (5) treatments)~~].

(2) The stallion may be returned to service twenty-four (24) hours after the final treatment. The first two (2) mares bred by the stallion must be cultured from the cervix, clitoral fossa and clitoral sinus on days two (2) and four (4) after being covered and each of the first two (2) mares must have a CF test for CEM performed on days fifteen (15) and twenty-five (25) after being covered.

ED LOGSDON, Commissioner

APPROVED BY AGENCY: November 15, 1994

FILED WITH LRC: November 15, 1994 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on Wednesday, December 21, 1994 at 10 a.m. at the Department of Agriculture, 7th Floor Conference Room, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by December 16, 1994, five (5) days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Donna Greenwell Dutton, General Counsel, Department of Agriculture, Capital Plaza Tower, 7th Floor, 500 Mero Street, Frankfort, Kentucky 40601, (502) 564-4696.

REGULATORY IMPACT ANALYSIS

Contact Person: Dr. D. L. Notter, State Veterinarian

(1) Type and number of entities affected: All persons who own mares in Kentucky.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: There will be no increase in reporting and paperwork requirements.

2. Second and subsequent years: There will be no increase in reporting and paperwork requirements.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs: There will be no increase in reporting and paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Existing personnel will be used for enforcement.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: No public comments were received.

(a) Geographical area in which administrative regulation will be implemented: No public comments were received.

(b) Kentucky: No public comments were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: There are no alternative methods.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of

the geographical area in which implemented and on Kentucky: This amendment changes requirements for quarantine feed lots.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes, possibly.

(9) 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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. It is necessary to treat all equine owners the same to control disease in the Commonwealth.

GENERAL GOVERNMENT CABINET
Department of Agriculture
Division of Animal Health
(Proposed Amendment)

302 KAR 20:140. Breeding shed for female equines.

RELATES TO: KRS 257.070

STATUTORY AUTHORITY: KRS 257.030

NECESSITY AND FUNCTION: To establish the necessary requirements to allow female equine over 731 days of age to enter a breeding shed in Kentucky.

Section 1. Definitions. As used in this administrative regulation, unless the context clearly requires otherwise:

(1) "Breeding" means natural or artificial insemination of a mare.

(2) "CF test" means a complement-fixation test of equine serum for the detection of specific antibodies of CEM bacterium.

(3) "Set of cultures" from the mare means a culture from the clitoral sinus (if intact), clitoral fossa, cervix [~~and~~/]or endometrium of the uterus.

(4) "Maiden mare" means a female equine over 731 days of age which has not been covered by a stallion.

Section 2. Maiden mares over 731 days of age at the time of importation coming from any country outside the continental United States, its territories, [~~and~~] possessions or [~~with the exception of~~] Canada will have one (1) negative prebreeding CF test and two (2) sets of negative cultures. One (1) set of cultures must be obtained in early estrus; the [~~second~~] may be taken during a period of seven (7) to fourteen (14) days before or after the culture in [~~is~~] estrus. Imported maiden mares bred in Kentucky will be prophylactically scrubbed and bred last of any group of mares bred during that session. The covering stallion will be scrubbed and treated after breeding and will remain out-of-service for a minimum of twelve (12) hours. The imported maiden and the next three (3) mares bred to the same stallion will have a CF test taken fifteen (15) to forty (40) days after the mare is bred.

Section 3. Mares over 731 days of age imported from any country outside the continental United States, its territories, possessions or Canada that are not listed in the Code of Federal Regulations as being affected with CEM [~~countries not known to be infected with CEM~~] will have one (1) negative prebreeding CF test and two (2) negative sets of cultures. One (1) set of cultures must be obtained in early estrus; the other [~~second~~] may be taken during a period of seven (7) to fourteen (14) days before or after the culture in [~~is~~] estrus. Imported mares, addressed in this section, bred in Kentucky will be prophylactically scrubbed and bred last of any group of mares bred during that session. The covering stallion will be scrubbed and treated after breeding and will remain out-of-service for a minimum of twelve (12) hours. The imported mare and the next three (3) mares bred to the same stallion will have a CF test taken fifteen (15) to forty (40) days after the mare is bred.

Section 4. Mares, other than maidens, over 731 days of age imported from countries listed in the Code of Federal Regulations as being affected [~~known to be infected~~] with CEM are required to be handled in accordance with 302 KAR 20:110. [~~will b prophylactically scrubbed before breeding, bred last in line and the stallion scrubbed and treated after breeding. The imported mare and the next three (3) mares bred to the same stallion will have a CF test taken fifteen (15) to forty (40) days after the mare is bred.~~

~~Section 5. Domestic and Canadian mares not CF tested during the previous breeding season will have the results of one (1) set of cultures before entering the breeding shed.~~

~~Section 6. Maiden domestic and maiden Canadian mares are exempt from CF test and culture requirements.~~]

ED LOGSDON, Commissioner

APPROVED BY AGENCY: November 15, 1994

FILED WITH LRC: November 15, 1994 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on Wednesday, December 21, 1994 at 10 a.m. at the Department of Agriculture, 7th Floor Conference Room, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by December 16, 1994, five (5) days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Donna Greenwell Dutton, General Counsel, Department of Agriculture, Capital Plaza Tower, 7th Floor, 500 Mero Street, Frankfort, Kentucky 40601, (502) 564-4696.

REGULATORY IMPACT ANALYSIS

Contact Person: Dr. D. L. Notter, State Veterinarian

(1) Type and number of entities affected: All equine owners in Kentucky.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: There will be no increase in reporting and paperwork requirements.

2. Second and subsequent years: There will be no increase in reporting and paperwork requirements.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs: There will be no increase in reporting and paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Existing personnel will be used for enforcement.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: No public comments were received.

(a) Geographical area in which administrative regulation will be implemented: No public comments were received.

(b) Kentucky: No public comments were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: There are no alternative methods.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This amendment changes requirements for quarantine feed lots.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes, possibly.

(9) 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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. It is necessary to treat all equine owners the same to control disease in the Commonwealth.

GENERAL GOVERNMENT CABINET
Department of Agriculture
Division of Animal Health
(Proposed Amendment)

302 KAR 20:180. Restrictions equine viral arteritis.

RELATES TO: KRS 257.020, 257.030

STATUTORY AUTHORITY: KRS 257.030

NECESSITY AND FUNCTION: To protect the thoroughbred industry from the spread of Equine Viral Arteritis within the borders of the Commonwealth of Kentucky and to control the disease in the Commonwealth.

Section 1. Definitions. As used in this regulation unless the context clearly requires otherwise:

(1) "EVA" means equine viral arteritis a communicable disease in equids [~~livestock~~];

(2) "Vaccinated" or "vaccination" means equine vaccinated with an approved EVA modified live virus vaccine and the vaccination status kept current in accordance with the manufacturers recommendations;

(3) "Sero positive" horse means the horse has reacted positive to a blood test for EVA;

(4) "Sero negative" horse means the horse has reacted negatively to a blood test for EVA;

(5) "Book or booking" means the contracting of mares to breed to stallions [~~and/~~]or the scheduling of mares to breed to stallions;

(6) "Chief livestock health [~~sanitary~~] official" means the State Veterinarian of the Commonwealth of Kentucky;

(7) "Cover" means the act of breeding a stallion to a mare;

(8) "Shedder or shedding" means equine that have been determined to have EAV present [~~has the EVA organism~~] in the body and [~~that~~] is capable of being transmitted to other equines; [~~animals; and~~]

(9) "Identified or Identification" of equine means identification by breed, color, age, sex, tattoo and markings; and

(10) "EAV" means equine arteritis virus, the organism which causes the disease equine viral arteritis.

Section 2. Sero Positive Stallions. Sero positive stallions shall be handled in the following manner:

(1) All thoroughbred stallions known to be shedding EVA shall not be permitted to breed until the chief livestock health [~~sanitary~~] official determines that the stallion does not pose a threat of transmitting EAV [~~EVA spread~~]. In determining whether a shedding stallion [~~shedder~~] poses a threat of spreading the virus [~~disease spread~~] the chief livestock animal health [~~sanitary~~] official shall consider whether the farm where the shedding stallion [~~shedder~~] is located can comply [~~in all respects~~] with the restrictions for permitting the breeding of shedders found in subsection (1)(b) of this section. When the chief livestock health [~~sanitary~~] official determines that a shedding stallion can meet the requirements [~~breed~~] the following control measures shall apply:

(a) Owners [~~and/~~]or agents of mares booking or seeking to book to known shedding stallions shall be notified in writing by the owner [~~and/~~]or agent of the stallion as to the classification of the stallion as a shedder at the time of booking and copy of written notification sent to the chief livestock animal health [~~sanitary~~] official;

(b) Shedding stallions shall be housed, handled and bred in a facility isolated from nonshedding stallions;

(c) Shedding stallions shall be bred only to mares that have been vaccinated against EVA at least twenty-one (21) days prior to breeding or to mares that are sero positive from prior vaccination or exposure to EAV. The serological testing on said positive mares must have been conducted no sooner than November 1 of the previous calendar year.

(d) All mares bred to shedding stallions shall be classified as either Category One Mares or Category Two Mares for the breeding season and the following shall apply to each category of mares:

1. Category One Mares. Category One Mares shall include mares bred to a shedding stallion for the first time.

a. Category One Mares shall be vaccinated a minimum of twenty-one (21) days prior to first cover by the shedding stallion and shall be isolated a minimum of twenty-one (21) days after first cover.

(i) For purposes of clause a of this subparagraph isolation shall mean physical separation from other equine in a separate isolation area approved by the chief livestock health [~~sanitary~~] official or designated personnel.

(ii) Following the completion of the isolation period the Category One Mares may move without further restriction.

b. Category One Mares that [~~who~~] do not conceive after being bred to shedding stallions and who have completed the twenty- one (21) day isolation period following first cover shall be reclassified as Category Two Mares for the remainder of the breeding season.

2. Category Two Mares. Category Two Mares shall include mares bred to shedding stallions within the previous two (2) years; mares previously classified as Category One Mares who have completed the twenty-one (21) day isolation period set out in clause a of this subparagraph; Category Two Mares may move without restrictions following being covered by [~~cover with~~] shedding stallions.

(e) Mares bred to shedding stallions shall be returned to the farm of origin in a separate van or other mode of transportation. Upon returning to the farm of origin the van or other mode of transportation used to transport said mare shall be immediately cleaned and disinfected;

(f) Mares [~~that do not conceive after being~~] bred to a shedding stallion shall be bred only to shedding stallions during that estrus cycle. These mares may be bred to stallions vaccinated for the current breeding season in subsequent estrus cycles.

(2) It shall be the responsibility of the chief livestock health [~~sanitary~~] official in cooperation with the stallion owner/manager to determine that a stallion is not shedding EAV [~~EVA virus~~] prior to the stallion being permitted to breed other than to test mares;

(a) Sero positive nonshedding stallions shall be required to be monitored as follows:

1. All of the sero negative mares bred to these stallions shall be sero-monitored at [~~fourteen (14) and~~] twenty-eight (28) days following breeding for the first breeding season following the classification of the stallion as a sero positive, nonshedding stallion.

2. The first two (2) sero negative mares shall be sero-monitored at [~~fourteen (14) and~~] twenty-eight (28) days following breeding to sero positive nonshedders during the stallions second season following classification as a sero positive, nonshedding stallion.

3. No mares are required to be sero-monitored following the second season after classification as a [~~during the third season of service for~~] sero positive nonshedding stallions.

(b) The procedure for determining that a stallion is not a shedder [~~during the current breeding season~~] shall be accomplished in the presence of the chief livestock health [~~sanitary~~] official or his designee using a scientifically acceptable procedure prescribed by the state veterinarian and approved for use by the Kentucky State Board of Agriculture. [~~and shall be as follows:~~

~~1. Bleed the stallion and if confirmed as sero positive breed the stallion a minimum of two (2) times a day for two (2) to four (4) days to each of two (2) sero negative test mares. These test mares shall be isolated from all other equine and bleed tested on day fourteen (14) and twenty eight (28) following the last cover.~~

~~2. If neither of the test mares shows symptoms of EVA and if each test mare remains sero negative following the twenty eight (28) day test, the stallion shall be considered a nonshedder and allowed to breed.~~

~~3. If any test mare shows symptoms of the disease and/or if any mare sero converts the stallion shall be considered a shedder and shall be handled in accordance with subsection (1) of this section.~~]

(c) Owners [~~and/~~]or agents of mares booking or seeking to book to sero positive stallions classified under subsection (2) of this section shall be notified in writing by the owner [~~and/~~]or agent of the stallion as to the classification of the stallion at the time of booking and a copy of the written notification sent to the chief livestock health [~~sanitary~~] official;

(3) Sero positive, vaccinated stallions shall have been [~~never associated with the transmission of EVA must have been~~] sero negative prior to vaccination and a statement presented by the owner [~~and/~~]or agent of the stallion and his veterinarian that the stallion had no known contact with EVA infected [~~and/~~]or exposed equine prior to vaccination nor during the twenty-one (21) days post vaccination.

Section 3. Stallions or mares becoming infected during the breeding season shall immediately cease breeding and the chief livestock health [~~sanitary~~] official shall be immediately notified. All owners [~~and/~~]or agents having mares booked or previously bred to stallions becoming infected during the breeding season shall be immediately notified in writing by the owner [~~and/~~]or agent of the stallion and a copy of written notification sent [~~set~~] to the chief livestock health [~~sanitary~~] official. Any [~~The~~] stallion becoming infected during the breeding season shall be classified as a shedder and shall be handled accordingly. The stallion may be subsequently determined by the chief livestock animal health [~~sanitary~~] official to be a nonshedder [~~by test breeding~~] in accordance with Section 2(2)(b) of this regulation.

Section 4. Equine Vaccinated Against EVA. Equine vaccinated for the first time against EVA must have blood drawn for EVA testing and a negative EVA test result prior to vaccination. Vaccinations must be reported to the chief livestock health [~~sanitary~~] official within seven (7) days of the vaccination. Stallions vaccinated shall not be exposed to infected animals nor used for breeding for at least twenty-eight (28) days following vaccination. All equine vaccinated against EVA shall be properly identified. All thoroughbred stallions breeding in Kentucky must be properly vaccinated against EVA.

Section 5. The chief livestock health [~~sanitary~~] official may take such steps in addition to those outlined in this regulation as are reasonably necessary for the prevention and control of EVA in the equine population which shall include but not be limited to the isolation of all thoroughbreds and equine associated with them, thought to present the potential for EVA spread in the Commonwealth of Kentucky.

Section 6. [~~All thoroughbred stallions not receiving boosters, nonvaccinated stallions and teasers shall be blood tested for EVA prior to the 1987 breeding season.~~

~~Section 7.~~] Nurse mares shall be sero negative [~~and/~~]or properly vaccinated in accordance with Section 4 of this administrative regulation [~~and/~~]or isolated on the thoroughbred farm.

Section 7. [~~8.~~] All teasers shall be properly vaccinated against EVA. [~~in accordance with manufacturers recommendations.~~]

Section 8. [~~9.~~] If any test mare after test breeding shows symptoms of the disease [~~and/~~]or if any mare sero converts the positive mare shall be isolated under state supervision from all other equines until released by the chief livestock health official which will be no sooner than twenty-eight (28) days after the onset of clinical signs. [~~for the remainder of the breeding season.~~]

ED LOGSDON, Commissioner

APPROVED BY AGENCY: November 15, 1994

FILED WITH LRC: November 15, 1994 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on Wednesday, December 21, 1994 at 10 a.m. at the Department of Agriculture, 7th Floor Conference Room, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by December 16, 1994, five (5) days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Donna Greenwell Dutton, General Counsel, Department of Agriculture, Capital Plaza Tower, 7th Floor, 500 Mero Street, Frankfort, Kentucky 40601, (502) 564-4696.

REGULATORY IMPACT ANALYSIS

Contact Person: Dr. D. L. Notter, State Veterinarian

(1) Type and number of entities affected: All equine owners in Kentucky.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: There are no additional reporting and paperwork requirements.

2. Second and subsequent years: There are no additional reporting and paperwork requirements.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: There are no additional reporting and paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Existing personnel will be used for enforcement.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: No public comments were received.

(a) Geographical area in which administrative regulation will be implemented: No public comments were received.

(b) Kentucky: No public comments were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: There are no alternative methods.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This amendment changes requirements for quarantine feed lots.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes, possibly.

(9) 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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. It is necessary to treat all equine owners the same to control disease in the Commonwealth.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Proposed Amendment)

401 KAR 57:015. National emission standard for beryllium ~~[emissions]~~.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 61.30 to 61.34, 42 USC 7412

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 61.30 to 61.34, 42 USC 7412

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. The federal regulation incorporated by reference in this administrative regulation provides for the control of beryllium emissions from affected stationary sources. Delegation of implementation and enforcement authority for the federal National Emissions Standard for Hazardous Air Pollutants (NESHAP) regulation from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7412(d).

Section 1. Definitions. As used in 40 CFR 61.30 to 61.34, the following terms shall be defined as provided in this section:

(1) Except as provided in subsection (2) of this section, "administrator" means the Secretary of the Natural Resources and Environmental Protection Cabinet.

(2) As used in 40 CFR 61.32(b), "administrator" means the Administrator of the U.S. EPA.

Section 2. (1) 40 CFR 61.30 to 61.34, (40 CFR 61, Subpart C), National Emission Standard for Beryllium, as published in the Code of Federal Regulations, Title 40, Parts 61 to 80, July 1, 1993, is incorporated by reference.

(2) The material incorporated by reference may be obtained, inspected, or copied at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

(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.

(3) 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.

~~[RELATES TO: KRS 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 regulations for the prevention, abatement, and control of air pollution. This regulation provides for the control of beryllium emissions.~~

~~Section 1. Applicability. The provisions of this regulation are applicable to the following stationary sources:~~

~~(1) Extraction plants, ceramic plants, foundries, incinerators, and propellant plants which process beryllium ore, beryllium, beryllium oxide, beryllium alloys, or beryllium containing waste.~~

~~(2) Machine shops which process beryllium, beryllium oxides, or any alloy when such alloy contains more than five (5) percent beryllium by weight.~~

~~Section 2. Definitions. Terms used in this regulation not defined herein shall have the meaning given to them in 401 KAR 57:005, or not defined therein shall have the meaning given to them in 401 KAR 50:010.~~

~~(1) "Beryllium" means the element beryllium. Where weights or concentrations are specified, such weights or concentrations apply to beryllium only, excluding the weight or concentration of any associated elements.~~

~~(2) "Extraction plant" means a facility chemically processing beryllium ore to beryllium metal alloy, or oxide, or performing any of the intermediate steps in these processes.~~

~~(3) "Beryllium ore" means any naturally occurring material mined or gathered for its beryllium content.~~

~~(4) "Machine shop" means a facility performing cutting, grinding, turning, honing, milling, deburring, lapping, electrochemical machining, etching, or other similar operations.~~

~~(5) "Ceramic plant" means a manufacturing plant producing ceramic items.~~

~~(6) "Foundry" means a facility engaged in the melting or casting of beryllium metal or alloy.~~

~~(7) "Beryllium containing waste" means material contaminated with beryllium and/or beryllium compounds used or generated during any process or operation performed by a source subject to this~~

~~regulation.~~

~~(8) "Incinerator" means any furnace used in the process of burning waste for the primary purpose of reducing the volume of the waste by removing combustible matter.~~

~~(9) "Propellant" means a fuel and oxidizer physically or chemically combined which undergoes combustion to provide rocket propulsion.~~

~~(10) "Beryllium alloy" means any metal to which beryllium has been added in order to increase its beryllium content and which contains more than 0.1 percent beryllium by weight.~~

~~(11) "Propellant plant" means any facility engaged in the mixing, casting or machining of propellants.~~

~~(12) "Classification date" means April 6, 1973.~~

~~Section 3. Emission Standard. (1) Emissions to the atmosphere from stationary sources subject to the provisions of this section shall not exceed ten (10) grams of beryllium over a twenty four (24) hour period, except as provided in subsection (2) of this section.~~

~~(2) Rather than meet the requirements of subsection (1) of this section, an owner or operator may request approval from the cabinet to meet an ambient concentration limit on beryllium in the vicinity of the stationary source of 0.01 micrograms per cubic meter, averaged over a thirty (30) day period. Approval of such requests may be granted by the cabinet provided that:~~

~~(a) At least three (3) years of data are available which in the judgment of the cabinet demonstrates that the future ambient concentrations of beryllium in the vicinity of the stationary source will not exceed 0.01 micrograms per cubic meter, averaged over a thirty (30) day period. Such three (3) year period shall be the three (3) years ending thirty (30) days before the classification date of this regulation.~~

~~(b) The owner or operator requests such approval in writing within thirty (30) days after the classification date of this regulation.~~

~~(c) The owner or operator submits a report to the cabinet within forty five (45) days after the classification date of this regulation which includes the following information:~~

~~1. Description of sampling method including the method and frequency of calibration.~~

~~2. Method of sample analysis.~~

~~3. Averaging technique for determining thirty (30) day average concentrations.~~

~~4. Number, identity, and location (address, coordinates, or distance and heading from plant) of sampling sites.~~

~~5. Ground elevations and height above ground of sampling inlets.~~

~~6. Plant and sampling area plots showing emission points and sampling sites. Topographic features significantly affecting dispersion including plant building heights and locations shall be included.~~

~~7. Information necessary for estimating dispersion including stack height, inside diameter, exit gas temperature, exit velocity or flow rate and beryllium concentrations.~~

~~8. A description of data and procedures (methods or models) used to design the air sampling network (i.e. number and location of sampling sites).~~

~~9. Air sampling data indicating beryllium concentrations in the vicinity of the stationary source for the three (3) year period specified in Section 3(2)(a) of this regulation. This data shall be presented chronologically and include the beryllium concentration and location of each individual sample taken by the network and the corresponding thirty (30) day average beryllium concentrations.~~

~~(d) Within sixty (60) days after receiving such report, the cabinet shall notify the owner or operator in writing whether approval is granted or denied. Prior to denying approval to comply with the provisions of this subsection, the cabinet will consult with representatives of the air contaminant source for which the demonstration report was submitted.~~

~~(3) The burning of beryllium and/or beryllium containing waste, except propellants, is prohibited except in incinerators, emissions from which must comply with the standard specified in this regulation.~~

~~Section 4. Stack Sampling. (1) Each owner or operator required to comply with Section 3(1) of this regulation shall test emissions from his source as set forth by the cabinet and the U. S. EPA as follows:~~

~~(a) Within ninety (90) days of the classification date of this regulation in the case of an existing source.~~

~~(b) Within ninety (90) days of start up in the case of a new source.~~

~~(2) The cabinet shall be notified at least thirty (30) days prior to an emission test so that it may observe the tests.~~

~~(3) Samples shall be taken over such period or periods as are necessary to accurately determine the maximum emissions which will occur in any twenty four (24) hour period. Where emissions depend upon the relative frequency of operation of different types of processes, operating hours, operating capacities, or other factors, the calculation of maximum twenty four (24) hour period emissions shall be based on that combination of factors which are likely to occur during the subject period and which result in the maximum emissions. No changes in the operation shall be made, which would potentially increase emissions above that determined by the most recent source test, until a new emission level has been estimated by calculation and the results reported to the cabinet.~~

~~(4) All samples shall be analyzed and beryllium emissions shall be determined within thirty (30) days after the source test. All determinations shall be reported to the cabinet.~~

~~(5) Records of emission test results and other data needed to determine total emissions shall be retained at the source and made available, for inspection by the cabinet, for a minimum of two (2) years.~~

~~Section 5. Air Sampling. (1) Stationary sources subject to Section 3(2) of this regulation shall locate air sampling sites in accordance with a plan approved by the cabinet. Such sites shall be located in such a manner calculated to detect maximum concentrations of beryllium in the ambient air.~~

~~(2) All monitoring sites shall be operated continuously except for a reasonable time allowance for instrument maintenance and calibration, for changing filters, or for replacement of equipment needing major repair.~~

~~(3) Filters shall be analyzed and concentrations calculated within thirty (30) days after filters are collected. Records of concentrations at all sampling sites and other data needed to determine such concentrations shall be retained at the source and made available, for inspection by the cabinet, for a minimum of two (2) years.~~

~~(4) Concentrations measured at all sampling sites shall be reported to the cabinet every thirty (30) days.~~

~~(5) The cabinet may at any time require changes in, or expansion of, the sampling network.~~]

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: November 14, 1994

FILED WITH LRC: November 15, 1994 at 11 a.m.

PUBLIC HEARING: A public hearing to receive comments on the proposed regulation will be conducted on December 29, 1994, at 10 a.m. (ET) in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, 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. 362. 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 incorporates by reference the federal national emission standard for beryllium, 40 CFR Part 61, Subpart C, as published in the Code of Federal Regulations, Title 40, Parts 61 to 80, July 1, 1993. The federal NESHAP regulation applies to the following sources: extraction plants, ceramic plants, foundries, incinerators, and propellant plants which process beryllium ore, beryllium, beryllium oxide, beryllium alloys, or beryllium-containing waste. It also applies to machine shops which process beryllium, beryllium oxides, or any alloy when such alloy contains more than 5 percent beryllium by weight.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented. There are no costs or savings beyond those which are described in the federal final rulemaking for this source category at Federal Register, 50 FR 46294, November 7, 1985.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented. This administrative regulation does not affect the cost of doing business in geographical areas where affected sources are located.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: There will be no compliance, reporting, or paperwork requirements beyond those required in the federal NESHAP regulation. Sources in Kentucky are subject to the same provisions as required of all other affected sources in the country.

2. Second and subsequent years: There will be no additional compliance, reporting, or paperwork requirements during the second and succeeding years beyond those described for the first year.

(3) 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.

(4) Assessment of anticipated effect on state and local revenues: This administrative regulation will have no effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The division's operating budget will be used to implement and enforce this administrative regulation.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation will have no economic impact in the geographical location of affected sources.

(b) Kentucky: This administrative regulation will have no economic impact in any geographical location in Kentucky.

(7) 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 NESHAP regulation (40 CFR Part 61, Subpart C), and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Affected sources will benefit from this administrative regulation by obtaining permits from the state rather than the federal government. This administrative regulation will have no additional effects on public health and the environment beyond those described in the federal rulemaking.

(b) State whether a detrimental effect on environment and public health would result if not implemented: The division anticipates no detrimental effect on the environment and public health if the administrative regulation is not implemented, since the federal regulation will be implemented and enforced by the U.S. EPA if Kentucky does not seek delegation.

(c) If detrimental effect would result, explain detrimental effect: No detrimental effect is anticipated.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, 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 administrative regulation with conflicting provisions: The administrative regulation is not in conflict.

(10) Any additional information or comments: The cabinet is promulgating this administrative regulation to incorporate by reference the federal NESHAP regulation, 40 CFR Part 61, Subpart C, so that Kentucky can continue to have delegation of authority to enforce the provisions of the federal NESHAP regulation.

(11) TIERING: Is 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 regulation (40 CFR Part 61, Subpart C)

establishes standards, procedures, and requirements for sources subject to 40 CFR Part 61, Subpart C. 42 USC 7412(d) allows the U.S. EPA to delegate authority for implementing and enforcing NESHAP regulations to the states.

2. State compliance standards. The federal regulation contains standards for sources subject to 40 CFR Part 61, Subpart C, and provisions for maintaining those standards. The requirements in the state regulation are identical to the federal regulation which is incorporated by reference.

3. Minimum or uniform standards contained in the federal mandate. The emission standard appears at 40 CFR 61.32. Stack sampling appears at 40 CFR 61.33 and air sampling appears at 40 CFR 61.34.

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
(Proposed Amendment)

401 KAR 57:021. National emission standard for mercury [~~standards~~].

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 61.50 to 61.56, 42 USC 7412

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 61.50 to 61.56, 42 USC 7412

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. The federal regulation incorporated by reference in this administrative regulation provides for the control of mercury emissions from affected stationary sources. Delegation of implementation and enforcement authority for the federal National Emissions Standard for Hazardous Air Pollutants (NESHAP) regulation from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7412(d).

Section 1. Definitions. As used in 40 CFR 61.50 to 61.56, the following terms shall be defined as provided in this section:

(1) Except as provided by subsection (2) of this section, "administrator" means the Secretary of the Natural Resources and Environmental Protection Cabinet.

(2) As used in 40 CFR 61.56, "administrator" means the Administrator of the U.S. EPA.

Section 2. (1) 40 CFR 61.50 to 61.56, (40 CFR 61, Subpart E), National Emission Standard for Mercury, as published in the Code of Federal Regulations, Title 40, Parts 61 to 80, July 1, 1993, is incorporated by reference.

(2) The material incorporated by reference may be obtained, inspected, or copied at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

(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.

(3) 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.

~~[RELATES TO: KRS 224.20-100, 224.20-110, 224.20-120~~
~~STATUTORY AUTHORITY: KRS 224.10-100~~
~~NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the control of mercury emissions from stationary sources which process mercury ore to recover mercury, incinerate or dry wastewater treatment plant sludge, or use mercury chlor-alkali cells to produce chlorine gas and alkali metal hydroxide.~~

~~Section 1. General References. In the federal regulation adopted by reference in this regulation, "Regional Administrator" shall be read as "secretary," "EPA" and "Agency" shall be read as "cabinet," and "this subpart" shall be read as "this regulation."~~

~~Section 2. The federal regulation for mercury contained in 40 CFR 61, Subpart E, as published in the Code of Federal Regulations, Title 40, Parts 53 to 80, July 1, 1985, and as amended by Federal Register 50 FR 46294, November 7, 1985, is hereby adopted and filed herein by reference, except that "61.31" in 40 CFR 61.53 shall be read as "61.13." The methods for determining compliance as required in 40 CFR 61, Subpart E are filed by reference in 401 KAR 50:015.~~

~~Section 3. Summary. The federal regulation adopted herein by reference, 40 CFR 61, Subpart E, as amended, limits emissions of mercury from stationary sources which process mercury ore to recover mercury, incinerate or dry wastewater treatment plant sludge, or use mercury chlor-alkali cells to produce chlorine gas and alkali metal hydroxide, that commenced construction, modification, or reconstruction after October 14, 1975. The standards in the federal regulation represent the best demonstrated technology for the industry.~~

~~Section 4. Availability. (1) Copies of the Code of Federal Regulations (CFR) and 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 incorporated by reference in this regulation shall be available for public review at the following offices of the Division for Air Quality:~~

~~(a) Director's Office, Division for Air Quality, Fort Boone Plaza, 18 Reilly Road, Frankfort, Kentucky 40601, (502) 564-3382;~~

~~(b) Ashland Regional Office, 3700 13th Street, Ashland, Kentucky 41101, (606) 325-8569;~~

~~(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky 42101, (502) 842-8131;~~

~~(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky 41042 (606) 371-0598;~~

~~(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky 41701, (606) 439-2391;~~

~~(f) Owensboro Regional Office, 311 West Second Street, Owensboro, Kentucky 42301, (502) 686-3304; and~~

~~(g) Paducah Regional Office, 1300 Irvin Cobb Drive, Paducah, Kentucky 42001, (502) 444-8295.]~~

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: November 14, 1994

FILED WITH LRC: November 15, 1994 at 11 a.m.

PUBLIC HEARING: A public hearing to receive comments on the proposed regulation will be conducted on December 29, 1994, at 10 a.m. (ET) in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, 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. 362. 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 incorporates by reference the federal national emission standard for mercury, 40 CFR Part 61, Subpart E, as published in the Code of Federal Regulations, Title 40, Parts 61 to 80, July 1, 1993. The federal NESHAP regulation applies to those stationary sources which process mercury ore to recover mercury, use mercury chlor-alkali cells to produce chlorine gas and alkali metal hydroxide, and incinerate or dry wastewater treatment plant sludge.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented. There are no costs or savings beyond those which are described in the federal final rulemaking for this source category at Federal Register, 52 FR 8724, March 19, 1987.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented. This administrative regulation does not affect the cost of doing business in geographical areas where affected sources are located.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: There will be no compliance, reporting, or paperwork requirements beyond those required in the federal NESHAP regulation. Sources in Kentucky are subject to the same provisions as required of all other affected sources in the country.

2. Second and subsequent years: There will be no additional compliance, reporting, or paperwork requirements during the second and succeeding years beyond those described for the first year.

(3) 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.

(4) Assessment of anticipated effect on state and local revenues: This administrative regulation will have no effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The division's operating budget will be used to implement and enforce this administrative regulation.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation will have no economic impact in the geographical location of affected sources.

(b) Kentucky: This administrative regulation will have no economic impact in any geographical location in Kentucky.

(7) 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 NESHAP regulation, (40 CFR Part 61, Subpart E), and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Affected sources will benefit from this administrative regulation by obtaining permits from the state rather than the federal government. This administrative regulation will have no additional effects on public health and the environment beyond those described in the federal rulemaking.

(b) State whether a detrimental effect on environment and public health would result if not implemented: The division anticipates no detrimental effect on the environment and public health if the administrative regulation is not implemented, since the federal regulation will be implemented and enforced by the U.S. EPA if Kentucky does not seek delegation.

(c) If detrimental effect would result, explain detrimental effect: No detrimental effect is anticipated.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, 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 administrative regulation with conflicting provisions: The administrative regulation is not in conflict.

(10) Any additional information or comments: The cabinet is promulgating this administrative regulation to incorporate by reference the federal NESHAP regulation, 40 CFR Part 61, Subpart E, so that Kentucky can continue to have delegation of authority to enforce the provisions of the federal NESHAP regulation.

(11) TIERING: Is 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 regulation (40 CFR Part 61, Subpart E) establishes standards, procedures, and requirements for sources subject to 40 CFR Part 61, Subpart E. 42 USC 7412(d) allows the U.S. EPA to delegate authority for implementing and enforcing NESHAP regulations to the states.

2. State compliance standards. The federal regulation contains standards for sources subject to 40 CFR Part 61, Subpart E, and provisions for maintaining those standards. The requirements in the state regulation are identical to the federal regulation which is incorporated by reference.

3. Minimum or uniform standards contained in the federal mandate. The emission standard appears at 40 CFR 61.52. Stack sampling appears at 40 CFR 61.53 and sludge sampling appears at 40 CFR 61.54.

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
(Proposed Amendment)

401 KAR 57:025. National emission standard for beryllium rocket motor firing. [~~Beryllium rocket motor firing.~~]

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 61.40 to 61.44, 42 USC 7412

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 61.40 to 61.44, 42 USC 7412

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. The federal regulation incorporated by reference in this administrative regulation provides for the control of beryllium emissions at rocket motor test sites. Delegation of implementation and enforcement authority for the federal National Emissions Standard for Hazardous Air Pollutants (NESHAP) regulation from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7412(d).

Section 1. Definitions. As used in 40 CFR 61.40 to 61.44, the term "administrator" means the Secretary of the Natural Resources and Environmental Protection Cabinet.

Section 2. (1) 40 CFR 61.40 to 61.44, (40 CFR 61, Subpart D), National Emission Standard for Beryllium Rocket Motor Firing, as published in the Code of Federal Regulations, Title 40, Parts 61 to 80, July 1, 1993, is incorporated by reference.

(2) The material incorporated by reference may be obtained, inspected, or copied at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

(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.

(3) 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.

~~[RELATES TO: KRS 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 regulations for the prevention, abatement, and control of air pollution. This regulation provides for the control of beryllium emissions at rocket motor test sites.~~

~~Section 1. Applicability. The provisions of this regulation are applicable to rocket motor test sites.~~

~~Section 2. Definitions. Terms used in this regulation not defined herein shall have the meaning given to them in 401 KAR 57:005 or, not defined therein, shall have the meaning given to them in 401 KAR 50:010.~~

~~(1) "Rocket motor test site" means any building, structure, facility, or installation where the static test firing of a beryllium rocket motor and/or the disposal of beryllium propellant is conducted.~~

~~(2) "Beryllium propellant" means any propellant incorporating beryllium.~~

~~(3) "Classification date" means April 6, 1973.~~

~~Section 3. Emission Standard. (1) Emissions to the atmosphere from rocket motor test sites shall not cause time weighted atmospheric concentrations of beryllium to exceed seventy five (75) microgram minutes per cubic meter of air within the limits of ten (10) to sixty (60) minutes, accumulated during any two (2) consecutive weeks, in any area in which an effect adverse to public health could occur.~~

~~(2) If combustion products from the firing of beryllium propellant are collected in a closed tank, emissions from such tank shall not exceed two (2) grams per hour and a maximum of ten (10) grams per day.~~

~~Section 4. Emission Testing; Rocket Firing or Propellant Disposal. (1) Ambient air concentrations shall be measured during and after firing of a rocket motor or propellant disposal and in such a manner that the effect of these emissions can be compared with the standard. Such sampling techniques shall be approved by the cabinet.~~

~~(2) All samples shall be analyzed and results shall be calculated within thirty (30) days after samples are taken and before any subsequent rocket motor firing or propellant disposal at the given site.~~

~~All results shall be reported to the cabinet by a registered letter dispatched before the close of the next business day following determination of such results.~~

~~(3) Records of air sampling test results and other data needed to determine integrated intermittent concentrations shall be retained at the source and made available, for inspection by the cabinet, for a minimum of two (2) years.~~

~~(4) The cabinet shall be notified at least thirty (30) days prior to an air sampling test, so that it may at its option observe the test.~~

~~Section 5. Stack Sampling. (1) Sources subject to Section 3(2) of this regulation shall be continuously sampled, during release of combustion products from the tank, in such a manner that compliance with the standards can be determined.~~

~~(2) All samples shall be analyzed and beryllium emissions shall be determined within thirty (30) days after samples are taken and before any subsequent rocket motor firing or propellant disposal at the given site. All determinations shall be reported to the cabinet by a registered letter dispatched before the close of the next business day following such determinations.~~

~~(3) Records of emission test results and other data needed to determine total emissions shall be retained at the source and made available, for inspection by the cabinet, for a minimum of two (2) years.~~

~~(4) The cabinet shall be notified at least thirty (30) days prior to an emission test, so that it may at its option observe the test.~~]

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: November 14, 1994

FILED WITH LRC: November 15, 1994 at 11 a.m.

PUBLIC HEARING: A public hearing to receive comments on the proposed regulation will be conducted on December 29, 1994, at 10 a.m. (ET) in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, 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. 362. 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 incorporates by reference the federal national emission standard for beryllium rocket motor firing, 40 CFR Part 61, Subpart D, as published in the Code of Federal Regulations, Title 40, Parts 61 to 80, July 1, 1993. The federal NESHAP regulation applies to rocket motor test sites which is any building, structure, facility, or installation where the static test firing of a beryllium rocket motor and/or the disposal of beryllium propellant is conducted.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented. There are no costs or savings beyond those which are described in the federal final rulemaking for this source category at Federal Register, 50 FR 46294, November 7, 1985.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented. This administrative regulation does not affect the cost of doing business in geographical areas where affected sources are located.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: There will be no compliance, reporting, or paperwork requirements beyond those required in the federal NESHAP regulation. Sources in Kentucky are subject to the same provisions as required of all other affected sources in the country.

2. Second and subsequent years: There will be no additional compliance, reporting, or paperwork requirements during the second and succeeding years beyond those described for the first year.

(3) 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.

(4) Assessment of anticipated effect on state and local revenues: This administrative regulation will have no effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The division's operating budget will be used to implement and enforce this administrative regulation.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation will have no economic impact in the geographical location of affected sources.

(b) Kentucky: This administrative regulation will have no economic impact in any geographical location in Kentucky.

(7) 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 NESHAP regulation, (40 CFR Part 61, Subpart D), and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Affected sources will benefit from this administrative regulation by obtaining permits from the state rather than the federal government. This administrative regulation will have no additional effects on public health and the environment beyond those described in the federal rulemaking.

(b) State whether a detrimental effect on environment and public health would result if not implemented: The division anticipates no detrimental effect on the environment and public health if the administrative regulation is not implemented, since the federal regulation will be implemented and enforced by the U.S. EPA if Kentucky does not seek delegation.

(c) If detrimental effect would result, explain detrimental effect: No detrimental effect is anticipated.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, 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 administrative regulation with conflicting provisions: The administrative regulation is not in conflict.

(10) Any additional information or comments: The cabinet is promulgating this administrative regulation to incorporate by reference the federal NESHAP regulation, 40 CFR Part 61, Subpart D, so that Kentucky can continue to have delegation of authority to enforce the provisions of the federal NESHAP regulation.

(11) TIERING: Is 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 regulation (40 CFR Part 61, Subpart D) establishes standards, procedures, and requirements for sources subject to 40 CFR Part 61, Subpart D. 42 USC 7412(d) allows the U.S. EPA to delegate authority for implementing and enforcing NESHAP regulations to the states.

2. State compliance standards. The federal regulation contains standards for sources subject to 40 CFR Part 61, Subpart D, and provisions for maintaining those standards. The requirements in the state regulation are identical to the federal regulation which is incorporated by reference.

3. Minimum or uniform standards contained in the federal mandate. The emission standard appears at 40 CFR 61.42. The standard for emission testing for rocket firing or propellant disposal appears at 40 CFR 61.43 and stack sampling appears at 40 CFR 61.44.

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
(Proposed Amendment)

401 KAR 57:030. National emission standard for vinyl chloride [~~emissions~~].

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 61.60 to 61.71, 42 USC 7412

STATUTORY AUTHORITY: KRS.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 61.60 to 61.71, 42 USC 7412

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. The federal regulation incorporated by reference in this administrative regulation provides for the control of vinyl chloride emissions from affected stationary sources. Delegation of implementation and enforcement authority for the federal National Emissions Standard for Hazardous Air Pollutants (NESHAP) regulation from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7412(d).

Section 1. Definitions. As used in 40 CFR 61.60 to 61.71, the following terms shall be defined as provided in this section:

(1) Except as provided in subsection (2) of this section, "administrator" means the Secretary of the Natural Resources and Environmental Protection Cabinet.

(2) As used in 40 CFR 61.66 and 61.67(g), "administrator" means the Administrator of the U.S. EPA.

Section 2. (1) 40 CFR 61.60 to 61.71, (40 CFR 61, Subpart F), National Emission Standard for Vinyl Chloride, as published in the Code of Federal Regulations, Title 40, Parts 61 to 80, July 1, 1993, is incorporated by reference.

(2) The material incorporated by reference may be obtained, inspected, or copied at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

(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.

(3) 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.

~~[RELATES TO: KRS 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 regulations for the prevention, abatement, and control of air pollution. This regulation provides for the control of vinyl chloride emissions.~~

~~Section 1. Applicability. (1) This regulation applies to plants which produce:~~

(a) Ethylene dichloride by reaction of oxygen and hydrogen chloride with ethylene;

(b) Vinyl chloride by any process; and/or

(c) One (1) or more polymers containing any fraction of polymerized vinyl chloride.

(2) This regulation does not apply to equipment used in research and development if the reactor used to polymerize the vinyl chloride processed in the equipment has a capacity of no more than 0.19 cubic meters (fifty (50) gal).

(3) Other than Sections 2; 5(1)(a), (2), (3), (4); 8; 9; 10; 11; and 12 of this regulation; this regulation does not apply to equipment used in research and development if the reactor used to polymerize the vinyl chloride processed in the equipment has a capacity of greater than 0.19 cubic meter (fifty (50) gal) and no more than 4.07 cubic meters (1,100 gal).

Section 2. Definitions. Terms used in this regulation not defined herein shall have the meaning given to them in 401 KAR 57:005, or not defined therein shall have the meaning given to them in 401 KAR 50:010.

(1) "Ethylene dichloride plant" includes any plant which produces ethylene dichloride by reaction of oxygen and hydrogen chloride with ethylene.

(2) "Vinyl chloride plant" includes any plant which produces vinyl chloride by any process.

(3) "Polyvinyl chloride plant" includes any plant where vinyl chloride alone or in combination with other materials is polymerized.

(4) "Slip gauge" means a gauge which has a probe that moves through the gas/liquid interface in a storage or transfer vessel and indicates the level of vinyl chloride in the vessel by the physical state of the material the gauge discharges.

(5) "Type of resin" means the broad classification of resin referring to the basic manufacturing process for producing that resin, including, but not limited to, suspension, dispersion, latex, bulk, and solution processes.

(6) "Grade of resin" means the subdivision of resin classification which describes it as a unique resin, i.e., the most exact description of a resin with no further subdivision.

(7) "Dispersion resin" means a resin manufactured in such a way as to form fluid dispersions when dispersed in a plasticizer or plasticizer/diluent mixtures.

(8) "Latex resin" means a resin which is produced by a polymerization process which initiates from free radical catalyst sites and is sold undried.

(9) "Bulk resin" means a resin which is produced by a polymerization process in which no water is used.

(10) "In process wastewater" means any water which, during manufacturing or processing, comes into direct contact with vinyl chloride or polyvinyl chloride or results from the production or use of any raw material, intermediate product, finished product, by product, or waste product containing vinyl chloride or polyvinyl chloride but which has not been discharged to a wastewater treatment process or discharged untreated as wastewater.

(11) "Wastewater treatment process" includes any process which modifies characteristics such as BOD, COD, TSS, and pH, usually for the purpose of meeting effluent guidelines and standards; it does not include any process the purpose of which is to remove vinyl chloride from water to meet requirements of this regulation.

(12) "In vinyl chloride service" means that a piece of equipment contains or contacts either a liquid that is at least ten (10) percent by weight vinyl chloride or a gas that is at least ten (10) percent by volume vinyl chloride.

(13) "Standard operating procedure" means a formal written procedure officially adopted by the plant owner or operator and available on a routine basis to those persons responsible for carrying out the procedure.

(14) "Run" means the net period of time during which an emission sample is collected.

(15) "Ethylene dichloride purification" includes any part of the process of ethylene dichloride formation and in which finished ethylene dichloride is produced.

(16) "Vinyl chloride purification" includes any part of the process of vinyl chloride production which follows vinyl chloride formation and in which finished vinyl chloride is produced.

(17) "Reactor" includes any vessel in which vinyl chloride is partially or totally polymerized into polyvinyl chloride.

(18) "Reactor opening loss" means the emissions of vinyl chloride occurring when a reactor is vented to the atmosphere for any purpose other than an emergency relief discharge as defined in Section 6(1) of this regulation.

(19) "Stripper" includes any vessel in which residual vinyl chloride is removed from polyvinyl chloride resin, except bulk resin, in the slurry form by the use of heat and/or vacuum. In the case of bulk resin, "stripper" includes any vessel which is used to remove residual vinyl chloride from polyvinyl chloride resin immediately following the polymerization step in the plant process flow.

(20) "Classification date" means October 21, 1976.

(21) "Standard temperature" means a temperature of twenty (20) oC (sixty nine (69) oF).

(22) "Standard pressure" means a pressure of 760 mm of Hg (29.92 in. of Hg).

Section 3. Emission Standard for Ethylene Dichloride Plants. An owner or operator of an ethylene dichloride plant shall comply with the requirements of this section and Section 6 of this regulation.

(1) Ethylene dichloride purification. The concentration of vinyl chloride in all exhaust gases discharged to the atmosphere from any equipment used in ethylene dichloride purification is not to exceed ten (10) ppm, except as provided in Section 6(1) of this regulation. This requirement does not apply to equipment that has been opened, is out of operation, and met the requirement in Section 6(2)(f)1 of this regulation before being opened.

(2) Oxychlorination reactor. Except as provided in Section 6(1) of this regulation, emissions of vinyl chloride to the atmosphere from each oxychlorination reactor are not to exceed two tenths (0.2) g/kg (0.0002 lb/lb) of the 100 percent ethylene dichloride product from the oxychlorination process.

Section 4. Emission Standard for Vinyl Chloride Plants. An owner or operator of a vinyl chloride plant shall comply with the requirements of this section and Section 6 of this regulation. Vinyl chloride formation and purification: the concentration of vinyl chloride in all exhaust gases discharged to the atmosphere from any equipment used in vinyl chloride formation and/or purification is not to exceed ten (10) ppm, except as provided in Section 6(1) of this regulation. This requirement does not apply to equipment that has been opened, is out of operation, and met the requirement in Section 6(2)(b)1 of this regulation before being opened.

Section 5. Emission Standard for Polyvinyl Chloride Plants. An owner or operator of a polyvinyl chloride plant shall comply with the requirements of this section and Section 6 of this regulation.

(1) Reactor. The following requirements apply to reactors:

(a) The concentration of vinyl chloride in all exhaust gases discharged to the atmosphere from each reactor is not to exceed ten (10) ppm, except as provided in paragraph (b) of this subsection and Section 6(1) of this regulation.

(b) The reactor opening loss from each reactor is not to exceed 0.02 g vinyl chloride/kg (0.00002 lb vinyl chloride/lb) of the polyvinyl chloride product, with the product determined on a dry solids basis. This requirement applies to any vessel which is used as a reactor or as both a reactor and a stripper. In the bulk process, the product means the gross product of prepolymerization and postpolymerization.

(c) Manual vent valve discharge: Except for an emergency

manual vent valve discharge, there is to be no discharge to the atmosphere from any manual vent valve on a polyvinyl chloride reactor in vinyl chloride service. An emergency manual vent valve discharge means a discharge to the atmosphere which could not have been avoided by taking measures to prevent the discharge. Within ten (10) days of any discharge to the atmosphere from any manual vent valve, the owner or operator of the source from which the discharge occurs shall submit to the cabinet a report in writing containing information on the source, nature and cause of the discharge, the date and time of the discharge, the approximate total vinyl chloride loss during the discharge, the method used for determining the vinyl chloride loss, the action that was taken to prevent the discharge, and measures adopted to prevent future discharges.

(2) Stripper. The concentration of vinyl chloride in all exhaust gases discharged to the atmosphere from each stripper is not to exceed ten (10) ppm, except as provided in Section 6(1) of this regulation. This requirement does not apply to equipment that has been opened, is out of operation, and met the requirement in Section 6(2)(b)1 of this regulation before being opened.

(3) Mixing, weighing, and holding containers. The concentration of vinyl chloride in all exhaust gases discharged to the atmosphere from each mixing, weighing, or holding container in vinyl chloride service which precedes the stripper (or the reactor if the plant has no stripper) in the plant process flow is not to exceed ten (10) ppm except as provided in Section 6(1) of this regulation. This requirement does not apply to equipment that has been opened, is out of operation, and has met the requirement in Section 6(2)(f)1 of this regulation before being opened.

(4) Monomer recovery system. The concentration of vinyl chloride in all exhaust gases discharged to the atmosphere from each monomer recovery system is not to exceed ten (10) ppm, except as provided in Section 6(1) of this regulation. This requirement does not apply to equipment that has been opened, is out of operation, and has met the requirement in Section 6(2)(f)1 of this regulation before being opened.

(5) Sources following the stripper(s). The following requirements apply to emissions of vinyl chloride to the atmosphere from the combination of all sources following the stripper(s) (or the reactor(s) if the plant has no stripper(s)) in the plant process flow including but not limited to: centrifuges, concentrators, blend tanks, filters, dryers, conveyor air discharges, baggers, storage containers, and in process wastewater.

(a) In polyvinyl chloride plants using stripping technology to control vinyl chloride emissions, the weighted average residual vinyl chloride concentration in all grades of polyvinyl chloride resin processed through the stripping operation on each calendar day, measured immediately after the stripping operation is completed, may not exceed:

1. 2,000 ppm for polyvinyl chloride dispersion resins, excluding latex resins;

2. 400 ppm for all other polyvinyl chloride resins, including latex resins, averaged separately for each type of resin; or

(b) In polyvinyl chloride plants controlling vinyl chloride emissions with technology other than stripping or in addition to stripping, emissions of vinyl chloride to the atmosphere may not exceed:

1. Two (2) g/kg (0.002 lb/lb) product from the stripper(s) (or reactor(s) if the plant has no stripper(s)) for dispersion polyvinyl chloride resins, excluding latex resins, with the product determined on a dry solids basis;

2. 0.4 g/kg (0.0004 lb/lb) product from the stripper(s) (or reactor(s) if the plant has no stripper(s)) for all other polyvinyl chloride resins, including latex resins, with the product determined on a dry solids basis.

Section 6. Emission Standard for Ethylene Dichloride, Vinyl Chloride, and Polyvinyl Chloride Plants. An owner or operator of an ethylene dichloride, vinyl chloride, and/or polyvinyl chloride plant shall comply with the requirements of this section.

(1) Relief valve discharge. Except for an emergency relief discharge, there is to be no discharge to the atmosphere from any relief valve on any equipment in vinyl chloride service. An emergency relief discharge means a discharge which could not have been avoided by taking measures to prevent the discharge. Within ten (10) days of any relief valve discharge, the owner or operator of the source from which the relief valve discharge occurs shall submit to the cabinet a report in writing containing information on the source, nature and cause of the discharge, the date and time of the discharge, the approximate total vinyl chloride loss during the discharge, the method used for determining the vinyl chloride loss, the action that was taken to prevent the discharge, and measures adopted to prevent future discharges.

(2) Fugitive emission sources.

(a) Loading and unloading lines. Vinyl chloride emissions from loading and unloading lines in vinyl chloride service which are opened to the atmosphere after each loading or unloading operation are to be minimized as follows:

1. After each loading or unloading operation and before opening a loading or unloading line to the atmosphere, the quantity of vinyl chloride in all parts of each loading or unloading line that are to be opened to the atmosphere is to be reduced so that the parts combined contain no greater than 0.0038 cubic meters (0.13 cubic feet) of vinyl chloride at standard temperature and pressure; and,

2. Any vinyl chloride removed from a loading or unloading line in accordance with subparagraph 1 of this paragraph is to be ducted through a control system from which the concentration of vinyl chloride in the exhaust gases does not exceed ten (10) ppm, or equivalent as provided in Section 7 of this regulation.

(b) Slip gauges. During loading or unloading operations, the vinyl chloride emissions from each slip gauge in vinyl chloride service are to be minimized by ducting any vinyl chloride discharged from the slip gauge through a control system from which the concentration of vinyl chloride in the exhaust gases does not exceed ten (10) ppm, or equivalent as provided in Section 7 of this regulation.

(c) Leakage from pump, compressor, and agitator seals.

1. Rotating pumps. Vinyl chloride emissions from seals on all rotating pumps in vinyl chloride service are to be minimized by installing sealless pumps, pumps with double mechanical seals, or equivalent as provided in Section 7 of this regulation. If double mechanical seals are used, vinyl chloride emissions from the seals are to be minimized by maintaining the pressure between the two (2) seals so that any leak that occurs is into the pump by ducting any vinyl chloride between the two (2) seals through a control system from which the concentration of vinyl chloride in the exhaust gases does not exceed ten (10) ppm, or equivalent as provided in Section 7 of this regulation.

2. Reciprocating pumps. Vinyl chloride emissions from seals on all reciprocating pumps in vinyl chloride service are to be minimized by installing double outboard seals, or equivalent as provided in Section 7 of this regulation. If double outboard seals are used, vinyl chloride emissions from the seals are to be minimized by maintaining the pressure between the two (2) seals so that any leak that occurs is into the pump by ducting any vinyl chloride between the two (2) seals through a control system from which the concentration of vinyl chloride in the exhaust gases does not exceed ten (10) ppm, or equivalent as provided in Section 7 of this regulation.

3. Rotating compressors. Vinyl chloride emissions from seals on all rotating compressors in vinyl chloride service are to be minimized by installing compressors with double mechanical seals, or equivalent as provided in Section 7 of this regulation. If double mechanical seals are used, vinyl chloride emissions from the seals are to be minimized by maintaining the pressure between the two (2) seals so that any leak that occurs is into the compressor by ducting any vinyl chloride between the two (2) seals through a control system from which the

concentration of vinyl chloride in the exhaust gases does not exceed ten (10) ppm, or equivalent as provided in Section 7 of this regulation.

4. Reciprocating compressors. Vinyl chloride emissions from seals on all reciprocating compressors in vinyl chloride service are to be minimized by installing double outboard seals, or equivalent as provided in Section 7 of this regulation. If double outboard seals are used, vinyl chloride emissions from the seals are to be minimized by maintaining the pressure between the two (2) seals so that any leak that occurs is into the compressor by ducting any vinyl chloride between the two (2) seals through a control system from which the concentration of vinyl chloride in the exhaust gases does not exceed ten (10) ppm, or equivalent as provided in Section 7 of this regulation.

5. Agitators. Vinyl chloride emissions from seals on all agitators in vinyl chloride service are to be minimized by installing agitators with double mechanical seals, or equivalent as provided in Section 7 of this regulation. If double mechanical seals are used, vinyl chloride emissions from the seals are to be minimized by maintaining the pressure between the two (2) seals so that any leak that occurs is into the agitated vessel by ducting any vinyl chloride between the two (2) seals through a control system from which the concentration of vinyl chloride in the exhaust gases does not exceed ten (10) ppm, or equivalent as provided in Section 7 of this regulation.

(d) Leakage from relief valves. Vinyl chloride emissions due to leakage from each relief valve on equipment in vinyl chloride service are to be minimized by installing a rupture disk between the equipment and the relief valve, by connecting the relief valve discharge to a process line or recovery system, or equivalent as provided in Section 7 of this regulation.

(e) Manual venting of gases. Except as provided in Section 5(1)(e) of this regulation, all gases which are manually vented from equipment in vinyl chloride service are to be ducted through a control system from which the concentration of vinyl chloride in the exhaust gases does not exceed ten (10) ppm, or equivalent as provided in Section 7 of this regulation.

(f) Opening of equipment. Vinyl chloride emissions from opening of equipment (including loading or unloading lines that are not opened to the atmosphere after each loading or unloading operation) are to be minimized as follows:

1. Before opening any equipment for any reason, the quantity of vinyl chloride is to be reduced so that the equipment contains no more than two (2.0) percent by volume vinyl chloride or 0.0950 cubic meter (twenty five (25) gallons) of vinyl chloride, whichever is larger, at standard temperature and pressure; and

2. Any vinyl chloride removed from the equipment in accordance with subparagraph 1 of this paragraph is to be ducted through a control system from which the concentration of vinyl chloride in the exhaust gases does not exceed ten (10) ppm, or equivalent as provided in Section 7 of this regulation.

(g) Samples. Unused portions of samples containing at least ten (10) percent by weight vinyl chloride are to be returned to the process, and sampling techniques are to be such that sample containers in vinyl chloride service are purged into a closed process system.

(h) Leak detection and elimination. Vinyl chloride emissions due to leaks from equipment in vinyl chloride service are to minimized by instituting and implementing a formal leak detection and elimination program. The owner or operator shall submit a description of the program to the cabinet for approval. The program is to be submitted within forty five (45) days of the classification date of these regulations, unless a waiver of compliance is granted under 401 KAR 57:005, Section 9. If a waiver of compliance is granted, the program is to be submitted on a date scheduled by the cabinet. Approval of a program will be granted by the cabinet provided:

1. It includes a reliable and accurate vinyl chloride monitoring system for detection of major leaks and identification of the general area of the plant where a leak is located. A vinyl chloride monitoring system means a device which obtains air samples from one (1) or more points on a continuous sequential basis and analyzes the samples with gas chromatography or, if the owner or operator assumes that all hydrocarbons measured are vinyl chloride, with infrared spectrophotometry, flame ion detection, or an equivalent or alternative method.

2. It includes a reliable and accurate portable hydrocarbon detector to be used routinely to find small leaks and to pinpoint the major leaks indicated by the vinyl chloride monitoring system. A portable hydrocarbon detector means a device which measures hydrocarbons with a sensitivity of at least ten (10) ppm and is of such design and size that it can be used to measure emissions from localized points.

3. It provides for an acceptable calibration and maintenance schedule for the vinyl chloride monitoring system and portable hydrocarbon detector. For the vinyl chloride monitoring system, a daily span check is to be conducted with a concentration of vinyl chloride equal to the concentration defined as a leak according to subparagraph 6 of this paragraph. The calibration is to be done with either a calibration gas mixture prepared from the gases specified in Sections 5.2.1 and 5.2.3 of Test Method 106 and in accordance with Section 7.1 of Test Method 106 in Appendix B to 40 CFR 61, filed by reference in 401 KAR 50:015, or a calibration gas cylinder containing the appropriate concentration of vinyl chloride. The gas composition of the calibration gas cylinder standard is to have been certified by the manufacturer. The manufacturer must have recommended a maximum shelf life for each cylinder so that the concentration does not change greater than plus or minus five (5) percent from the certified value. The date of gas cylinder preparation, certified vinyl chloride concentration and recommended maximum shelf life must have been affixed to the cylinder before shipment from the manufacturer to the buyer. If a gas chromatograph is used as the vinyl chloride monitoring system, these gas mixtures may be directly used to prepare a chromatograph calibration curve as described in Section 7.3 of Test Method 106. The requirements in Sections 5.2.3.1 and 5.2.3.2 of Test Method 106 for certification of cylinder standards and for establishment and verification of calibration standards are to be followed.

4. The location and number of points to be monitored and the frequency of monitoring provided for in the program are acceptable when they are compared with the number of pieces of equipment in vinyl chloride service and the size and physical layout of the plant.

5. It contains an acceptable plan of action to be taken when a leak is detected.

6. It contains a definition of leak which is acceptable when compared with the background concentration of vinyl chloride in the areas of the plant to be monitored by the vinyl chloride monitoring system. Measurements of background concentrations of vinyl chloride in the areas of the plant to be monitored by the vinyl chloride monitoring system are to be included with the description of the program. The definition of leak for a given plant may vary among the different areas within the plant and is also to change over time as background concentrations in the plant are reduced.

(i) In process wastewater. Vinyl chloride emissions to the atmosphere from in process wastewater are to be reduced as follows:

1. The concentration of vinyl chloride in each in process wastewater stream containing greater than ten (10) ppm vinyl chloride measured immediately as it leaves a piece of equipment and before being mixed with any other in process wastewater stream is to be reduced to no more than ten (10) ppm by weight before being mixed with any other in process wastewater stream which contains less than ten (10) ppm vinyl chloride; before being exposed to the atmosphere; before being discharged to a wastewater treatment process; or before being discharged untreated as a wastewater. This subparagraph does apply to water which is used to displace vinyl chloride from equipment before it is opened to the atmosphere in accordance with Section 5(1)(b) of this regulation or paragraph (f) of this subsection, but does not apply to water which is used to wash out equipment after the

~~equipment has already been opened to the atmosphere in accordance with Section 5(1)(b) of this regulation or paragraph (f) of this subsection.~~

~~2. Any vinyl chloride removed from the in-process wastewater in accordance with subparagraph 1 of this paragraph is to be ducted through a control system from which the concentration of vinyl chloride in the exhaust gases does not exceed ten (10) ppm, or equivalent as provided in Section 7 of this regulation.~~

~~(3) The requirements in subsection (2)(a), (b), (c), (f), (g) and (h) of this section are to be incorporated into a standard operating procedure, and made available upon request for inspection by the cabinet. The standard operating procedure is to include provisions for measuring the vinyl chloride in equipment greater than or equal to 4.75 cubic meters (1,250 gal) in volume for which an emission limit is prescribed in subsection (2)(f)1 of this section prior to opening the equipment and using Test Method 106, a portable hydrocarbon detector, or an equivalent or alternative method. The method of measurement is to meet the requirements in Section 8(6)(c)1 and 2 of this regulation.~~

~~Section 7. Equivalent Equipment and Procedures. Upon written application from an owner or operator, the cabinet may approve use of equipment or procedures which have been demonstrated to its satisfaction to be equivalent in terms of reducing vinyl chloride emissions to the atmosphere to those prescribed for compliance with a specific section of this regulation. For an existing source, any request for using an equivalent method as the initial measure of control is to be submitted to the cabinet within thirty (30) days of the classification date. For a new source, any request for using an equivalent method is to be submitted to the cabinet with the application for approval of construction or modification required by 401 KAR 50:035.~~

~~Section 8. Emission Test. (1) Unless a waiver of emission testing is obtained under 401 KAR 57:005, Section 11, the owner or operator of a source to which this regulation applies shall test emissions from this source:~~

~~(a) Within ninety (90) days of the classification date in the case of an existing source;~~

~~(b) Within ninety (90) days of start up in the case of a new source.~~

~~(2) The owner or operator shall provide the cabinet at least thirty (30) days prior notice of an emission test to afford the cabinet the opportunity to have an observer present during the test.~~

~~(3) Any emission test is to be conducted while the equipment being tested is operating at the maximum production rate at which the equipment will be operated and under other relevant conditions as may be specified by the cabinet based on representative performance of the source.~~

~~(4) When at all possible, each sample is to be analyzed within twenty four (24) hours but in no case in excess of seventy two (72) hours of sample collection. Vinyl chloride emissions are to be determined within thirty (30) days after the emission test. The owner or operator shall report the determinations to the cabinet by a registered letter dispatched before the close of the next business day following the determination.~~

~~(5) The owner or operator shall retain at the plant and make available, upon request, for inspection by the cabinet for a minimum of two (2) years, records of emission test results and other data needed to determine emissions.~~

~~(6) Unless otherwise specified, the owner or operator shall use the tests as approved by 401 KAR 57:005, Section 12, for each test as required by this subsection unless an equivalent method or an alternative method has been approved by the cabinet and the U. S. EPA. If the results of the reference and equivalent or alternative methods do not agree, the results obtained by the reference method prevail, and the cabinet may notify the owner or operator that approval of the method previously considered to be equivalent or alternative is withdrawn.~~

~~(a) Test Method 106 is to be used to determine the vinyl chloride emissions from any source for which an emission limit is prescribed in Sections 3(1) or (2); 4, 5(1)(a), (2), (3) or (4) of this regulation; or from any control system to which reactor emissions are required to be ducted in Section 5(1)(b) of this regulation or which fugitive emissions are required to be ducted in Section 6(2)(a)2, (b) and (c), (f)2, and (i)2 of this regulation.~~

~~1. For each run, one (1) sample is to be collected. The sampling site is to be at least two (2) stack or duct diameters downstream and one half (1/2) diameter upstream from any flow disturbance such as a bend, expansion, contraction, or visible flame. For a rectangular cross section an equivalent diameter is to be determined from the following equation:~~

NOTE: All equations throughout this admininstrative regulation are proposed to be delete.

$$\text{equivalent diameter} = \frac{2\,(\text{length})(\text{width})}{\text{length} + \text{width}}$$

~~The sampling point in the duct is to be at the center of the cross section. The sample is to be extracted at a rate proportional to the gas velocity at the sampling point. The sample is to be taken over a minimum of one (1) hour, and is to contain a minimum volume of fifty (50) liters corrected to standard conditions.~~

~~2. Each emission test is to consist of three (3) runs. For the purpose of determining emissions, the average of results of all runs is to apply. The average is to be computed on a time weighted basis.~~

~~3. For gas streams containing more than ten (10) percent oxygen, the concentration of vinyl chloride as determined by Test Method 106 is to be corrected to ten (10) percent oxygen (dry basis) for determination of emissions by using the equation which is Appendix A to this regulation.~~

~~4. For those emission sources where the emission limit is prescribed in terms of mass rather than concentration, mass emissions in kg/100 kg product are to be determined by using the equation which is Appendix B to this regulation.~~

~~(b) Test Method 107 is to be used to determine the concentration of vinyl chloride in each in process wastewater stream for which an emission limit is prescribed in Section 6(2)(i)1 of this regulation.~~

~~(c) Where a stripping operation is used to attain the emission limit in Section 5(5) of this regulation, emissions are to be determined using Test Method 107 as follows:~~

~~1. The number of strippers and samples and the types and grades of resin to be sampled are to be determined by the cabinet for each individual plant at the time of the test based on the plant's operation.~~

~~2. Each sample is to be taken immediately following the stripping operation.~~

~~3. The corresponding quantity of material processed by each stripper is to be determined on a dry solids basis and by a method submitted to and approved by the cabinet.~~

~~4. At the prior request of the cabinet the owner or operator shall provide duplicates of the samples required in subparagraph 1 of this paragraph.~~

~~(d) Where control technology other than or in addition to a stripping operation is used to attain the emission limit in Section 5(5) of this regulation, emissions are to be determined as follows:~~

~~1. Test Method 106 is to be used to determine atmospheric emissions from all of the process equipment simultaneously. The requirements of subsection (6)(a) of this section are to be met.~~

~~2. Test Method 107 is to be used to determine the concentration of vinyl chloride in each in process wastewater stream subject to the emission limit prescribed in Section 5(5) of this regulation. The mass~~

of vinyl chloride in kg/100 kg product in each in-process wastewater stream is to be determined by using the equation which is Appendix C to this regulation.

(c) The reactor opening loss for which an emission limit is prescribed in Section 5(1)(b) of this regulation is to be determined. The number of reactors for which the determination is to be made is to be specified by the cabinet for each individual plant at the time of the determination based on the plant's operation. For a reactor that is also used as a stripper, the determination may be made immediately following the stripping operation. Except as provided in subparagraph 2 of this paragraph the reactor opening loss is to be determined using the equation which is Appendix D to this regulation.

1. If Method 106 is used to determine the concentration of vinyl chloride the sample is to be withdrawn at a constant rate with a probe of sufficient length to reach the vessel bottom from the manhole. Samples are to be taken for five (5) minutes within six (6) inches of the vessel bottom, five (5) minutes near the vessel center, and five (5) minutes near the vessel top.

2. If the portable hydrocarbon detector is used to determine the concentration of vinyl chloride (Cb), a probe of sufficient length to reach the vessel bottom from the manhole is to be used to make measurements. One (1) measurement will be made within six (6) inches of the vessel bottom, one (1) near the vessel center, and one (1) near the vessel top. Measurements are to be made at each location until the reading is stabilized. All hydrocarbons measured are to be assumed to be vinyl chloride.

3. The production rate of polyvinyl chloride (Z) is to be determined by a method submitted to and approved by the cabinet.

Section 9. Emission Monitoring. (1) A vinyl chloride monitoring system is to be used to monitor on a continuous basis the emissions from the sources for which emission limits are prescribed in Sections 3(1) and (2); 4; 5(1)(a), (2), (3) and (4) of this regulation, and for any control system to which reactor emissions are required to be ducted in Section 5(1)(b) of this regulation or to which fugitive emissions are required to be ducted in Section 6(2)(a)2, (b) and (e), (f)2 and (i)2 of this regulation.

(2) The vinyl chloride monitoring system(s) used to meet the requirement in subsection (1) of this section is to be a device which obtains air samples from one (1) or more points on a continuous sequential basis and analyses the samples with gas chromatography or, if the owner or operator assumes that all hydrocarbons measured are vinyl chloride, the infrared spectrophotometry, flame ion detection, or an equivalent or alternative method. The vinyl chloride monitoring system used to meet the requirements in Section 6(2)(h)1 of this regulation may be used to meet the requirements of this section.

(3) A daily span check is to be conducted for each vinyl chloride monitoring system used. For all of the emission sources listed in subsection (1) of this section, except the one (1) for which an emissions limit is prescribed in Section 3(2) of this regulation, the daily span check is to be conducted with a concentration of vinyl chloride equal to ten (10) ppm. For the emission source for which an emission limit is prescribed in Section 3(2) of this regulation the daily span check is to be conducted with a concentration of vinyl chloride which is determined to be equivalent to the emission limit for that source based on the emission test required by Section 8 of this regulation. The calibration is to be done with either:

(a) A calibration gas mixture prepared from the gases specified in Sections 5.2.1 and 5.2.3 of Test Method 106 and in accordance with Section 7.1 of Test Method 106; or

(b) A calibration gas cylinder containing the appropriate concentration of vinyl chloride. The gas composition of the calibration gas cylinder standard is to have been certified by the manufacturer. The manufacturer must have recommended a maximum shelf life for each cylinder so that the concentration does not change greater than plus or minus five (5) percent from the certified value. The date of gas cylinder preparation, certified vinyl chloride preparation, certified vinyl chloride concentration and recommended maximum shelf life must have been affixed to the cylinder before shipment from the manufacturer to the buyer. If a gas chromatograph is used as the vinyl chloride monitoring system, these gas mixtures may be directly used to prepare a chromatograph calibration curve as described in Section 7.3 of Test Method 106. The requirements in Sections 5.2.3.1 and 5.2.3.2 of Test Method 106 for certification of cylinder standards and for establishment and verification of calibration standards are to be followed.

Section 10. Initial Report. (1) An owner or operator of any source to which this regulation applies shall submit a statement in writing notifying the cabinet that the equipment and procedural specifications in Section 6(2)(a), (b), (c), (d), (e), (f), (g) and (h) of this regulation are being implemented.

(2) In the case of an existing source, the statement is to be submitted within ninety (90) days of the classification date, unless a waiver of compliance is granted under 401 KAR 57:005, Section 9, along with the information required under 401 KAR 57:005, Section 8. If a waiver of compliance is granted, the statement is to be submitted on a date scheduled by the cabinet. In the case of a new source, the statement is to be submitted within ninety (90) days of the initial start-up date.

(3) The statement is to contain the following information:

(a) A list of the equipment installed for compliance.

(b) A description of the physical and functional characteristics of each piece of equipment.

(c) A description of the methods which have been incorporated into the standard operating procedures for measuring or calculating the emissions for which emission limits are prescribed in Section 6(2)(a)1 and (f)1 of this regulation.

(d) A statement that each piece of equipment is installed and that each piece of equipment and each procedure is being used.

Section 11. Semiannual Report. (1) The owner or operator of any source to which this regulation applies shall submit to the cabinet on September 15 and March 15 of each year a report in writing containing the information required by this section. The first semiannual report is to be submitted following the first full six (6) months reporting period after the initial report is submitted.

(2) In the case of an existing source, the first report is to be submitted within 180 days of the classification date, unless a waiver of compliance is granted under 401 KAR 57:005, Section 9. If a waiver of compliance is granted, the first report is to be submitted on a date scheduled by the cabinet. In the case of a new source, the first report is to be submitted within 180 days of the initial start up date.

(3) Unless otherwise specified, the owner or operator shall use the test methods approved by 401 KAR 57:005, Section 12, to conduct emission tests as required by subsections (5) and (6) of this section, unless an equivalent or alternative method has been approved by the cabinet and the U. S. EPA. If the results of the reference and equivalent or alternative methods do not agree, the results obtained by the reference method prevail, and the cabinet may notify the owner or operator that approval of the method previously considered to be equivalent or alternative is withdrawn.

(4) The owner or operator shall include in the report a record of any emissions which averaged over any hour period (commencing on the hour) are in excess of the emission limits prescribed in Sections 3(1) or (2); 4; or 5(1)(a), (2), (3) or (4) of this regulation, or for any control system to which reactor emissions are required to be ducted in Section 5(1)(b) of this regulation or to which fugitive emissions are required to be ducted in Section 6(2)(a)2, (b) and (e), (f)2, and (i)2 of this regulation. The emissions are to be measured in accordance with Section 9 of this regulation.

(5) In polyvinyl chloride plants for which a stripping operation is used to attain the emission level prescribed in Section 5(5) of this regulation, the owner or operator shall include in the report a record

of the vinyl chloride content in the polyvinyl chloride resin. Test Method 107 is to be used to determine vinyl chloride content as follows:

(a) If batch stripping is used, one (1) representative sample of polyvinyl chloride resin is to be taken from each batch of each grade of resin immediately following the completion of the stripping operation and identified by the resin type and grade and the date and time the batch is completed. The corresponding quantity of material processed in each stripper batch is to be recorded and identified by resin type and grade and the date and time the batch is completed.

(b) If continuous stripping is used, one (1) representative sample of polyvinyl chloride resin is to be taken for each grade of resin processed or at intervals of eight (8) hours for each grade of resin which is being processed, whichever is more frequent. The sample is to be taken as the resin flows out of the stripper and identified by the resin type and grade and the date and time the sample was taken. The corresponding quantity of material processed by each stripper over the time period represented by the sample during the eight (8) hour period, is to be recorded and identified by resin type and grade and the date and time it represents.

(c) The quantity of material processed by the stripper is to be determined on a dry solids basis and by a method submitted to and approved by the cabinet.

(d) At the prior request of the cabinet, the owner or operator shall provide duplicates of the samples required in paragraphs (a) and (b) of this subsection.

(e) The report to the cabinet by the owner or operator is to include the vinyl chloride content found in each sample required in paragraphs (a) and (b) of this subsection, averaged separately for each type of resin, over each calendar day and weighted according to the quantity of each grade of resin processed by the stripper(s) that calendar day, according to the equation which is Appendix E to this regulation.

(f) The owner or operator shall retain at the source and make available for inspection by the cabinet for a minimum of two (2) years, records of all data needed to furnish the information required in paragraph (e) of this subsection. The records are to contain the following information:

1. The vinyl chloride content found in all the samples required in paragraphs (a) and (b) of this subsection, identified by the resin type and grade and the time and date of the sample; and

2. The corresponding quantity of polyvinyl chloride resin processed by the stripper(s), identified by the resin type and grade and the time and date it represents.

(g) The owner or operator shall include in the report a record of the emissions from each reactor opening for which an emission limit is prescribed in Section 5(1)(b) of this regulation. Emissions are to be determined in accordance with Section 8(6)(c) of this regulation, except that emissions for each reactor are to be determined. For a reactor that is also used as a stripper, the determination may be made immediately following the stripping operation.

Section 12. Recordkeeping. The owner or operator of any source to which this regulation applies shall retain the following information at the source and make it available for inspection by the cabinet for a minimum of two (2) years:

(1) A record of the leaks detected by the vinyl chloride monitoring system, as required by Section 6(2)(h) of this regulation, including the concentrations of vinyl chloride as measured, analyzed, and recorded by the vinyl chloride detector, the location of each measurement and the date and approximate time of each measurement.

(2) A record of the leaks detected during the routine monitoring with the portable hydrocarbon detector and the action taken to repair the leaks, as required by Section 6(2)(h) of this regulation, including a brief statement explaining the location and cause of each leak detected with the portable hydrocarbon detector, the date and time of the leak and any action taken to eliminate that leak.

(3) A record of emissions measured in accordance with Section 9 of this regulation.

(4) A daily operating record for each polyvinyl chloride reactor, including pressures and temperatures.

APPENDIX A TO 401 KAR 57:030
DETERMINATION OF OXYGEN CORRECTED
VINYL CHLORIDE CONCENTRATIONS

$$C_b(\text{corrected}) = C_b \frac{10.9}{20.9 - \text{percent } O_2}$$

Where:

$C_{b(corrected)}$ = The concentration of vinyl chloride in the exhaust gases, corrected to 10 percent oxygen.

C_b = The concentration of vinyl chloride as measured by Test Method 106.

20.9 = Percent oxygen in the ambient air at standard conditions.

10.9 = Percent oxygen in the ambient air at standard conditions, minus the 10 percent oxygen to which the correction is being made.

Percent O_2 = Percent oxygen in the exhaust gas as measured by Reference Method 3 in Appendix A of 40 CFR 60.

APPENDIX B TO 401 KAR 57:030
CONVERSION OF VINYL CHLORIDE
CONCENTRATION TO VINYL CHLORIDE MASS

$$C_{BX} = \frac{(C_b\ (2.60)\ Q\ 10^{-6})\ (100)}{Z}$$

Where:

C_{BX} = kg vinyl chloride/100 kg product.

C_b = The concentration of vinyl chloride as measured by Test Method 106.

2.60 = Density of vinyl chloride at one atmosphere and 20°C in kg/m^3.

Q = Volumetric flow rate in m^3/hr as determined by Reference Method 2 of Appendix A to 40 CFR 60.

10^{-6} = Conversion factor for ppm.

Z = Production rate (kg/hr).

APPENDIX C TO 401 KAR 57:030
DETERMINATION OF VINYL CHLORIDE MASS
IN A WASTEWATER STREAM

$$C_{BX} = \frac{(C\text{-}d\ R\ 10^{-6})\ (100)}{Z}$$

Where:

C_{BX} = kg vinyl chloride/100 kg product.

C_d = The concentration of vinyl chloride as measured by Test Method 107.

R = Water flow rate in lb/hour, determined in accordance with a method which has been submitted to and approved by the cabinet.

10^{-6} = Conversion factor for ppm.

Z = Production rate (kg/hr) determined in accordance with a method which has been submitted to and approved by the cabinet.

APPENDIX D TO 401 KAR 57:030
DETERMINATION OF VINYL CHLORIDE
REACTOR OPENING LOSS

$$C = \frac{W\ (2.60)\ (10^{-6})\ (C_b)}{YZ}$$

Where:

C = kg vinyl chloride emissions/kg product.

W = Capacity of the reactor in m^3.

2.60 = Density of vinyl chloride at one atmosphere and 20°C in kg/m^3.

~~10^{-6} = Conversion factor for ppm.~~

~~C_6 = ppm by volume vinyl chloride as determined by Test Method 106 or portable hydrocarbon detector which measures hydrocarbons with a sensitivity of at least 10 ppm.~~

~~Y = Number of batches since the reactor was last opened to the atmosphere.~~

~~Z = Average kg of polyvinyl chloride produced per batch in the number of batches since the reactor was last opened to the atmosphere.~~

~~APPENDIX E TO 401 KAR 57:030~~
~~DETERMINATION OF VINYL CHLORIDE CONTENT~~

$$C\text{-}T = \frac{\sum_{G=1}^{n} P_G M_G}{Q_T}$$

~~Where:~~

~~C_T = 24 hour concentration of type T resin in ppm (dry weight basis).~~

~~Q_T = Total production of type T resin over the 24 hour period, in kg.~~

~~P_G = Production of grade G resin in the sample, in kg.~~

~~M_G = Concentration of vinyl chloride in one sample of grade G resin in ppm.~~

~~n = Total number of grades of type T resin produced during the 24 hour period.~~

~~C_T is to be calculated and reported for each type of resin produced in the 24 hour period.~~]

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: November 14, 1994

FILED WITH LRC: November 15, 1994 at 11 a.m.

PUBLIC HEARING: A public hearing to receive comments on the proposed regulation will be conducted on December 29, 1994, at 10 a.m. (ET) in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, 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. 362. 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 incorporates by reference the federal national emission standard for vinyl chloride, 40 CFR Part 61, Subpart F, as published in the Code of Federal Regulations, Title 40, Parts 61 to 80, July 1, 1993. The federal NESHAP regulation applies to plants which produce ethylene dichloride by reaction of oxygen and hydrogen chloride with ethylene, vinyl chloride by any process, and/or one or more polymers containing any fraction of polymerized vinyl chloride. This administrative regulation does not apply to equipment used in research and development if the reactor used to polymerize the vinyl chloride processed in the equipment has a capacity of no more than 0.19 cubic meters (50 gallons). Sections of the federal NESHAP regulation other than 40 CFR 61.61; 61.64(a)(1), (b), (c), and (d); 61.67; 61.68; 61.70; and 61.71 do not apply to equipment used in research and development if the reactor used to polymerize the vinyl chloride processed in the equipment has a capacity of greater than 0.19 cubic meters (50 gallons) and no more than 4.17 cubic meters (1100 gallons).

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented. There are no costs or savings beyond those which are described in the federal final rulemaking for this source category at Federal Register, 57 FR 60999, December 23, 1992.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented. This administrative regulation does not affect the cost of doing business in geographical areas where affected sources are located.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: There will be no compliance, reporting, or paperwork requirements beyond those required in the federal NESHAP regulation. Sources in Kentucky are subject to the same provisions as required of all other affected sources in the country.

2. Second and subsequent years: There will be no additional compliance, reporting, or paperwork requirements during the second and succeeding years beyond those described for the first year.

(3) 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.

(4) Assessment of anticipated effect on state and local revenues: This administrative regulation will have no effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The division's operating budget will be used to implement and enforce this administrative regulation.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation will have no economic impact in the geographical location of affected sources.

(b) Kentucky: This administrative regulation will have no economic impact in any geographical location in Kentucky.

(7) 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 NESHAP regulation, (40 CFR Part 61, Subpart F), and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Affected sources will benefit from this administrative regulation by obtaining permits from the state rather than the federal government.

This administrative regulation will have no additional effects on public health and the environment beyond those described in the federal rulemaking.

(b) State whether a detrimental effect on environment and public health would result if not implemented: The division anticipates no detrimental effect on the environment and public health if the administrative regulation is not implemented, since the federal regulation will be implemented and enforced by the U.S. EPA if Kentucky does not seek delegation.

(c) If detrimental effect would result, explain detrimental effect: No detrimental effect is anticipated.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, 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 administrative regulation with conflicting provisions: The administrative regulation is not in conflict.

(10) Any additional information or comments: The cabinet is promulgating this administrative regulation to incorporate by reference the federal NESHAP regulation, 40 CFR Part 61, Subpart F, so that Kentucky can continue to have delegation of authority to enforce the provisions of the federal NESHAP regulation.

(11) TIERING: Is 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 regulation (40 CFR Part 61, Subpart F) establishes standards, procedures, and requirements for sources subject to 40 CFR Part 61, Subpart F. 42 USC 7412(d) allows the U.S. EPA to delegate authority for implementing and enforcing NESHAP regulations to the states.

2. State compliance standards. The federal regulation contains standards for sources subject to 40 CFR Part 61, Subpart F, and provisions for maintaining those standards. The requirements in the state regulation are identical to the federal regulation which is incorporated by reference.

3. Minimum or uniform standards contained in the federal mandate. The emission standards appear from 40 CFR 61.62 to 61.65. Equivalent equipment and procedures appear at 40 CFR 61.66. Emission tests appear at 40 CFR 61.67 and emission monitoring appears at 40 CFR 61.68.

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
(Proposed Amendment)

401 KAR 57:035. National emission standard for equipment leaks (fugitive emission sources).

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 61.240 to 61.247, 42 USC 7412

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 61.240 to 61.247, 42 USC 7412

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. The federal regulation incorporated by reference in this administrative regulation provides for the control of emissions from equipment leaks of affected stationary sources. Delegation of implementation and enforcement authority for the federal National Emissions Standard for Hazardous Air Pollutants (NESHAP) regulation from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7412(d).

Section 1. Definitions. As used in 40 CFR 61.240 to 61.247, the following terms shall be defined as provided in this section:

(1) Except as provided in subsection (2) of this section, "administrator" means the Secretary of the Natural Resources and Environmental Protection Cabinet.

(2) As used in 40 CFR 61.242-1(c)(2) and 61.244, "administrator" means the Administrator of the U.S. EPA.

Section 2. (1) 40 CFR 61.240 to 61.247, (40 CFR 61, Subpart V), National Emission Standard for Equipment Leaks (Fugitive Emission Source), as published in the Code of Federal Regulations, Title 40, Parts 61 to 80, July 1, 1993, is incorporated by reference.

(2) The material incorporated by reference may be obtained, inspected, or copied at the following offices of the Division for Air Quality, Monday through Friday, 8:00 a.m. to 4:30 p.m.:

(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.

(3) 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.

~~[RELATES TO: KRS 224.20-100, 224.20-110, 224.20-120~~
~~STATUTORY AUTHORITY: KRS 224.10-100~~
~~NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the control of emissions from equipment leaks of volatile hazardous air pollutants.~~

~~Section 1. General References. In the federal regulation adopted by reference in this regulation, "Regional Administrator" shall be read as "secretary," "EPA" and "Agency" shall be read as "cabinet," and "this subpart" shall be read as "this regulation."~~

~~Section 2. The federal regulation for the control of emissions from equipment leaks of volatile hazardous air pollutants contained in 40 CFR 61, Subpart V, made effective by Federal Register 49 FR 23512, June 6, 1984, and as amended by Federal Register 49 FR 38946, October 2, 1984, and 49 FR 43647, October 31, 1984, is hereby adopted and filed herein by reference. The methods for determining compliance as required in 40 CFR 61, Subpart V are filed by reference in 401 KAR 50:015.~~

~~Section 3. Summary. The federal regulation adopted herein by reference, 40 CFR 61, Subpart V, limits emissions of volatile hazardous air pollutants from specified new and existing equipment that operates in volatile hazardous air pollutant service (equipment that contains or contacts a fluid that is at least ten (10) percent by weight a volatile hazardous air pollutant). The types of equipment include: pumps, compressors, pressure relief devices, sampling connection systems, open ended valves or line valves, flanges and other connectors, product accumulator vessels, and control systems as may be required. This regulation provides the work practice, equipment, and other standards for all volatile hazardous air pollutants.~~

~~Section 4. Availability. (1) Copies of the Code of Federal Regulations (CFR) and 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 incorporated by reference in this regulation shall be available for public review at the following offices of the Division for Air Quality:~~

~~(a) Director's Office, Division for Air Quality, Fort Boone Plaza, 18 Reilly Road, Frankfort, Kentucky 40601, (502) 564-3382;~~

~~(b) Ashland Regional Office, 3700 13th Street, Ashland, Kentucky 41101, (606) 325-8569;~~

~~(c) Bowling Green Regional Office, 210 East Tenth Street, Bowling Green, Kentucky 42101, (502) 842-8131;~~

~~(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky 41042, (606) 371-0598;~~

~~(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky 41701, (606) 439-2391;~~

~~(f) Owensboro Regional Office, 311 West Second Street, Owensboro, Kentucky 42301, (502) 686-3304; and~~

~~(g) Paducah Regional Office, 1390 Irvin Cobb Drive, Paducah, Kentucky 42001, (502) 444-8295.]~~

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: November 14, 1994

FILED WITH LRC: November 15, 1994 at 11 a.m.

PUBLIC HEARING: A public hearing to receive comments on the proposed regulation will be conducted on December 29, 1994, at 10 a.m. (ET) in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, 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. 362. 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 incorporates by reference the federal national emission standard for equipment leaks (fugitive emission sources), 40 CFR Part 61, Subpart V, as published in the Code of Federal Regulations, Title 40, Parts 61 to 80, July 1, 1993. The federal NESHAP regulation applies to the following sources that are intended to operate in volatile hazardous air pollutant (VHAP) service: pumps, compressors, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, flanges and other connectors, product accumulator vessels, and control devices or systems required by Subpart V. The provisions of this administrative regulation apply to the sources listed above after the promulgation date of a specific subpart in 40 CFR Part 61. A source that is subject to this administrative regulation and also subject to the provisions in 40 CFR Part 60, will be required to comply with this administrative regulation only.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented. There are no costs or savings beyond those which are described in the federal final rulemaking for this source category at Federal Register, 55 FR 28349, July 10, 1990.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented. This administrative regulation does not affect the cost of doing business in geographical areas where affected sources are located.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: There will be no compliance, reporting, or paperwork requirements beyond those required in the federal NESHAP regulation. Sources in Kentucky are subject to the same provisions as required of all other affected sources in the country.

2. Second and subsequent years: There will be no additional compliance, reporting, or paperwork requirements during the second and succeeding years beyond those described for the first year.

(3) 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.

(4) Assessment of anticipated effect on state and local revenues:

This administrative regulation will have no effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The division's operating budget will be used to implement and enforce this administrative regulation.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation will have no economic impact in the geographical location of affected sources.

(b) Kentucky: This administrative regulation will have no economic impact in any geographical location in Kentucky.

(7) 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 NESHAP regulation, (40 CFR Part 61, Subpart V), and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Affected sources will benefit from this administrative regulation by obtaining permits from the state rather than the federal government. This administrative regulation will have no additional effects on public health and the environment beyond those described in the federal rulemaking.

(b) State whether a detrimental effect on environment and public health would result if not implemented: The division anticipates no detrimental effect on the environment and public health if the administrative regulation is not implemented, since the federal regulation will be implemented and enforced by the U.S. EPA if Kentucky does not seek delegation.

(c) If detrimental effect would result, explain detrimental effect: No detrimental effect is anticipated.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, 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 administrative regulation with conflicting provisions: The administrative regulation is not in conflict.

(10) Any additional information or comments: The cabinet is promulgating this administrative regulation to incorporate by reference the federal NESHAP regulation, 40 CFR Part 61, Subpart V, so that Kentucky can continue to have delegation of authority to enforce the provisions of the federal NESHAP regulation.

(11) TIERING: Is 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 regulation (40 CFR Part 61, Subpart V) establishes standards, procedures, and requirements for sources subject to 40 CFR Part 61, Subpart V. 42 USC 7412(d) allows the U.S. EPA to delegate authority for implementing and enforcing NESHAP regulations to the states.

2. State compliance standards. The federal regulation contains standards for sources subject to 40 CFR Part 61, Subpart V, and provisions for maintaining those standards. The requirements in the state regulation are identical to the federal regulation which is incorporated by reference.

3. Minimum or uniform standards contained in the federal mandate. The emission standards appear from 40 CFR 61.242-1 to 61.244. Test methods and procedures appear at 40 CFR 61.245.

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
(Proposed Amendment)

401 KAR 57:045. National emission standard for inorganic arsenic emissions from glass manufacturing plants.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 61.160 to 61.165, 42 USC 7412

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 61.160 to 61.165, 42 USC 7412

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. The federal regulation incorporated by reference in this administrative regulation provides for the control of inorganic arsenic emissions from affected stationary sources. Delegation of implementation and enforcement authority for the federal National Emissions Standard for Hazardous Air Pollutants (NESHAP) regulation from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7412(d).

Section 1. Definitions. As used in 40 CFR 61.160 to 61.165, the following terms shall be defined as provided in this section:

(1) Except as provided in subsection (2) of this section, "administrator" means the Secretary of the Natural Resources and Environ-

mental Protection Cabinet.

(2) As used in 40 CFR 61.162(c), 61.163(h), and 61.164(a), "administrator" means the Administrator of the U.S. EPA.

Section 2. (1) 40 CFR 61.160 to 61.165, (40 CFR 61, Subpart N), National Emission Standard for Inorganic Arsenic Emissions from Glass Manufacturing Plants, as published in the Code of Federal Regulations, Title 40, Parts 61 to 80, July 1, 1993, is incorporated by reference.

(2) The material incorporated by reference may be obtained, inspected, or copied at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

(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.

(3) 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.

~~[RELATES TO: KRS 224.20-100, 224.20-110, 224.20-120~~
~~STATUTORY AUTHORITY: KRS 224.10-100~~
~~NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the control of inorganic arsenic emissions from glass manufacturing plants.~~

~~Section 1. General References. In the federal regulation adopted by reference in this regulation, "Regional Administrator" shall be read as "secretary," "EPA" and "Agency" shall be read as "cabinet," and "this subpart" shall be read as "this regulation."~~

~~Section 2. The federal regulation for the control of inorganic arsenic emissions from glass manufacturing plants contained in 40 CFR 61, Subpart N, made effective by Federal Register 51 FR 28025, August 4, 1986, and as amended by 51 FR 35355, October 3, 1986, is hereby adopted and filed herein by reference.~~

~~Section 3. Summary. The federal regulation adopted herein by reference, 40 CFR 61, Subpart N, limits emissions of inorganic arsenic from glass manufacturing plants. The affected facility in a glass manufacturing plant is each glass melting furnace which uses commercial arsenic as a raw material. Pot furnaces, however, are exempt from the provisions of this regulation.~~

~~Section 4. Availability. (1) Copies of the Code of Federal Regulations (CFR) and 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 incorporated by reference in this regulation shall be available for public review at the following offices of the Division for Air Quality:~~

~~(a) Director's Office, Division for Air Quality, Frankfort Office Park, 18 Reilly Road, Frankfort, Kentucky 40601, (502) 564-3382;~~

~~(b) Ashland Regional Office, 3700 13th Street, Ashland, Kentucky 41101, (606) 325-8569;~~

~~(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky 42101, (502) 843-5475;~~

~~(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky 41042 (606) 371-0598;~~

~~(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky 41701, (606) 439-2391;~~

~~(f) Owensboro Regional Office, 311 West Second Street, Owensboro, Kentucky 42301, (502) 686-3304; and~~

~~(g) Paducah Regional Office, 1390 Irvin Cobb Drive, Paducah, Kentucky 42001, (502) 444-8295.]~~

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: November 14, 1994

FILED WITH LRC: November 15, 1994 at 11 a.m.

PUBLIC HEARING: A public hearing to receive comments on the proposed regulation will be conducted on December 29, 1994, at 10 a.m. (ET) in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, 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. 362. 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 incorporates by reference the federal national emission standard for inorganic arsenic emissions from glass manufacturing plants, 40 CFR Part 61, Subpart N, as published in the Code of Federal Regulations, Title 40, Parts 61 to 80, July 1, 1993. The federal NESHAP regulation applies to each glass melting furnace that uses commercial arsenic as a raw material. Rebricking is not considered construction or modification for the purposes of 40 CFR 61.05(a). The provisions of this administrative regulation do not apply to pot furnaces.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented. There are no costs or savings beyond those which are described in the federal final rulemaking for this source category at Federal Register, 55 FR 22027, May 31, 1990.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented. This administrative regulation does not affect the cost of doing business in geographical areas where affected sources are located.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: There will be no compliance, reporting, or paperwork requirements beyond those required in the federal NESHAP regulation. Sources in Kentucky are subject to the same provisions as required of all other affected sources in the country.

2. Second and subsequent years: There will be no additional compliance, reporting, or paperwork requirements during the second and succeeding years beyond those described for the first year.

(3) 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.

(4) Assessment of anticipated effect on state and local revenues: This administrative regulation will have no effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The division's operating budget will be used to implement and enforce this administrative regulation.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation will have no economic impact in the geographical location of affected sources.

(b) Kentucky: This administrative regulation will have no economic impact in any geographical location in Kentucky.

(7) 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 NESHAP regulation, (40 CFR Part 61, Subpart N), and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Affected sources will benefit from this administrative regulation by obtaining permits from the state rather than the federal government. This administrative regulation will have no additional effects on public health and the environment beyond those described in the federal rulemaking.

(b) State whether a detrimental effect on environment and public health would result if not implemented: The division anticipates no detrimental effect on the environment and public health if the administrative regulation is not implemented, since the federal regulation will be implemented and enforced by the U.S. EPA if Kentucky does not seek delegation.

(c) If detrimental effect would result, explain detrimental effect: No detrimental effect is anticipated.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, 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 administrative regulation with conflicting provisions: The administrative regulation is not in conflict.

(10) Any additional information or comments: The cabinet is promulgating this administrative regulation to incorporate by reference the federal NESHAP regulation, 40 CFR Part 61, Subpart N, so that Kentucky can continue to have delegation of authority to enforce the provisions of the federal NESHAP regulation.

(11) TIERING: Is 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 regulation (40 CFR Part 61, Subpart N) establishes standards, procedures, and requirements for sources subject to 40 CFR Part 61, Subpart N. 42 USC 7412(d) allows the U.S. EPA to delegate authority for implementing and enforcing NESHAP regulations to the states.

2. State compliance standards. The federal regulation contains standards for sources subject to 40 CFR Part 61, Subpart N, and provisions for maintaining those standards. The requirements in the state regulation are identical to the federal regulation which is incorporated by reference.

3. Minimum or uniform standards contained in the federal mandate. Emission limits appear at 40 CFR 61.162. Emission monitoring requirements appear at 40 CFR 61.163 and test methods and procedures appear at 40 CFR 61.164.

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
(Proposed Amendment)

401 KAR 57:050. National emission standard for inorganic arsenic emissions from primary copper smelters.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 61.170 to 61.177, 42 USC 7412

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 61.170 to 61.177, 42 USC 7412

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. The federal regulation incorporated by reference in this administrative regulation provides for the control of inorganic arsenic emissions from affected stationary sources. Delegation of implementation and enforcement authority for the federal National Emissions Standard for Hazardous Air Pollutants (NESHAP) regulation from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7412(d).

Section 1. Definitions. As used in 40 CFR 61.170 to 61.177, the following terms shall be defined as provided in this section:

(1) Except as provided in subsection (2) of this section, "administrator" means the Secretary of the Natural Resources and Environmental Protection Cabinet.

(2) As used in 40 CFR 61.174(a), "administrator" means the Administrator of the U.S. EPA.

Section 2. (1) 40 CFR 61.170 to 61.177, (40 CFR 61, Subpart O), National Emission Standard for Inorganic Arsenic Emissions from Primary Copper Smelters, as published in the Code of Federal Regulations, Title 40, Parts 61 to 80, July 1, 1993, is incorporated by reference.

(2) The material incorporated by reference may be obtained, inspected, or copied at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

(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.

(3) 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.

~~[RELATES TO: KRS 224.20-100, 224.20-110, 224.20-120~~
~~STATUTORY AUTHORITY: KRS 224.10-100~~
~~NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the control of inorganic arsenic from primary copper smelters.~~

~~Section 1. General References. In the federal regulation adopted by reference in this regulation, "Regional Administrator" shall be read as "secretary," "EPA" and "Agency" shall be read as "cabinet," and "this subpart" shall be read as "this regulation."~~

~~Section 2. The federal regulation for inorganic arsenic emissions from primary copper smelters contained in 40 CFR 61, Subpart O, as made effective by Federal Register 51 FR 28029, August 4, 1986, is hereby adopted and filed herein by reference. The methods for determining compliance as required in 40 CFR 61, Subpart O are filed by reference in 401 KAR 50:015.~~

~~Section 3. Summary. The federal regulation adopted herein by reference, 40 CFR 61, Subpart O, limits emissions of inorganic arsenic from primary copper smelters. The affected facility is each copper converter at any new or existing primary copper smelter. The provisions of this regulation shall not apply to any copper converter at a facility where the total arsenic charging rate for the copper converter department averaged over a one (1) year period is less than seventy-five (75) kg/hr, as determined by the test methods and procedures specified in the federal regulation. The standards in the federal regulation represent the best demonstrated technology for the industry.~~

~~Section 4. Availability. (1) Copies of the Code of Federal Regulations (CFR) and 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 incorporated by reference in this regulation shall be available for public review at the following offices of the Division for Air Quality:~~

~~(a) Director's Office, Division for Air Quality, Fort Boone Plaza, 18 Reilly Road, Frankfort, Kentucky 40601, (502) 564-3382;~~

~~(b) Ashland Regional Office, 3700 13th Street, Ashland, Kentucky 41101, (606) 325-8569;~~

~~(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky 42101, (502) 842-8131;~~

~~(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky 41042, (606) 371-0598;~~

~~(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky 41701, (606) 439-2391;~~

~~(f) Owensboro Regional Office, 311 West Second Street, Owensboro, Kentucky 42301, (502) 686-3304; and~~

~~(g) Paducah Regional Office, 1390 Irvin Cobb Drive, Paducah, Kentucky 42001, (502) 444-8295.]~~

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: November 14, 1994

FILED WITH LRC: November 15, 1994 at 11 a.m.

PUBLIC HEARING: A public hearing to receive comments on the proposed regulation will be conducted on December 29, 1994, at 10 a.m. (ET) in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, 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. 362. 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 incorporates by reference the federal national emission standard for inorganic arsenic emissions from primary copper smelters, 40 CFR Part 61, Subpart O, as published in the Code of Federal Regulations, Title 40, Parts 61 to 80, July 1, 1993. The federal NESHAP regulation applies to each copper convertor at any new or existing primary copper smelter, except as noted in 40 CFR 61.172(a).

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented. There are no costs or savings beyond those which are described in the federal final rulemaking for this source category at Federal Register, 55 FR 22027, May 31, 1990.

(b) Cost of doing business in the geographical area in which the

administrative regulation will be implemented. This administrative regulation does not affect the cost of doing business in geographical areas where affected sources are located.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: There will be no compliance, reporting, or paperwork requirements beyond those required in the federal NESHAP regulation. Sources in Kentucky are subject to the same provisions as required of all other affected sources in the country.

2. Second and subsequent years: There will be no additional compliance, reporting, or paperwork requirements during the second and succeeding years beyond those described for the first year.

(3) 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.

(4) Assessment of anticipated effect on state and local revenues: This administrative regulation will have no effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The division's operating budget will be used to implement and enforce this administrative regulation.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation will have no economic impact in the geographical location of affected sources.

(b) Kentucky: This administrative regulation will have no economic impact in any geographical location in Kentucky.

(7) 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 NESHAP regulation, (40 CFR Part 61, Subpart O), and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Affected sources will benefit from this administrative regulation by obtaining permits from the state rather than the federal government. This administrative regulation will have no additional effects on public health and the environment beyond those described in the federal rulemaking.

(b) State whether a detrimental effect on environment and public health would result if not implemented: The division anticipates no detrimental effect on the environment and public health if the administrative regulation is not implemented, since the federal regulation will be implemented and enforced by the U.S. EPA if Kentucky does not seek delegation.

(c) If detrimental effect would result, explain detrimental effect: No detrimental effect is anticipated.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, 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 administrative regulation with conflicting provisions: The administrative regulation is not in conflict.

(10) Any additional information or comments: The cabinet is promulgating this administrative regulation to incorporate by reference the federal NESHAP regulation, 40 CFR Part 61, Subpart O, so that Kentucky can continue to have delegation of authority to enforce the provisions of the federal NESHAP regulation.

(11) TIERING: Is 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 regulation (40 CFR Part 61, Subpart O) establishes standards, procedures, and requirements for sources subject to 40 CFR Part 61, Subpart O. 42 USC 7412(d) allows the U.S. EPA to delegate authority for implementing and enforcing NESHAP regulations to the states.

2. State compliance standards. The federal regulation contains standards for sources subject to 40 CFR Part 61, Subpart O, and provisions for maintaining those standards. The requirements in the state regulation are identical to the federal regulation which is incorporated by reference.

3. Minimum or uniform standards contained in the federal mandate. The standard for new and existing sources appear at 40 CFR 61.172. Compliance provisions appear at 40 CFR 61.173 and test methods and procedures appear at 40 CFR 61.174.

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
(Proposed Amendment)

401 KAR 57:055. National emission standard for inorganic arsenic emissions from arsenic trioxide and metallic arsenic production facilities.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 61.180 to 61.186, 42 USC 7412
STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 61.180 to 61.186, 42 USC 7412
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. The federal regulation incorporated by reference in this administrative regulation provides for the control of inorganic arsenic emissions from affected stationary sources. Delegation of implementation and enforcement authority for the federal National Emissions Standard for Hazardous Air Pollutants (NESHAP) regulation from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7412(d).

Section 1. Definitions. As used in 40 CFR 61.180 to 61.186, the term "administrator" means the Secretary of the Natural Resources and Environmental Protection Cabinet.

Section 2. (1) 40 CFR 61.180 to 61.186, (40 CFR 61, Subpart P), National Emission Standard for Inorganic Arsenic Emissions from Arsenic Trioxide and Metallic Arsenic Production Facilities, as published in the Code of Federal Regulations, Title 40, Parts 61 to 80, July 1, 1993, is incorporated by reference.
(2) The material incorporated by reference may be obtained, inspected, or copied at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:
(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.
(3) 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.

~~[RELATES TO: KRS 224.20-100, 224.20-110, 224.20-120~~
~~STATUTORY AUTHORITY: KRS 224.10-100~~
~~NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the control of inorganic arsenic from arsenic trioxide and metallic arsenic production facilities.~~

~~Section 1. General References. In the federal regulation adopted by reference in this regulation, "Regional Administrator" shall be read as "secretary," "EPA" and "Agency" shall be read as "cabinet," and "this subpart" shall be read as "this regulation."~~

~~Section 2. The federal regulation for the control of inorganic arsenic emissions from arsenic trioxide and metallic arsenic production facilities contained in 40 CFR 61, Subpart P, made effective by Federal Register 51 FR 28033, August 4, 1986, and as amended by Federal Register 51 FR 35355, October 3, 1986, is hereby adopted and filed herein by reference. The methods for determining compliance as required in 40 CFR 61, Subpart P are filed by reference in 401 KAR 50:015.~~

~~Section 3. Summary. The federal regulation adopted herein by reference, 40 CFR 61, Subpart P, as amended, limits emissions of inorganic arsenic from arsenic trioxide and metallic arsenic production facilities. The provisions of this regulation are applicable to each metallic arsenic production plant and to each arsenic trioxide plant that processes low grade arsenic bearing materials by a roasting condensation process.~~

~~Section 4. Availability. (1) Copies of the Code of Federal Regulations (CFR) and 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 incorporated by reference in this regulation shall be available for public review at the following offices of the Division for Air Quality:~~
~~(a) Director's Office, Division for Air Quality, Fort Boone Plaza, 18 Reilly Road, Frankfort, Kentucky 40601, (502) 564-3382;~~
~~(b) Ashland Regional Office, 3700 13th Street, Ashland, Kentucky 41101, (606) 325-8569;~~
~~(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky 42101, (502) 842-8131;~~
~~(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky 41042, (606) 371-0598;~~
~~(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky 41701, (606) 439-2391;~~
~~(f) Owensboro Regional Office, 311 West Second Street, Owensboro, Kentucky 42301, (502) 686-3304; and~~
~~(g) Paducah Regional Office, 1390 Irvin Cobb Drive, Paducah, Kentucky 42001, (502) 444-8295.]~~

PHILLIP J. SHEPHERD, Secretary
APPROVED BY AGENCY: November 14, 1994
FILED WITH LRC: November 15, 1994 at 11 a.m.
PUBLIC HEARING: A public hearing to receive comments on the proposed regulation will be conducted on December 29, 1994, at 10 a.m. (ET) in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, 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. 362. 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 incorporates by reference the federal national emission standard for inorganic arsenic emissions from arsenic trioxide and metallic arsenic production facilities, 40 CFR Part 61, Subpart P, as

published in the Code of Federal Regulations, Title 40, Parts 61 to 80, July 1, 1993. The federal NESHAP regulation applies to each metallic arsenic production plant and to each arsenic trioxide plant that processes low-grade arsenic bearing materials by a roasting condensation process.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented. There are no costs or savings beyond those which are described in the federal final rulemaking for this source category at Federal Register, 51 FR 35355, October 3, 1986.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented. This administrative regulation does not affect the cost of doing business in geographical areas where affected sources are located.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: There will be no compliance, reporting, or paperwork requirements beyond those required in the federal NESHAP regulation. Sources in Kentucky are subject to the same provisions as required of all other affected sources in the country.

2. Second and subsequent years: There will be no additional compliance, reporting, or paperwork requirements during the second and succeeding years beyond those described for the first year.

(3) 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.

(4) Assessment of anticipated effect on state and local revenues: This administrative regulation will have no effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The division's operating budget will be used to implement and enforce this administrative regulation.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation will have no economic impact in the geographical location of affected sources.

(b) Kentucky: This administrative regulation will have no economic impact in any geographical location in Kentucky.

(7) 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 NESHAP regulation, (40 CFR Part 61, Subpart P), and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Affected sources will benefit from this administrative regulation by obtaining permits from the state rather than the federal government. This administrative regulation will have no additional effects on public health and the environment beyond those described in the federal rulemaking.

(b) State whether a detrimental effect on environment and public health would result if not implemented: The division anticipates no detrimental effect on the environment and public health if the administrative regulation is not implemented, since the federal regulation will be implemented and enforced by the U.S. EPA if Kentucky does not seek delegation.

(c) If detrimental effect would result, explain detrimental effect: No detrimental effect is anticipated.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, 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 administrative regulation with conflicting provisions: The administrative regulation is not in conflict.

(10) Any additional information or comments: The cabinet is promulgating this administrative regulation to incorporate by reference the federal NESHAP regulation, 40 CFR Part 61, Subpart P, so that Kentucky can continue to have delegation of authority to enforce the provisions of the federal NESHAP regulation.

(11) TIERING: Is 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 regulation (40 CFR Part 61, Subpart P) establishes standards, procedures, and requirements for sources subject to 40 CFR Part 61, Subpart P. 42 USC 7412(d) allows the U.S. EPA to delegate authority for implementing and enforcing NESHAP regulations to the states.

2. State compliance standards. The federal regulation contains standards for sources subject to 40 CFR Part 61, Subpart P, and provisions for maintaining those standards. The requirements in the state regulation are identical to the federal regulation which is incorporated by reference.

3. Minimum or uniform standards contained in the federal mandate. The standard for new and existing sources appears at 40 CFR 61.182. Emission monitoring appears at 40 CFR 61.183 and ambient air monitoring for inorganic arsenic appears at 40 CFR 61.184.

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.

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 November 14 [~~October 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 (Amended 11/14/94)
9.6	Contraband
9.7	Storage, Issue and Use of Weapons Including Chemical Agents [~~(Amended 10/12/94)~~]
9.8	Search Policy
9.9	Transportation of Inmates (Amended 11/14/94)
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
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
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 11/14/94)
18.5	Custody and Security Guidelines [~~(Amended 10/12/94)~~]
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 [~~(Amended 10/12/94)~~]
18.12	Referral Procedure for Inmates Adjudicated Guilty But Mentally Ill
18.13	Population Categories
18.15	Protective Custody
18.17	Interestate Agreement on Transfers [~~(Added 10/12/94)~~]
18.18	International Transfer of Inmates [~~(Added 10/12/94)~~]
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 (Amended 11/14/94)
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: November 14, 1994

FILED WITH LRC: November 15, 1994 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for December 29, 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 visitors to all state correctional institutions.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None
2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Policy revisions.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1994-1996 biennium.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: N/A

(9) 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

(10) Any additional information or comments: None

(11) TIERING: Is 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 6:040. 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 November [~~June~~] 14, 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
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 (Deleted 11/14/94)~~
[~~KSP 070000-24~~	~~Food Service, General Sanitation, Safety, and Protection Standards and Requirements (Deleted 11/14/94)~~
~~KSP 070000-25~~	~~Food Service Inspections (Deleted 11/14/94)~~]
KSP 090000-01	Inmate Work Programs/Safety Inspections of Inmate Work Locations
KSP 09-08-01	Searches and Preservation of Evidence (Amended 11/14/94)
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 (Deleted 11/14/94)~~]
KSP 100000-20	Legal Services Program
KSP 100000-21	Photocopies for Nonindigent Inmates with Special Court Deadlines
KSP 11-03-01	Therapeutic Diets (Amended 11/14/94)
KSP 11-06-01	Food Service Inspections (Amended 11/14/94) (Renumbered from 070000-25)
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
KSP 15-10-01	Discharge of Inmates by Shock Probation
KSP 16-01-01	Visiting Program
KSP 16-02-01	Inmate Correspondence (Amended 11/14/94)
KSP 16-03-02	Inmate Telephone Access
KSP 16-04-01	Inmate Packages (Amended 11/14/94)
KSP 17-01-01	Inmate Personal Property
KSP 17-01-04	Property Room, Clothing Storage and Property Inventory Control (Amended 11/14/94) (Renumbered from 100000-14)
KSP 18-15-01	Protective Custody Unit
KSP 19-05-01	Correctional Industries
KSP 20-04-01	Educational Programs
KSP 22-04-01	Arts and Crafts Program (Added 11/14/94)

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: November 14, 1994

FILED WITH LRC: November 15, 1994 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for December 29, 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, Corrections Cabinet, 2nd 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 correctional institution, 800 inmates, and all visitors to state correctional institutions.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None
2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Policy revisions.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1994-1996 biennium.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: N/A

(9) 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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

DEPARTMENT OF CORRECTIONS
(Proposed Amendment)

501 KAR 6:130. Western Kentucky Correctional Complex.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590 and 439.640 authorizes the commissioner to adopt, amend or rescind administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation is in conformity with those provisions.

Section 1. Pursuant to the authority vested in the Department of Corrections the following policies and procedures, revised November 14 [~~July 13~~], 1994 are incorporated by reference and shall be referred to as Western Kentucky Correctional Complex Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Department of Corrections, State Office Building, Frankfort, Kentucky 40601 or may be reviewed at the Office of General Counsel weekdays from 8 a.m. to 4:30 p.m.

WKCC 02-01-01	Inmate Funds
WKCC 02-01-02	Inmate Canteen
WKCC 02-00-03	Invoice and Voucher Processing
WKCC 02-00-04	Monetary Receipts During Nonbusiness Hours
WKCC 02-00-06	Purchasing Procedures
WKCC 02-01-01	Inmate Funds
WKCC 02-02-01	Agency Funds and Accounting Procedures
WKCC 02-08-01	Property Receipt and Inventory Procedures
WKCC 04-01-01	Travel Reimbursement for Official Business in Attendance at Professional Meetings
WKCC 04-02-01	Employee Training and Development
WKCC 04-04-01	Educational Assistance Program
WKCC 05-01-01	Research, Consultants, and Student Interns
WKCC 06-00-01	Offender Records and Information Access
WKCC 06-00-02	Court Orders, Orders of Appearance, Warrants, Detainers, Etc.
WKCC 09-00-01	Drug Abuse and Alcohol Testing
WKCC 10-02-01	Special Management Inmates
WKCC 11-00-02	Food Service Inmate Work Responsibilities, Evaluations, and Health Requirements
WKCC 11-00-03	Food Service Inspections, Sanitation, Purchasing, and Storage of Food
WKCC 11-00-04	Food Service Security
WKCC 11-00-05	Food Service General Guidelines
WKCC 11-03-01	Food Service Meals, Menus, Nutrition and Special Diets
WKCC 12-01-01	Inmate Clothing (Amended 11/14/94)
WKCC 13-00-01	Special Health Programs
WKCC 13-01-01	Use of Pharmaceutical Products (Amended 11/14/94)
WKCC 13-02-01	Health Care Services
WKCC 14-04-01	Legal Services Program
WKCC 14-06-01	Inmate Grievance Procedure
WKCC 15-01-01	Hair and Grooming Standards
[~~WKCC 15-03-01~~	~~Meritorious Good Time (Deleted 11/14/94)~~
~~WKCC 15-05-01~~	~~Restoration of Forfeited Good Time (Deleted 11/14/94)~~]
WKCC 16-01-01	Visiting Policy and Procedures [(~~Amended 7/13/94~~)]
WKCC 16-02-01	Inmate Correspondence
WKCC 16-03-01	Inmate Access to Telephones

WKCC 16-04-01	Inmate Packages
WKCC 17-01-01	Inmate Personal Property
WKCC 17-02-01	Inmate Reception and Orientation
WKCC 18-01-01	Structure, Guidelines, and Functions of the Classification Committee
WKCC 20-01-01	Education Program
WKCC 22-00-01	Inmate Recreation and Leisure Time Activities
WKCC 22-00-02	Inmate Clubs and Organizations
WKCC 23-00-01	Religious Services [~~(Amended 7/13/94)~~]
WKCC 25-02-01	Inmate Release Process
WKCC 25-03-01	Prerelease Programs

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: November 14, 1994

FILED WITH LRC: November 15, 1994 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for December 29, 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, Corrections Cabinet, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack Damron

(1) Type and number of entities affected: 140 employees of the correctional institution, 424 inmates, and all visitors to state correctional institutions.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None
2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Policy revisions.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1994-1996 biennium.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: N/A

(9) 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

(10) Any additional information or comments: None

(11) TIERING: Is 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 Workers' Claims
(Proposed Amendment)

803 KAR 25:091. Workers' compensation hospital fee schedule.

RELATES TO: KRS Chapter 342

STATUTORY AUTHORITY: KRS Chapter 13A, 342.020, 342.035, 342.260

NECESSITY AND FUNCTION: KRS 342.035 requires the Commissioner of the Department of Workers' Claims [~~Workers' Compensation Board~~] to promulgate administrative regulations to adopt a schedule of fees for the purpose of ensuring that all fees, charges and reimbursements under KRS 342.020 are fair, current, and reasonable and limited to charges that are fair, current, and reasonable for similar treatment of injured persons in the same community for like services, where treatment is paid for by general health insurers. [~~of a like standard of living in the same community and where treatment is paid for by the injured person himself.~~] The increased security of payment afforded by the Workers' Compensation Act may be considered in determining what fees are reasonable. KRS 342.020 requires the employer to pay for hospital treatment, including nursing, medical, and surgical supplies and appliances. The function of this administrative regulation is to regulate hospital fees for services and supplies provided to workers' compensation patients pursuant to KRS 342.020.

Section 1. Definitions. (1) "Hospital" means any facility, surgical center, or psychiatric, rehabilitative or other treatment or specialty center which is licensed pursuant to Kentucky Revised Statutes Chapter 216B.

(2) "Hospital-based practitioner [~~physician~~]" means any provider of medical services [~~physician~~] whose [~~fees for~~] services are billed by the hospital, and who is an employee of the hospital.

(3) "Independent practitioner" means any provider of medical services who is not an employee of the hospital in which medical services have been rendered, and who provides services on a contract basis.

(4) "Unbundling" means the practice of submitting separate bills for services to any payor pursuant to this administrative regulation which are billed to payers other than pursuant to this administrative regulation on a global basis.

(5) [~~(4)~~] "Global basis" means the practice of submitting a bill for two (2) or more services as one (1) item only.

(6) [~~(5)~~] "New hospital" means a hospital which has not completed its first fiscal year.

Section 2. Applicability. This administrative regulation shall apply to all workers' compensation patient hospital fees for all hospitals as defined in Section 1(1) of this administrative regulation, for all compensable services and supplies provided on or after the effective date of this administrative regulation.

Section 3. Calculation of Hospital's Base and Adjusted Cost-to-charge Ratio; Reimbursement. (1) A hospital's base cost-to-charge

ratio shall be based on the latest HCFA-2552 which has been supplied to the Cabinet for Human Resources, Department of Medicaid Services, pursuant to 907 KAR 1:376 and 907 KAR 1:013 on file as of November 30 of each calendar year. The calculation for cost shall be the net expenses for allocation as reflected on Worksheet A, Column 7, Line 95, divided by the total patient revenues as reflected on Line 25 of Worksheet G-2 of the HCFA-2552.

(2) The base cost-to-charge ratio shall be further modified to allow for a return to equity by the addition of twelve (12) [~~fifteen (15)~~] percentile.

(3) A hospital's adjusted cost-to-charge ratio shall not exceed eighty-five (85) percentile, including the twelve (12) [~~fifteen (15)~~] percentile addition, except for hospitals that service seventy (70) percentile or more patients covered and reimbursed by Medicaid or Medicare as reflected in the records of the Cabinet for Human Resources, Department of Medicaid Services. The adjusted cost-to-charge ratio for hospitals that service seventy (70) percentile or more patients covered and reimbursed by Medicaid or Medicare shall not exceed ninety-seven (97) [~~100~~] percentile.

(4) The reimbursement to a hospital for services or supplies furnished to an employee which are compensable under KRS 342.020 shall be calculated by multiplying the hospital's total allowable charges by its adjusted cost-to-charge ratio.

Section 4. Appeal of Assigned Ratio. (1) Each hospital subject to the provisions of this administrative regulation shall be notified of its proposed base cost-to-charge ratio by the Commissioner of the Department of Workers' Claims by U.S. mail within thirty (30) days of the date the base cost-to-charge ratio is assigned by the Commissioner of the Department of Workers' Claims. [~~Workers' Compensation Board.~~]

(2) A hospital may request a review of its assigned ratio by filing a written appeal with the Commissioner of the Department of Workers' Claims no later than thirty (30) calendar days after the ratio has been assigned and hospital notified of its proposed cost-to-charge ratio.

Section 5. Revision of Hospital Cost-to-charge Ratio. (1) The Commissioner of the Department of Workers' Claims [~~Kentucky Workers' Compensation Board~~] shall calculate cost-to-charge ratios and notify [~~publish~~] each hospital of its [~~'s~~] adjusted cost-to-charge ratio on or before February 1 of each calendar year. A new hospital shall be assigned a [~~base~~] cost-to-charge ratio of eight (80) [~~eighty-three (83)~~] percentile until it has been in operation for one (1) full fiscal year. A "hospital", as defined in this administrative regulation, that does not file Worksheets A-7 and G-2 of HCFA 2552 shall also be assigned a cost-to-charge ratio of eighty (80) percentile.

(2) Any assigned cost-to-charge ratio shall remain in full force and effect until a new cost-to-charge ratio is assigned by the Commissioner of the Department of Workers' Claims [~~Workers' Compensation Board~~] pursuant to this administrative regulation.

Section 6. Calculation for Hospitals Located Outside the Commonwealth of Kentucky. (1) A hospital located outside the boundaries of the Commonwealth of Kentucky shall [~~will~~] be deemed to have agreed to be subject to the provisions of this administrative regulation if it accepts a patient for treatment who is covered under the Kentucky Workers' Compensation Act.

(2) The base cost-to-charge ratio for an out-of-state hospital shall be calculated in the same manner as for in-state hospitals, using Worksheets A and G-2 of the HCFA 2552. [~~the latest cost-to-charge ratio for Medicaid purposes assigned to the hospital by the state where the hospital is located. An out-of-state hospital shall furnish its most recent cost-to-charge ratio for Medicaid purposes when submitting its bill for services.~~]

Section 7. Reports to be Filed by Hospitals. All bills submitted by a hospital pursuant to this administrative regulation shall be submitted on a uniform billing form as prescribed by the Kentucky Health Policy Board pursuant to KRS Chapter 216. [~~(UB-82) or the successor to this form prescribed by the Commissioner of Insurance, with the Kentucky Workers' Compensation Medical Provider's Certification attached. Unless a bill complies with this section, it shall not be considered a bill or statement for services for the purposes of KRS 342.020 and 342.035.~~]

Section 8. Billing and Audit Procedures. (1) Any hospital providing only the technical component of a procedure shall bill and be paid for the technical component only.

(2) Any independent practitioner [~~hospital-based physician~~] providing only the professional component shall bill for and be paid the professional component only. An independent practitioner [~~A hospital-based physician~~] billing for the professional component shall submit the bill to the insurer on the appropriate billing form prescribed by the Kentucky Health Policy Board pursuant to KRS Chapter 216. [~~HCFA 1500, or successor to this form approved by the Commissioner of Insurance with the Kentucky Workers' Compensation Medical Provider's Certification attached.~~]

(3) All workers' compensation medical payment obligers administering or paying bills subject to this administrative regulation shall be required to audit the bills to ensure compliance with this administrative regulation.

(4) Any records or documents requested by a workers' compensation medical payment obligor shall be supplied by the hospital not later than ten (10) working days from the date the request for records or documents is received, unless good cause is shown for a failure to do so. A hospital shall not charge more than fifty (50) cents per page for reproducing the requested records or documents unless the requested records or documents total less than ten (10) pages, in which case a minimum five (5) dollar fee may be charged.

Section 9. Miscellaneous. (1) A new hospital shall be required to file a letter with the Workers' Compensation Board setting forth the start and end of its fiscal year within ninety (90) days of the date it commences operation.

(2) An independent [~~hospital-based~~] practitioner shall use the [~~HCFA 1500 or UB-82, or successor~~] forms prescribed by the Kentucky Health Policy Board pursuant to KRS Chapter 216 [~~Commissioner of Insurance~~] when billing for professional services and shall be compensated pursuant to the Kentucky Medical Fee Schedule for Physicians adopted pursuant to 803 KAR 25:089 [~~803 KAR 25:090~~].

(3) Any hospital-based practitioners [~~physicians or other provider~~] performing services which are regulated pursuant to 803 KAR 25:089 [~~803 KAR 25:090~~] (Kentucky medical Fee Schedule for Physicians) in a hospital as defined in Section 1 of this administrative regulation shall not bill for services rendered pursuant to 803 KAR 25:089, but shall receive their payment or salary directly from the hospital employing them. [~~803 KAR 25:090 only.~~]

(4) Kentucky law requires the employer (or insurer) to provide all medical care necessary to cure and relieve the effects of the employee's injury. Accordingly, under no circumstances should the employee be billed for medical treatment under KRS 342.020. This shall not prohibit the hospital from billing the employee for items or services not provided for under the Kentucky Workers' Compensation Act.

(5) The practice of "unbundling," as defined in Section 1(3) of this administrative regulation, is hereby prohibited.

[~~Section 10. Kentucky Workers' Compensation Medical Provider's Certification. All bills submitted by a hospital or hospital-based physician pursuant to this administrative regulation shall be accompanied by a "Kentucky Workers' Compensation Medical Provider's Certification."~~]

~~KENTUCKY WORKER'S COMPENSATION~~
~~MEDICAL PROVIDER'S CERTIFICATION~~

~~(1) The undersigned who has submitted the attached statement for services (Form HCFA 1500 or Form UB-82, or successor) does hereby certify that s/he has reasonable grounds to believe that the medical services, supplies, or appliance(s) for which payment is sought were reasonably required as a result of the patient's having suffered a work related injury or occupational disease.~~

~~Medical Provider Date~~

~~(2) This certificate may be executed on behalf of the hospital or hospital based physician by an employee or agent who is also authorized to execute billing forms UB-82 or HCFA 1500 for that provider.~~

~~(3) Patient history, written or oral, and information from the employer, medical payment obligor, prior medical providers, referring providers, or their agents may furnish reasonable grounds for the belief that the medical services, supplies, or appliances were reasonably required for a work related injury or occupational disease.~~]

WALTER W. TURNER, Commissioner

APPROVED BY AGENCY: November 11, 1994

FILED WITH LRC: November 11, 1994 at noon

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 December 21, 1994. Individuals interested in attending this hearing shall notify this agency in writing by December 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: Hospitals treating workers' compensation patients and the insurers or employers making payments to them. The Kentucky Hospital Association has 112 members. This is an amendment to the existing workers' compensation hospital fee schedule administrative regulation which took effect on February 2, 1993.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. This amendment reduces each hospital's return to equity from 15 percent to 12 percent for each hospital having an adjusted cost-to-charge ratio that does not exceed 85 percentile, including the 12 percentile addition. For hospitals that service 70 percentile or more patients covered and reimbursed by Medicaid or Medicare, the reimbursement rate has been reduced from 100 percent to 97 percent. The reimbursement rate for new hospitals and for those not required to file the HCFA 2552 worksheets specified in the regulation has been reduced from 83 percent to 80 percent.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. Medical costs in workers' compensation case involving hospital care will be reduced.

(c) Compliance, reporting and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Remain the same as under the original version of the regulation.

2. Second and subsequent years: Same as first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Some additional costs from printing copies of the amended regulation for distribution to the public. These costs are expected to be less than $1,000.

2. Continuing costs or savings: Minimal after the first year.

3. Additional factors increasing or decreasing costs: Demand for copies of the workers' compensation hospital fee schedule.

(b) Reporting and paperwork requirements: No change from original regulation.

(4) Assessment of anticipated effect on state and local revenues: None; no effect.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The Kentucky Workers' Compensation Funding Commission pursuant to KRS 342.122.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation will be implemented throughout the state of Kentucky, and will affect the reimbursement for some out-of-state hospitals that render care to Kentucky workers' compensation patients. For further discussion of the economic impact, see Section (2) above.

(b) Kentucky: See response to (a) above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: House Bill 928 has directed the commissioner to promulgate a regulation to effect a 25 percent reduction in the total medical costs within the workers' compensation program. This regulation and the revised Kentucky Workers' Compensation Medical Fee schedule for Physicians, along with the new Workers' Compensation Managed Health Care Plans regulation are expected, collectively, to achieve this reduction.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No effect.

(b) State whether a detrimental effect on environmental and public health would result if not implemented: No effect.

(c) If detrimental effect would result, explain detrimental effect: Not applicable.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplication: None

(a) Necessity of proposed regulation if in conflict: No conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Yes, each hospital's base cost-to-charge ratio is calculated separately based upon information supplied by each hospital to the Cabinet of Human Resources pursuant to 907 KAR 1:376 and 907 KAR 1:013.

CABINET FOR HUMAN RESOURCES
Office of Inspector General
(Proposed Amendment)

902 KAR 20:320. Psychiatric residential treatment facility operation and services.

RELATES TO: KRS 216B.010 to 216B.130, 216B.450 to 216B.459, 216B.990

STATUTORY AUTHORITY: KRS 216B.042, 216B.105, 216B.450 to 216B.459

NECESSITY AND FUNCTION: KRS 216B.042, 216B.105 and 216B.450 to 216B.459 mandate that the Kentucky Cabinet for Human Resources regulate health facilities and services. This administrative regulation provides minimum licensure requirements regarding the operation of and services provided in psychiatric residential treatment facilities.

Section 1. Definitions. (1) "Clinical privileges" means authorization by the governing body to provide certain resident care and treatment services in the facility specified by the governing body within well-defined limits, based on the individual's license, education, training, experience, competence, and judgment.

(2) "Direct-care staff" means residential or child-care workers who directly supervise residents.

(3) "Freestanding" means a completely detached and separate building, street access, telephone service, dining, and street address.

(4) "Full-time equivalent (FTE)" for this administrative regulation means one (1) employee working thirty-seven and one-half (37.5) hours per week or a combination of the hours worked by more than one (1) part-time employee totaling thirty-seven and one-half (37.5) hours per week.

(5) "Governing body" means the individual, agency, partnership, or corporation, in which the ultimate responsibility and authority for the conduct of the facility is vested.

(6) "Holding" means forced positioning of a resident by staff without use of mechanical devices.

(7) "Licensure agency" means the Division of Licensing and Regulation in the Office of the Inspector General, Cabinet for Human Resources.

(8) "Mental health associate" is an individual with a minimum of a bachelor's degree in a mental health related field.

(9) "Professional staff" means a psychiatrist; a psychologist with Ph.D. or master's degree and autonomous functioning, or master's degree under the supervision of a Ph.D.; a social worker with master's degree; a registered nurse with [~~bachelor's degree and~~] two (2) years' supervised experience in a mental health setting; a recreation therapist with a master's degree, or bachelor's degree and two (2) years' experience in a residential or mental health setting for children, or adolescents; and other professionals from disciplines related to the treatment of mental illness, such as a certified marriage and family therapist, occupational, or expressive therapist, with a master's degree in that discipline and specialized training or experience in the treatment of mental illness.

(10) "Psychiatric residential treatment facility (PRTF)" means a freestanding facility (other than a psychiatric inpatient hospital) with a maximum of eight (8) beds, except for those facilities licensed prior to April 9, 1992, which provides inpatient psychiatric residential treatment to residents age six (6) to twenty-one (21) who are capable of self-preservation during an internal disaster. Any entity which has obtained approval for a certificate of need for a sixteen (16) bed facility prior to March 26, 1992, may be licensed by the cabinet as two (2) eight (8) bed facilities located on a common campus. After the effective date of this administrative regulation, no PRTF shall be licensed to be located on property which is contiguous with another licensed PRTF or psychiatric hospital, except as provided for in this subsection.

(11) "Restraint" means the use of a mechanical device to involuntarily restrain movement of the whole or a portion of a resident's body as a means of controlling a resident's physical activities to protect the resident or others from injury or the use of intravenous, intramuscular, or subcutaneous administration of any pharmacologic or chemical agent to the resident with the sole or primary purpose of controlling or limiting the physical activities of the resident. Restraint is differentiated from mechanisms usually and customarily employed during medical, diagnostic, or surgical procedures.

(12) "Seclusion" means the involuntary confinement of a resident in a room, which the resident is physically prevented from leaving, for any period of time.

(13) "Special treatment procedures" means any procedure such as restraint or seclusion and holding which may have abuse potential or be life threatening.

(14) "Unusual treatment" means any procedure not readily accepted as a standard method of treatment by the relevant professional.

Section 2. Applicability. (1) A certificate of need shall be required for all psychiatric residential treatment facilities.

(2) If a residential treatment facility is located on grounds shared by another licensed facility other than a PRTF, the following shall apply:

(a) The residents of the residential treatment facility and the licensed facility with which it shares grounds shall not have any joint activities or interactions, except for organized education [~~and recreation~~] activities conducted by a school operated by the local educational authority for residents for whom it is determined by the local educational authority that the program provided by the school is appropriate for all residents in the program and is provided in accordance with Section 12(6) of this administrative regulation, or organized recreational activities;

(b) The program director and direct-care staff shall not serve both the licensed facility with which it shares grounds and the residential treatment facility;

(c) If the provisions of paragraph (a) of this subsection are met, the only services or components of the physical plant that may be shared are those related to housekeeping, maintenance, dietary and recreational facilities or grounds.

(3) PRTF's that are located on the same grounds in accordance with Section 1(10) of this administrative regulation may share joint activities and staff.

Section 3. Licensure. The psychiatric residential treatment facility shall comply with all the conditions for licensure contained in 902 KAR 20:008.

Section 4. Governing Body. Each facility shall have a governing body with overall authority and responsibility for the facility's operation.

(1) The governing body shall be a legally constituted entity in the Commonwealth of Kentucky by means of a charter, articles of incorporation, partnership agreement, franchise agreement, or legislative or executive act.

(2) A facility that is part of a multifacility system or is operated by a government agency shall have a written description of the system's administrative structure and lines of authority.

(3) The authority and responsibility of any person designated to function as the governing body shall be specified in writing.

(4) If a business relationship exists between a governing body member(s) and the organization, there shall be a conflict-of-interest policy that governs the member's participation in decisions influenced by the business interest.

(5) The responsibilities of the governing body shall be stated in writing and shall include at least the following:

(a) Adopting bylaws that describe how the governing body, through the program director, shall develop policies and procedures and make sufficient resources available (e.g., funds, staff, equipment, supplies, and facilities) to assure that the facility is capable of providing appropriate and adequate services to residents;

(b) Overseeing the system of financial management and accountability;

(c) Adopting a program to monitor and evaluate the quality of all care provided and to appropriately address identified problems in care;

(d) Electing, appointing, or employing the program director, clinical director, and other supervisors or administrators to direct the clinical and administrative activities of the facility, and defining the qualifications, authority, responsibility, and function of such positions;

(e) Establishing an organization table and establishing bylaws, rules or policies and procedures to guide the relationships between itself, the administrative staff, the direct-care staff, the professional staff, and the community. The bylaws, rules or policies and procedures shall define the means by which the administrative, direct-care, and professional staffs cooperatively function, participate in the development of policies concerning program management and resident care, and report to the governing body. The bylaws, rules or policies and procedures shall be reviewed at least every two (2) years and revised as necessary; and

(f) Approving appointments to the professional staff and granting or revising clinical privileges upon the documented recommendation of the clinical director.

(6) The governing body shall meet as a whole at least quarterly and keep records that demonstrate the ongoing discharge of its responsibilities.

(7) When a facility is a component of a larger organization, the facility staff, subject to the overall authority of the governing body, shall be given the necessary authority to plan, organize, and operate the program.

Section 5. Program Director. (1) The program director shall be employed by the governing body and shall be responsible for the day-to-day management and ongoing direction of the facility's program. In the event of the program director's absence, he shall designate a person who shall be responsible for the day-to-day management of the facility.

(2)(a) The program director shall be qualified by training and experience to direct a treatment program for children and adolescents with emotional problems.

(b) Minimum qualifications shall be those defined as professional staff in Section 1 of this administrative regulation, or at least a master's degree in [~~psychology, social work, nursing, or~~] education with appropriate licenses.

(c) The program director shall have two (2) years experience in services to children or adolescents including administrative responsibility in an organization for children and adolescents; three (3) professional references; two (2) personal references; and a police record check.

(d) If there is a prior crime conviction or pleas of guilty pursuant to KRS 17.165 or a Class A felony, the applicant shall not be employed.

(3) The program director shall be responsible to the governing body in accordance with the bylaws, rules or policies for the following:

(a) Overseeing the overall operation of the facility, including the control, utilization, and conservation of its physical and financial assets and the recruitment and direction of staff;

(b) Hiring and direction of personnel;

(c) Assuring that sufficient staff meeting minimum standards under appropriate supervision are on duty to meet the needs of the residents at all times;

(d) Approving purchases and payroll;

(e) Assuring that treatment planning, medical supervision, and quality assurance occur as specified in this administrative regulation;

(f) Advising the governing body of all significant matters bearing on the facility's licensure and operations;

(g) Preparation of reports or items necessary to assist the governing body in formulating policies and procedures to assure that the facility is capable of providing appropriate and adequate services to residents;

(h) Preparation of a written manual that defines policies and procedures which is regularly revised and updated; and

(i) Assuring that all written facility policies, plans, and procedures are followed.

(4) The program director shall attend and maintain documentation of attendance and participation of staff in continuing education programs.

Section 6. Administration and Operation. (1) Written plan.

(a) The governing body shall formulate and specify the facility's goals and objectives and describe its programs in a written plan so that the facility's performance can be measured.

(b) A copy of the written plan shall be given to all professional staff and to the program director.

(c) The written plan shall be reviewed at least annually and revised as necessary, in accordance with the changing needs of the residents and the community and with the overall objectives and goals of the facility when reviewed or revised. Revisions in the plan shall incorporate, as appropriate, relevant findings from the facility's quality assurance and utilization review programs.

(d) The written plan shall include the following:

1. An organizational chart that includes position titles and the name of the person occupying the position, and that shows the chain of command;

2. A service philosophy with clearly defined assumptions and values;

3. Estimates of the clinical needs of the children and adolescents in the area served by the facility;

4. The services provided by the facility in response to needs;

5. The population served, including age groups and other relevant characteristics of the resident population;

6. The intake or admission process, including how the initial contact is made with resident and the family or significant others;

7. The assessment and evaluation procedures provided by the facility;

8. The methods used to deliver services to meet the identified clinical needs of the residents served;

9. The methods used to deliver services to meet the basic needs of residents in a manner as consistent with normal daily living as possible;

10. The methods used to create a home-like environment for all residents;

11. The methods, means and linkages by which the facility will involve all residents in community activities, organization, and events;

12. The treatment planning process and the periodic review of therapy;

13. The discharge and aftercare planning processes;

14. The organizational relationships of each of the facility's therapeutic programs, including channels of staff communication, responsibility, and authority, as well as supervisory relationships;

15. How all professional services will be supervised by qualified, experienced personnel;

16. How all members of the professional and direct-care staff who have been assigned specific treatment responsibilities are qualified by training or experience and demonstrated competence and have appropriate clinical privileges; or are supervised by professional staff members who are qualified by experience to supervise such treatment;

17. How the facility will be linked to regional interagency councils, psychiatric hospitals, community mental health centers, Department

for Social Services offices and facilities, and school systems in the facility's service area; and

18. The means by which the facility provides, or makes arrangements for the provision of:

a. Emergency services and crisis stabilization;

b. Discharge and aftercare planning, that promotes continuity of care; and

c. Education and vocational services, whether provided by the facility or by agreement. Educational services to be provided by local education agency or a private agency, at a minimum, shall be arranged for sixty (60) days prior to the need for the service to be provided.

(2) Professional staff.

(a) The facility shall employ sufficient appropriately qualified professional staff to meet the treatment needs of residents and the goals and objectives of the facility.

(b) Professional staff shall meet all requirements in the licensing, registration, or certification laws relating to their respective professions.

(c) Staffing. The facility shall meet the following specific requirements with regard to staffing:

1. A board-eligible or board-certified child psychiatrist or board-certified adult psychiatrist shall be employed to meet the treatment needs of the residents and the functions which shall be performed by a psychiatrist specified within this administrative regulation. If a facility has residents ages twelve (12) and under, the psychiatrist shall be board-eligible or board-certified in child psychiatry.

2. A recreational therapist with a master's degree, or bachelor's degree and two (2) years' experience in a residential, or mental health setting for children and adolescents shall be employed to meet the treatment needs of the residents and the functions which shall be performed by a recreational therapist specified within this administrative regulation.

3. A total of at least one (1) [~~two (2)~~] full-time staff shall be employed from one (1) [~~two (2)~~] of the following professions [~~(i.e., these staff cannot be from the same profession)~~]:

a. Psychologist with Ph.D. or master's degree and autonomous functioning, or master's degree under supervision of a Ph.D.;

b. Social worker with master's degree with two (2) [~~three (3)~~] years of inpatient or outpatient clinical experience in psychiatric social work, or a person who meets the qualifications of the professional staff referenced in Section 1(9) of this administrative regulation with two (2) years of experience in a residential setting for children; or

c. Registered nurse with two (2) [~~bachelor's degree and three (3)~~] years' supervised experience in a mental health setting.

4. Staff for the profession listed in subparagraph 3 of this paragraph who is not employed on a full-time basis, shall be employed or employed under contract at least ten (10) percent of full-time equivalency.

5. [~~There shall be a ratio of full-time equivalent professional staff to residents of 1:6.~~

~~6.~~] A member of the professional staff shall be on the unit or otherwise interacting with residents, in addition to planned verbal therapies, setting the tone of the therapeutic milieu at least two (2) hours each weekday and four (4) hours one (1) day each weekend during a nonschool waking-hour shift.

6. [~~7.~~] Appropriate professional staff shall be available to assist on-site in emergencies on at least an on-call basis at all times.

7. [~~8.~~] A physician shall be available on at least an on-call basis at all times.

(d) Clinical director. The governing body shall designate one (1) member of the full-time professional staff as clinical director.

1. In addition to the requirements related to his profession, the clinical director shall have at least a master's degree in a field related to the treatment of mental illness and two (2) years' supervisory experience in a program for children or adolescents with emotional problems.

2. The governing body shall define the authority and duties of the clinical director in its bylaws.

3. The clinical director may be the program director if the qualifications of both positions are met.

4. The clinical director shall supervise professional staff and be responsible for the maintenance of the facility's therapeutic milieu.

(e) The clinical director, in consultation with professional staff, shall develop written policies and procedures approved by the governing body that specify the following:

1. The clinical privileges of professional staff;

2. The responsibility of professional staff for supervising and directing individuals who require supervision or direction in the provision of resident care services;

3. The responsibilities of physicians in relation to nonphysician members of the professional staff; and

4. The responsibility of professional staff for accounting to the governing body for the quality of clinical care provided to the residents, and for its ethical conduct and professional practice.

(3) Direct-care staff.

(a) The facility shall employ adequate direct-care staff to ensure the continuous provision of sufficient regular and emergency supervision of all residents twenty-four (24) hours a day.

(b) Direct-care staff shall be a mental health associate or hold a high school diploma or equivalency and have two (2) years' experience in a program in the mental health field serving children or adolescents. Completion of a twenty-hour (24) hour training curriculum meeting the requirements of subsection (8)(f) within one (1) month of employment may be substituted for experience, except that no direct-care staff so qualified shall be given clinical privileges in his first year of employment.

(c) In order to assure that the residents are adequately supervised and are cared for in a safe and therapeutic manner, the direct-care staffing plan shall meet each of the following requirements:

1. At least one (1) direct-care staff member who is a mental health associate shall be assigned direct-care responsibilities for every eight (8) residents [~~of each living unit~~] at all times when residents awake and are not in school;

2. At least three (3) direct-care staff members shall be assigned to direct-care responsibilities [~~for each living unit~~] during normal waking hours when the residents are on-site [~~the unit~~]; however, if the number of residents present on-site [~~the unit~~] is six (6) or fewer, the number of direct-care staff members may be reduced to two (2);

3. At least one (1) direct-care staff member shall be assigned to direct-care responsibilities for each three (3) residents who are twelve (12) and under and one (1) for each four (4) adolescents who are over twelve (12) during all hours the residents are awake, not on the living unit, and not in school;

4. At least one (1) direct-care staff member shall be assigned direct-care responsibilities, be awake, and be continuously available on each living unit during all hours the residents are asleep. A minimum of one (1) additional direct-care staff member who is a mental health associate [~~for each living unit~~] shall be immediately available on-site to assist with emergencies or problems which might arise;

5. If a member of the professional staff is directly involved in an activity with a group of residents, he may meet the requirement for a direct-care staff member; and

6. The direct-care staff member who is supervising residents shall know the whereabouts of each resident at all times.

(d) The clinical director, in consultation with professional staff, shall develop written policies and procedures approved by the governing body that:

1. Specify the clinical privileges, if any, of each member of the direct-care staff;

2. Provide for the supervision of the direct-care staff; and

3. Describe the responsibilities of direct-care staff in relation to professional staff.

(4) Support staff.

(a) Environmental services. There shall be an adequate number of domestic and maintenance staff to maintain the facility's buildings and grounds in a healthful, comfortable condition and in good repair. Such services may be provided by contractual agreement.

(b) Clerical staff. The facility shall employ a sufficient number of clerical staff qualified by high school diploma or equivalency to maintain correspondence, records, reports and files.

(5) Student field placements/internships. The facility shall ensure that student interns are supervised directly by an appropriate paid staff member who will act as a liaison between the facility and the school making placements.

(6) Volunteers.

(a) The facility may use volunteers to help meet residents' basic needs for social interaction, self-esteem, and self-fulfillment.

(b) The governing body shall adopt written policies and procedures which address screening, selection, and supervision of all volunteers.

(c) Volunteers used within the program shall meet the qualifications for the positions for which they volunteer.

(d) Volunteers shall not be used in place of required staff.

(e) Volunteers shall be oriented to the facility's goals and services and given appropriate clinical background regarding the facility's residents.

(7) Part-time employees. Part-time employees shall meet minimum qualifications of full-time staff and shall not be utilized to the extent that continuity in resident care is disrupted by frequent shift changes or changes in personnel from day-to-day.

(8) Staff development.

(a) Appropriate staff development programs shall be provided for administrative, professional, direct-care, and support staff under the supervision and direction of the program director or designee(s). Responsibility for any part of the staff development program may be delegated to appropriately qualified individuals.

(b) The participation of the program director and professional, direct-care, and support staff in staff development programs shall be documented.

(c) Professional and direct-care staff shall meet the continuing education requirements of their profession or be provided with twenty (20) hours per year of in-service training by the facility.

(d) Library services shall be made available to meet the professional and technical needs of the facility staff. A facility which does not maintain a professional library shall have arrangements with a library or institution for use of its professional library.

(e) The facility shall communicate and collaborate, as appropriate, with national, state, and local mental health professional organizations in planning and providing ongoing training.

(f) The program director shall require that each staff member working directly with residents demonstrate basic knowledge in the following areas:

1. Child and adolescent growth and development;
2. Therapeutic principles and modalities used in the facility;
3. Building and maintaining a positive therapeutic milieu on the living unit;
4. Techniques of group and child management; and
5. Detection and reporting of child abuse and neglect.

(9) Employment practices.

(a) The facility shall have employment and personnel policies and procedures designed, established, and maintained to promote the objectives of the facility, to ensure that an adequate number of qualified personnel under appropriate supervision is provided during all hours of operation, and to support quality of care and functions of the facility.

(b) The policies and procedures shall be written, systematically reviewed, and approved on an annual basis by the governing body, and dated to indicate the time of last review.

(c) The policies and procedures shall provide for the recruitment, selection, promotion, and termination of staff.

(d) The facility shall maintain job descriptions approved by the governing body for all positions specifying the qualifications, duties, and supervisory relationship of the position. Job descriptions shall accurately reflect the actual job situation and shall be revised whenever a change is made in the required qualifications, duties, supervision, or any other major job-related factor. In addition, salary range for each position shall be provided.

(e) The personnel policies and procedures shall be available and apply to all employees and shall be discussed with all new employees. The governing body shall establish a mechanism for notifying employees of changes in the policies and procedures.

(f) Information on the following shall be included in the policies and procedures:

1. Employee benefits;
2. Recruitment;
3. Promotion;
4. Training and staff development;
5. Employee grievances;
6. Safety and employee injuries;
7. Relationships with employee organizations;
8. Disciplinary systems;
9. Suspension and termination mechanisms;
10. Rules of conduct;
11. Lines of authority;
12. Performance appraisals;
13. Wages, hours and salary administration; and
14. Equal employment opportunity and, when required, affirmative action policies.

(g) The personnel policies and procedures shall describe methods and procedures for supervising all personnel, including volunteers.

(h) The policies and procedures shall require appropriate criminal history and police record checks for all staff and volunteers to assure that only persons whose presence does not jeopardize the health, safety, and welfare of residents are employed and used.

(i) The policies and procedures shall provide for reporting and cooperating in the investigation of suspected cases of child abuse and neglect by facility personnel.

(j) A personnel record shall be kept on each staff member and shall contain the following items:

1. Application for employment;
2. Written references and a record of verbal references;
3. Verification of all training and experience and of licensure, certification, registration, or renewals;
4. Wage and salary information, including all adjustments;
5. Performance appraisals;
6. Counseling actions;
7. Disciplinary actions;
8. Commendations;
9. Employee incident reports; and
10. Initial and subsequent health clearances.

(k) The policies and procedures shall assure the confidentiality of personnel records and specify who has access to various types of personnel information.

(l) Performance appraisals shall relate job description and job performance and shall be written. The criteria used to evaluate job performance shall be objective.

Section 7. Resident Rights. (1) The facility shall support and protect the basic human, civil, and constitutional rights of the individual resident.

(2) Written policy and procedure approved by the governing body shall provide a description of the resident's rights and the means by which these rights are protected and exercised.

(3) At the point of admission, the facility shall provide the resident and parent, guardian, or custodian with a clearly written and readable statement of rights and responsibilities. The statement shall be read

to the resident or parent, guardian, or custodian if either cannot read and shall cover, at a minimum:

(a) Each resident's access to treatment, regardless of race, religion, or ethnicity;

(b) Each resident's right to recognition and respect of his personal dignity in the provision of all treatment and care;

(c) Each resident's right to be provided treatment and care in the least restrictive environment possible;

(d) Each resident's right to an individualized treatment plan;

(e) Each resident's and family's participation in planning for treatment;

(f) The nature of care, procedures, and treatment that he shall receive;

(g) The risks, side effects, and benefits of all medications and treatment procedures used; and

(h) The right, to the extent permitted by law, to refuse the specific medications or treatment procedures and the responsibility of the facility when the resident refuses treatment, to seek appropriate legal alternatives or orders of involuntary treatment, or, in accordance with professional standards, to terminate the relationship with the resident upon reasonable notice.

(4) The rights of residents shall be written in language which is understandable to the resident, his parents, custodians, or guardians and shall be posted in appropriate areas of the facility.

(5) The policy and procedure concerning resident rights shall assure and protect the resident's personal privacy within the constraints of his treatment plan. These rights to privacy shall at least include:

(a) Visitation by the resident's family or significant others in a suitable private area of the facility;

(b) Sending and receiving mail without hindrance or censorship; and

(c) Telephone communications with the resident's family or significant others at a reasonable frequency.

(6) If any rights to privacy must be limited, the resident and his parent, guardian, or custodian shall receive a full explanation. Limitations shall be documented in the resident's record and their therapeutic effectiveness shall be evaluated and documented by professional staff every seven (7) days.

(7) The right to initiate a complaint or grievance procedure and the means for requesting a hearing or review of a complaint shall be specified in a written policy approved by the governing body and made available to residents, parents, guardians, and custodians responsible for the resident. The procedure shall indicate:

(a) To whom the grievance is to be addressed; and

(b) Steps to be followed for filing a complaint, grievance, or appeal.

(8) The resident and his parent, guardian, or custodian shall be informed of the current and future use and disposition of products of special observation and audio-visual techniques such as one (1) way vision mirrors, tape recorders, television, movies, or photographs.

(9) The policy and procedure regarding resident's rights shall ensure the resident's right to confidentiality of all information recorded in his record maintained by the facility. The facility shall ensure the initial and continuing training of all staff in the principles of confidentiality and privacy.

(10) The resident shall be allowed to work for the facility only under the following conditions:

(a) The work is part of the individual treatment plan;

(b) The work is performed voluntarily;

(c) The patient receives wages commensurate with the economic value of the work;

(d) The work project complies with applicable law and administrative regulation; and

(e) The performance of tasks related to the responsibilities of family-like living, such as laundry and housekeeping, shall not be considered work for the facility and need not be compensated or voluntary.

(11) Written policy and procedure developed in consultation with professional and direct care staff and approved by the governing body shall provide for the measures utilized by the facility to discipline residents. These measures shall be fully explained to each resident and the resident's parent, guardian, or custodian.

(12) The facility shall prohibit all cruel and unusual disciplinary measures including the following:

(a) Corporal punishment;

(b) Forced physical exercise;

(c) Forced fixed body positions;

(d) Group punishment for individual actions;

(e) Verbal abuse, ridicule, or humiliation;

(f) Denial of three (3) balanced nutritional meals per day;

(g) Denial of clothing, shelter, bedding, or personal hygiene needs;

(h) Denial of access to educational services;

(i) Denial of visitation, mail, or phone privileges for punishment;

(j) Exclusion of the resident from entry to his assigned living unit; and

(k) Restraint or seclusion as a punishment or employed for the convenience of staff.

(13) Written policy shall prohibit residents from administering disciplinary measures upon one another and shall prohibit persons other than professional or direct-care staff from administering disciplinary measures to residents.

(14) Written rules of resident conduct shall be developed in consultation with the professional and direct-care staff and be approved by the governing body. Residents shall participate in the development of the rules to a reasonable and appropriate extent. These rules shall be based on generally acceptable normal and natural behavior for the resident population served.

(15) The application of disciplinary measures shall relate to the violation of established rules.

Section 8. Resident Records. (1) The facility shall have written policies or procedures concerning resident records developed in consultation with professional staff and a registered records administrator and approved by the governing body.

(2) The facility shall maintain a written resident record on each resident, to be directly accessible to staff members caring for the resident.

(3) The resident record shall contain at a minimum:

(a) Basic identifying information;

(b) Appropriate court orders or consent of appropriate family members or guardians for admission, evaluation, and treatment;

(c) A provisional or admitting diagnosis which includes a physical diagnosis, if applicable, as well as a psychiatric diagnosis;

(d) The report by the parent, guardian, or custodian of the patient's immunization status;

(e) A psychosocial assessment of the resident and his family, including:

1. An evaluation of the effect of the family on the resident's condition and the effect of the resident's condition on the family; and

2. A summary of the resident's psychosocial needs.

(f) An evaluation of the resident's growth and development, including physical, emotional, cognitive, educational, and social development; and needs for play and daily activities;

(g) The resident's legal custody status, when applicable;

(h) The family's, guardian's, or custodian's expectations for, and involvement in, the assessment, treatment, and continuing care of the resident;

(i) Physical health assessment, including evaluations of the following:

1. Motor development and functioning;

2. Sensorimotor functioning;

3. Speech, hearing, and language functioning;

4. Visual functioning; and

5. Immunization status.

(4) The resident record shall also include:

(a) Physician's notes which shall include an entry made at least weekly by the staff psychiatrist regarding the condition of the resident.

(b) Professional progress notes which shall be completed following each professional service except when the service is provided daily to groups of residents, when weekly summaries may be used. Professional progress notes shall be signed and dated by the professional who provided the service.

(c) Direct-care progress notes which shall record implementation of all treatment and any unusual or significant events which occur for the residents. Direct-care progress notes shall be completed at least by the end of each direct-care shift and summarized weekly. Direct-care notes shall be signed and dated by the direct-care staff making the entry.

(d) Special clinical justifications for the use of special and unusual treatment procedures and reports.

(e) Discharge summary.

(f) If a patient dies, the resident record shall include a summation statement in the form of a discharge summary, including events leading to the death, signed by the attending physician.

(5) The facility shall maintain confidentiality of resident records. Resident information shall be released only on written consent of the resident or his parent, guardian, or custodian or as otherwise authorized by law. The written consent shall contain the following information:

(a) The name of the person, agency, or organization to which the information is to be disclosed;

(b) The specific information to be disclosed;

(c) The purpose of disclosure; and

(d) The date the consent was signed and the signature of the individual witnessing the consent.

Section 9. Quality Assurance. (1) The facility shall have an organized quality assurance program designed to enhance resident treatment and care through the ongoing objective assessment of important aspects of resident care and the correction of identified problems.

(2) The facility shall prepare a written quality assurance plan designed to ensure that there is an ongoing quality assurance program that includes effective mechanisms for reviewing and evaluating resident care, and that provides for appropriate response to findings. The written quality assurance plan shall be approved by the governing body and shall:

(a) Assign responsibility for the monitoring and evaluation activities;

(b) Delineate scope of care provided by the facility;

(c) Identify the aspects of care that the facility provides;

(d) Identify indicators (and appropriate clinical criteria) that can be used to monitor these aspects of care;

(e) Establish thresholds for the indicators at which further evaluation of the care is triggered;

(f) Collect and organize the data for each indicator;

(g) Evaluate the care when the thresholds are reached in order to identify problems or opportunities to improve care;

(h) Take actions to correct identified problems or to improve care;

(i) Assess the effectiveness of the actions and document the improvement in care; and

(j) Communicate relevant information to other individuals, departments, or services and to the facility-wide quality assurance program.

(3) The facility shall record all incidents or accidents that present a direct or immediate threat to the health, safety or security of any resident or staff member. Examples of incidents to be recorded include the following: physical violence, fighting, absence without leave, use or possession of drugs or alcohol, or inappropriate sexual behavior. The record should be kept on file and retained at the facility and shall be made available for inspection by the licensure agency.

Section 10. Admission Criteria. (1) The facility shall have written admission criteria approved by the governing body and which are consistent with the facility's goals and objectives.

(2) Admission criteria shall be made available to referral sources and to parents, guardians, or custodians and shall include:

(a) Types of admission (crisis stabilization, long-term treatment);

(b) Age and sex of accepted;

(c) Criteria that preclude admission;

(d) Clinical needs and problems typically addressed by the facility's programs and services;

(e) Criteria for discharge; and

(f) Any preplacement requirements of the resident, his parents, guardians, custodians, or the placing agency.

(3) A facility may only admit children with an emotional disability as defined in KRS 200.503(1) or a severe emotional disability as defined in KRS 200.503(2) [~~in accordance with HB 554 of the 1992 General Assembly~~] (this does not preclude the facility from admitting a child with multiple diagnoses) who meet its written admission criteria and for whom the facility finds:

(a) Less-restrictive treatment resources accessible and available in the resident's community will not meet his treatment needs;

(b) Proper treatment of the resident's psychiatric condition requires care and treatment under the direction of a psychiatrist within a psychiatric residential treatment facility;

(c) Proper treatment of the resident's psychiatric condition requires twenty-four (24) hour care in a facility which provides comprehensive and structured therapeutic mental health treatment in a less structured environment than an inpatient hospital; and

(d) Care and treatment in a psychiatric residential treatment facility can reasonably be expected to improve the resident's condition or prevent further regression so that residential treatment facility services will no longer be needed, provided that a poor prognosis shall not in itself constitute grounds for a denial of admission if treatment can be expected to effect a positive change in prognosis.

(4) Residents admitted to the facility shall have obtained age six (6), but not attained age eighteen (18). Residents may remain in care until age twenty-one (21) if admitted by their 18th birthday. Admission criteria related to age at admission shall be determined by the age grouping of children currently in residence and shall reflect a range no greater than five (5) years in a living unit.

(5) Children and adolescents who are a danger to self or others for whom the facility is unable to develop a risk-management plan shall not be admitted.

Section 11. Resident Management. (1) Intake.

(a) The facility shall have written policies and procedures approved by the governing body for the intake process which addresses at a minimum the following:

1. Referral, records, and statistical data to be kept regarding applicants for residence;

2. Criteria for determining the eligibility of individuals for admission;

3. Methods used in the intake process which shall be based on the services provided by the facility and the needs of residents; and

4. Procurement of appropriate consent forms. This may include the release of educational and medical records.

(b) The intake process shall include an initial assessment of the resident performed by the professional staff. The results of the assessment shall be explained to the parent or guardian or custodian if appropriate, and to the resident. As a condition at admission, the assessment shall conclude that:

1. The treatment required by the resident is appropriate to the intensity and restrictions of care provided by the facility; and

2. Alternatives for less intensive and restrictive treatment are not

available or accessible to the resident.

(c) The intake process shall be designed to provide at least the following information:

1. Identification of agencies who have been involved in the treatment of the resident in the community and the anticipated extent of involvement of those agencies during and after the resident's stay in the facility;

2. Temporary treatment plan including the proposed initial level of intervention with the resident, the health and safety needs, the education and activity plan, and legal, custody and visitation orders; and

3. Proposed discharge plan and anticipated length of stay.

(d) The intake process shall include an orientation for the parent, guardian, or custodian as appropriate and the resident which includes the following:

1. The rights and responsibilities of residents, including the rules governing resident conduct and the types of infractions that can result in disciplinary action or discharge from the facility;

2. Rights, responsibilities, and expectations of the parent, guardian, or custodian; and

3. Preparation of the staff and residents of the facility for the new resident.

(e) Upon admission each resident of school age shall have been certified or be referred for assessment as handicapped pursuant to PL 94-142.

(f) The temporary treatment plan shall be reviewed by all staff involved in the resident's treatment, approved by the clinical director and psychiatrist, and implemented upon admission.

(2) Assessment.

(a) A complete evaluation and assessment shall be performed for each resident which includes, but is not necessarily limited to, physical, emotional, behavioral, social, recreational, educational, legal, vocational, and nutritional needs.

(b) The physical examination of each resident shall be initiated within twenty-four (24) hours after admission and shall include, but not be limited to, evaluations of the following:

1. Motor development and functioning;

2. Sensorimotor functioning;

3. Speech, hearing, and language functioning;

4. Visual functioning; and

5. Immunization status. If a resident's immunization is not complete as defined in the report of the Committee on Infectious Diseases of the American Academy of Pediatrics, the facility shall be responsible for its completion and shall begin to complete any immunizations which are outside of the set periodicity schedule within thirty (30) days of admission or the physical examination, whichever is later.

(c) If the resident has had a complete physical examination by a qualified physician within the previous three (3) months which includes the requirements of subsection (b) of this section and if the facility obtains complete copies of the record, that examination may be used to meet the requirement for a physical examination in subsection (b) of this section.

(d) A physician shall be responsible for assessing each resident's physical health, his need for a current examination in spite of one done in the prior three (3) months, and his need for special clinical examinations and tests within twenty-four (24) hours of admission.

(e) Facilities shall have all the necessary diagnostic tools and personnel available or have written agreements with another organization to provide physical health assessments, including electroencephalographic equipment, a qualified technician trained in dealing with children and adolescents, and a properly qualified physician to interpret electroencephalographic tracing of children and adolescents.

(f) An emotional and behavioral assessment of each resident that includes an examination by a psychiatrist shall be completed and entered in the resident's record. The emotional and behavioral assessment shall include the following:

1. A history of previous emotional, behavioral, and substance abuse problems and treatment;

2. The resident's current emotional and behavioral functioning;

3. A direct psychiatric evaluation;

4. When indicated, psychological assessments, including intellectual, projective, and personality testing;

5. When indicated, other functional evaluations of language, self-care, and social-affective and visual-motor functioning; and

6. An evaluation of the developmental age factors of the resident.

(g) The facility shall have an assessment procedure for the early detection of mental health problems that are life threatening, are indicative of severe personality disorganization or deterioration, or may seriously affect the treatment or rehabilitation process.

(h) A social assessment of each resident shall be undertaken and include:

1. Environment and home;

2. Religion;

3. Childhood history;

4. Financial status;

5. The social, peer-group, and environmental setting from which the resident comes; and

6. The resident's family circumstances, including the constellation of the family group; the current living situation; and social, ethnic, cultural, emotional, and health factors, including drug and alcohol use.

(i) The social assessment shall include a determination of the need for participation of family members or significant others in the resident's treatment.

(j) An activities assessment of each resident shall include information relating to the individual's current skills, talents, aptitudes, and interest.

(k) An assessment shall be performed to evaluate the resident's potential for involvement in community activity, organizations, and events.

(l) For adolescents age sixteen (16) and older, a vocational assessment of the resident shall be done which includes the following:

1. Vocational history;

2. Education history, including academic and vocational training; and

3. A preliminary discussion, between the resident and the staff member doing the assessment, concerning the resident's past experiences with and attitude toward work, present motivations or areas of interest, and possibilities for future education, training, and employment.

(m) When appropriate, a legal assessment of the resident shall be undertaken and shall include the following:

1. A legal history; and

2. A preliminary discussion to determine the extent to which the legal situation will influence his progress in treatment and the urgency of the legal situation.

(3) Treatment plans.

(a) Within seventy-two (72) hours following admission, the clinical director or a member of the professional staff designated by him shall develop an initial treatment plan that is based at least on an assessment of the resident's presenting problems, physical health, and emotional and behavioral status. Appropriate therapeutic efforts shall begin before a master treatment plan is finalized.

(b) A master treatment plan shall be developed by a multidisciplinary team conference within ten (10) days of admission for any resident remaining in treatment. It shall be based on the comprehensive assessment of the resident's needs completed pursuant to subsection (2) of this section, include a substantiated diagnosis and the short-term and long-range treatment needs, and address the specific treatment modalities required to meet the resident's needs.

1. The treatment plan shall contain specific and measurable goals for the resident to achieve.

2. The treatment plan shall describe the services, activities, and programs to be provided to the resident, and shall specify staff members assigned to work with the resident and the time or frequency for each treatment procedure.

3. The treatment plan shall specify criteria to be met for termination of treatment.

4. The treatment plan shall include any referrals necessary for services not provided directly by the facility.

5. The resident shall participate to the maximum extent feasible in the development of his treatment plan, and such participation shall be documented in the resident's record.

6. The treatment plan shall specify the ways in which the resident will participate in community activities, organizations, and events.

7. The treatment plan shall address ways in which the environment for the resident is normalized.

8. A specific plan for involving the resident's family or significant others shall be included in the treatment plan. The parent, guardian, or custodian shall be given a copy of the resident's master treatment plan. The master treatment plan shall identify the professional staff member who is responsible for coordinating and facilitating the family's involvement throughout treatment.

9. The treatment plan shall be reviewed and updated through multidisciplinary team conferences as clinically indicated, but in no case shall this review and update be completed later than thirty (30) days following the first ten (10) days of treatment and every sixty (60) days thereafter [~~for the first year of treatment~~].

10. Following one (1) year of continuous treatment, the review and update may be conducted at three (3) month intervals.

(c) The master treatment plan and each review and update shall be signed by the participants in the multidisciplinary team conference that developed it, and approved by the clinical director.

(4) Progress notes.

(a) Progress notes shall be entered in the resident's records, be used as a basis for reviewing the treatment plan, signed and dated by the individual making the entry and shall include the following:

1. Documentation of implementation of the treatment plan;

2. Chronological documentation of all treatment provided to the resident and documentation of the resident's clinical course; and

3. Descriptions of each change in each of the resident's conditions.

(b) All entries involving subjective interpretation of the resident's progress shall be supplemented with a description of the actual behavior observed.

(c) Efforts shall be made to secure written progress reports for residents receiving services from outside sources and, when available, to include them in the resident record.

(d) The resident's progress and current status in meeting the goals and objectives of his treatment plan shall be regularly recorded in the resident record.

(5) Discharge planning. The facility shall have written policies and procedures for discharge of residents.

(a) Discharge planning shall begin at admission and be documented in the resident's record. At least ninety (90) days prior to the planned discharge of a resident from the facility, or within ten (10) days after admission if the anticipated length of stay is under ninety (90) days, the multidisciplinary team shall formulate a discharge and aftercare plan. This plan shall be maintained in the resident's record and reviewed and updated with the master treatment plan.

(b) All discharge recommendations shall be determined through a conference, including the appropriate facility staff, the resident, the resident's parents, guardian, or custodian and, if indicated, the representative of the agency to whom the resident may be referred for aftercare service(s), and the affected local school districts. All aftercare plans shall delineate those parties responsible for the provision of aftercare services.

(c) If the aftercare plan involves placement of the resident in another licensed program following discharge, facility staff shall share resident information with representatives of the aftercare program provider if authorized by written consent of the parent, guardian, or custodian.

(d) A facility deciding to release a resident on an unplanned basis shall:

1. Have reached the decision to release at a multidisciplinary team conference chaired by the clinical director that determined, in writing, that services available through the facility cannot meet the needs of the resident;

2. Provide at least ninety-six (96) hours notice to the resident's parent, guardian, or custodian and the agency which will be providing aftercare services. If authorized by written consent of the parent, guardian, or custodian, the facility shall provide to the receiving agency(ies) copies of the resident's records and discharge summary.

3. Consult with the receiving agency in situations involving placement for the purpose of ensuring that such placement reasonably meets the needs of the resident; and

4. Provide a written statement explaining the reasons for discharge to the receiving agency.

(e) Within fourteen (14) days of a resident's discharge from the facility, the facility shall compile and complete a written discharge summary for inclusion in the resident's record. The discharge summary shall include:

1. Name, address, phone number, and relationship of the person to whom the resident was released;

2. Description of circumstances leading to admission of the resident to the facility;

3. Significant problems of the resident;

4. Clinical course of the resident's treatment;

5. Assessment of remaining needs of the resident and alternative services recommended to meet those needs;

6. Special clinical management requirements including psychotropic drugs;

7. Brief descriptive overview of the aftercare plan designed for the resident; and

8. Circumstances leading to the unplanned or emergency discharge of the resident, if applicable.

(6) The facility shall request periodic follow-up reports from each agency providing services to the resident in accordance with the aftercare plan, and shall be responsible for documenting the outcome of the aftercare plan as possible.

Section 12. Services. The facility shall provide the following services in a manner which takes into account and addresses the social life; emotional, cognitive, and physical growth and development; and the educational needs of the resident.

(1) Mental health services.

(a) Mental health assessments and evaluations shall be provided as required in Section 11 of this administrative regulation.

(b) The mental health services available through the residential treatment facility shall include the services listed below. These mental health services shall be provided directly by the residential treatment facility:

1. Case coordination services to assure the full integration of all services provided to each resident. Case coordination activities include monitoring the resident's daily functioning to assure the continuity of service in accordance with the resident's treatment plan and ensuring that all staff responsible for the care and delivery of services actively participate in the development and implementation of the resident's treatment plan.

2. Planned verbal therapies including formal individual, family, and group therapies. These therapies shall be provided on site. These therapies include psychotherapy and other face-to-face verbal contacts between staff and the resident which are planned to enhance the resident's psychological and social functioning as well as to facilitate the resident's integration into a family unit. Verbal contacts that are incidental to other activities are excluded from this

service.

3. Task and skill training to enhance a resident's age appropriate skills necessary to facilitate the resident's ability to care for himself and to function effectively in community settings. Task and skill training activities include homemaking, housekeeping, personal hygiene, budgeting, shopping, and the use of community resources.

(2) Physical health services.

(a) The physical health services available through the residential treatment facility shall include the services listed below. Physical health services may be provided directly by the facility or may be provided by written agreement.

1. Assessments and evaluations as required in Section 11 of this administrative regulation;

2. Diagnosis, treatment, and consultation for acute or chronic illnesses occurring during the resident's stay at the facility or for problems identified during an evaluation;

3. Preventive health care services to include periodic assessments in accordance with the periodicity schedule established by the American Academy of Pediatrics;

4. A dental examination within six (6) months of admission, periodic assessments in accordance with the periodicity schedule established by the American Dental Association, and treatment as needed;

5. Health and sex education;

6. An ongoing immunization program; and

7. A physical examination within five (5) days of the client's planned date of discharge from the facility.

(b) When physical health services are provided by written agreement with a provider of services other than the facility, the written agreement shall, at a minimum, address:

1. Referral of residents;

2. Qualifications of staff providing services;

3. Exchange of clinical information; and

4. Financial arrangements.

(3) Dietary services.

(a) The facility shall have written policies and procedures approved by the governing body for the provision of dietetic services for staff and residents which may be provided directly by the facility staff or through written contractual agreement.

(b) Adequate staff, space, equipment, and supplies shall be provided for safe sanitary operation of the dietetic service, the safe and sanitary handling and distribution of food, the care and cleaning of equipment and kitchen area, and the washing of dishes.

(c) The nutritional aspects of resident's care shall be planned, reviewed, and periodically evaluated by a qualified dietician registered by the Commission on Dietetic Registration and employed by the facility as a staff member or consultant.

(d) The food shall be served to residents and staff in a common eating place and:

1. Shall account for the special food needs and tastes of residents;

2. Shall not be withheld as punishment; and

3. Shall provide for special dietary need of residents such as those relating to problems, such as diabetes and allergies.

(e) Residents shall participate in the preparation and serving of food as appropriate.

(f) At least three (3) meals per day shall be served with not more than a fifteen (15) hour span between the substantial evening meal and breakfast. The facility shall arrange for and make provision for between-meal and unscheduled snacks.

(g) Except for school lunches and meals at restaurants, all members of a living unit shall be provided their meals together as a therapeutic function of the living unit.

(4) Emergency services.

(a) The facility shall provide for the prompt notification of the resident's parents, guardian, or custodian in case of serious illness, injury, surgery, or death.

(b) The facility shall provide or arrange for the training of all direct-care and professional staff in first aid and CPR.

(c) All staff shall be knowledgeable of a written plan and procedure for meeting potential disasters and emergencies such as fires or severe weather. The plan shall be posted. Staff shall be trained in properly reporting a fire, extinguishing a small fire, and in evacuation from the building. Fire drills shall be practiced in accordance with state fire administrative regulations.

(d) The facility shall have written procedures to be followed by staff in the event of a psychiatric, medical, or dental emergency of a resident that specifies:

1. Notification of designated member of the facility's chain of command;

2. Designation of staff person who shall decide to refer resident to outside treatment resources;

3. Notification of resident's parent, guardian, or custodian;

4. Transportation to be used;

5. Staff member to accompany resident;

6. Necessary consent and referral forms to accompany resident; and

7. Name, location, and telephone of designated treatment resources.

(e) The facility shall have designated treatment resources who shall have agreed to accept a resident for emergency treatment. At a minimum the resources shall include:

1. Licensed physician and an alternate designee;

2. Licensed dentist and an alternate designee;

3. Licensed hospital; and

4. Licensed hospital with an accredited psychiatric unit.

(5) Pharmacy services. The facility shall have written policies and procedures approved by the governing body for proper management of pharmaceuticals that are consistent with the following requirements:

(a) Medications shall be administered by a registered nurse, physician, or dentist, except in the case of a licensed practical nurse, [~~or a~~] certified medication aide, or mental health associate under the supervision of a registered nurse. A mental health associate shall have successfully completed the medicine administration course approved by the Kentucky Board of Nursing for use in child caring facilities;

(b) Medications shall not be given without a written order signed by a physician, or dentist when applicable. Telephone orders for medications shall be given only to registered nurses or a pharmacist and signed by the physician or dentist within twenty-four (24) hours from the time the order is given;

(c) Psychotropic medications shall be prescribed only when clinically indicated as one (1) facet of a program of therapy. The facility shall ensure that no stimulant or psychotropic medication is administered solely for the purpose of program management or control, and that no medication is prescribed for the purposes of experimentation or research;

(d) All medications shall require "stop orders";

(e) All prescriptions shall be reevaluated by the prescriber prior to its renewal;

(f) There shall be a systematic method for prescribing, ordering, receipting, storing, dispensing, administering, distributing and accounting for all medications;

(g) The facility shall provide maximum security storage of and accountability for all legend medications, syringes, and needles;

(h) Self-administration of medication shall be permitted only when specifically ordered by the responsible physician and supervised by a member of the professional staff or a mental health associate. Drugs to be self-administered shall be stored in a secured area and be made available to the resident at the time of administration;

(i) Residents permitted to self-administer drugs shall be counseled regarding the indications for which the drugs are to be used, the primary side effects, and the physical dosage forms which are to be

administered;

(j) Drugs brought into the facility by residents shall not be administered unless they have been identified and unless written orders to administer these specific drugs are given by the responsible physician. Otherwise these drugs are to be packaged, sealed, and stored, and, if approved by the responsible physician, returned to the resident, parent, guardian, or custodian at the time of discharge.

(6) Education/vocational services.

(a) Educational and vocational services available through the facility shall include the minimum requirements of Kentucky Revised Statutes and federal laws and regulations regarding regular education, vocational education, and special education as appropriate to meet the needs of the residents.

1. Educational services may be provided directly by the facility, or may be provided by written agreement with the local school district in which the facility is located or with a nonpublic school program which is specially accredited by the Kentucky Department of Education (KDE) and is approved by the KDE to provide special education services to handicapped students.

2. If the educational services are provided by the facility, the school program must be specially accredited by the KDE and be approved by the KDE to provide special education services to handicapped students.

3. Educational services provided by a local school district may be provided within the facility or within the local school district.

4. The facility's multidisciplinary team shall make a recommendation concerning the delivery site of educational services provided by a local school district that is based on least restrictive environment determinations for individual residents.

5. In any case, education services approved by the Department of Education shall be available either on the same site or in close physical proximity to the residential treatment facility.

(b) When the education services are not provided directly by the facility, there shall be a written agreement between the provider of education services and the facility. The provider shall be a state education department-approved program. The written agreement shall, at a minimum, address:

1. Qualifications of staff providing services;

2. Participation of educational and vocational staff in the treatment planning process;

3. Access by staff of the facility to educational and vocational programs and records; and

4. Financial and service arrangements.

(c) The facility shall ensure that residents have opportunities to be educated in the least restrictive environment consistent with the treatment needs of the resident as determined by the multidisciplinary team and reflected in the resident's master treatment plan.

(d) Upon admission each resident of school age shall have been certified or be referred for assessment as handicapped pursuant to PL 94-142.

(e) The facility shall ensure that education services are developed and implemented in conjunction with the master treatment plan and meet the following requirements:

1. The resident's teacher shall be a member of the multidisciplinary team, when possible.

2. Each resident's master treatment plan shall include formal academic goals for remediation and continuing education.

3. Each resident eligible for special education services to the handicapped shall have treatment activities developed by the multidisciplinary team, which may be incorporated into the individualized treatment plan (ITP [~~IEP~~]) developed by the local school district. The multidisciplinary team shall develop treatment activities which extend into the classroom as appropriate. The program director or designee shall request an invitation to attend all ITP [~~IEP~~] meetings. If allowed, the program director or designee shall attend all ITP [~~IEP~~] meetings.

4. To avoid unnecessary duplication and make maximum use of resources, the services provided by the education and treatment components for those children identified as handicapped pursuant to PL 94-142 shall be developed with the opportunity for input from both parties.

(f) The facility shall provide or arrange for vocational services for residents, as is age appropriate and is in accordance with the master treatment plan. The services shall be planned, implemented and supervised by a vocational counselor or appropriate therapist who may be a full- or part-time employee of the facility or a consultant.

(g) Residents may be permitted to accumulate earnings in a bank account established with the resident by the facility.

(7) Activity services.

(a) The recreational therapist shall prepare a daily schedule of planned recreational activities for the approval of the clinical director prior to implementation of the schedule.

1. The schedule shall be [~~in one half (1/2) hour increments~~] for normal waking hours that residents are not in school, or in active treatment.

2. The schedule shall include a full range of activities including physical recreation, team sports, art, and music; attendance at recreational and cultural events in the community; and individualized, directed activities like reading and crafts.

3. Nondirected leisure time shall be limited to two (2) one-half (1/2) hour periods on school days and three (3) one-half (1/2) hour periods on nonschool days.

4. The activity schedule shall identify the professional or direct-care staff who will lead and support each activity.

5. Changes made to the schedule as the schedule is implemented shall be indicated on a copy of each daily schedule maintained as a permanent record by the clinical director.

(b) The recreational therapist shall direct, consult with, and train staff responsible for leading the scheduled activities.

(c) The recreational therapist shall evaluate the effectiveness of the activity services.

(d) Appropriate time, space, and equipment shall be provided by the facility for leisure activity and free play.

(e) The facility shall provide the means of observing holidays and personal milestones in keeping with the cultural and religious background of the residents.

(8) Speech, language, and hearing services. The facility shall provide or arrange for speech, language, and hearing services to meet the identified needs of residents. These services shall be provided by the facility or through written agreement with a qualified speech-language and hearing clinician. The written agreement shall, at a minimum, address:

(a) Referral of residents;

(b) Qualifications of staff providing services;

(c) Exchange of clinical information; and

(d) Financial arrangements.

Section 13. Special Treatment Procedures. (1) Special treatment procedures include procedures such as restraint or seclusion and holding which may have abuse potential or be life threatening. Special treatment shall be used only as a means to prevent a resident from injuring himself or others or to prevent serious disruption of the therapeutic environment.

(2) Special treatment procedures shall not be used as punishment or as a convenience of staff.

(3) Special treatment procedures may be used only by trained, clinically-privileged staff.

(4) The facility shall have a written plan approved by the governing body for the use of special treatment procedures which at a minimum meet the following requirements:

(a) Any use of special treatment procedures requires clinical justification;

(b) A rationale and the clinical indications for the use of special treatment procedures shall be clearly stated in the resident's record

for each occurrence. The rationale shall address the inadequacy of less restrictive intervention techniques;

(c) The plan shall specify the length of time for which a specific approval remains effective; and

(d) The plan shall specify the length of time the special treatment procedure may be utilized.

(5) Restraint or seclusion may be ordered or carried out only after the physician who is authorizing the use of the procedure has conducted a clinical assessment or has consulted with a member of the clinical staff who has conducted a clinical assessment of the resident.

(6) Each written order for restraint or seclusion shall be time limited and shall not exceed twenty-four (24) hours. No PRN orders for restraint or seclusion may be written.

(7) Restraint or seclusion may be utilized in an emergency by trained, clinically-privileged staff. The emergency implementation of restraint or seclusion shall not exceed thirty (30) minutes at which time a physician staff member's oral order is required if use of the procedure is to continue. The physician's written order to confirm restraint or seclusion shall be entered in the resident's record as soon as possible, but not more than twenty-four (24) hours after the implementation of the procedure.

(8) Use of restraint or seclusion for a period of twenty-four (24) hours shall be approved by a committee made up of the professional staff, the clinical director, and the program director prior to the expiration of the first twenty-four (24) hour order.

(9) Staff who implement special treatment procedures shall have documented training in the proper use of the procedure used and shall be certified in physical management by a nationally recognized training program in which certification is obtained through skilled-out testing.

(10) A professional or direct-care staff member shall be constantly, physically present with a resident in restraint; and attention shall be given in regard to regular meals, bathing and use of the toilet. This attention shall be documented in the resident's record.

(11) A professional or direct-care staff person shall always be in the seclusion room with a resident twelve (12) years of age or under so long as the staff person is not placed in undue physical danger due to the relative size and strength of the resident who is in seclusion. Attention shall be given in regard to regular meals, bathing and use of the toilet. This attention shall be documented in the resident's record.

(12) Constant visual attention through physical presence, remote video, or window shall be paid to an adolescent who is in seclusion and over twelve (12) years of age or a resident who is under twelve (12) years of age if the staff person would be placed in undue physical danger due to the resident's relative size and strength. Professional or direct-care staff shall check the resident's breathing and talk to the resident every fifteen (15) minutes and shall attend to the resident's regular meals, bathing, and use of the toilet. This attention shall be documented in the resident's record.

(13) At no time may a procedure be used in a manner that causes undue physical discomfort, harm, or pain to a resident.

(14) All uses of special treatment procedures shall be reviewed on a daily basis by the clinical director and evaluated by him for the possibility of unusual or unwarranted patterns of use.

(15) A facility shall not use extraordinary risk procedures including, but not limited to experimental treatment modalities, psychosurgery, aversive conditioning, electroconvulsive therapies, behavior modification procedures that use painful stimuli, unusual medications, and investigational and experimental drugs.

(16) Unusual treatment shall require the informed consent of the resident and parent, guardian, or custodian prior to the provision of unusual treatment as follows:

(a) The proposed unusual treatment shall be reviewed and interpreted by one (1) or more persons legally qualified to prescribe treatment addressing the rationale for use, methods to be used, specified time to be used, who will provide the treatment, and the methods that will be used to evaluate the efficacy of the treatment.

(b) The potential risks, side effects, and benefits of the proposed unusual treatment shall be explained, verbally and in writing, to the resident and the parent, guardian, or custodian prior to their granting approval for the unusual treatment. The approval shall be given in writing prior to implementation of the treatment.

Section 14. Housekeeping Services. (1) The facility shall have policies and procedures for and services which maintain a clean, safe, and hygienic environment for residents and facility personnel. Policies and procedures shall include guidelines for at least the following:

(a) The use, cleaning, and care of equipment;

(b) Assessing the proper use of housekeeping and cleaning supplies;

(c) Evaluating the effectiveness of cleaning; and

(d) The role of the facility staff in maintaining a clean environment.

(2) A laundry service shall be provided by the facility or through contractual agreement.

(3) Pest control shall be provided by the facility or through contractual agreement.

Section 15. Infection Control. (1) Because infections acquired in a facility or brought into a facility from the community are potential hazards for all persons having contact with the facility, there shall be an infection control program developed to prevent, identify, and control infections.

(2) Written policies and procedures pertaining to the operation of the infection control program shall be established, reviewed at least annually, and revised as necessary.

(3) A practical system shall be developed for reporting, evaluating, and maintaining records of infections among residents and personnel.

(4) The system shall include assignment of responsibility for the ongoing collection and analysis of data, as well as for the implementation of required follow-up actions.

(5) Corrective actions shall be taken on the basis of records and reports of infections and infection potentials among residents and personnel and shall be documented.

(6) All new employees shall be instructed in the importance of infection control and personal hygiene and in their responsibility in the infection control program.

(7) The facility shall document that in-service education in infection prevention and control is provided to all services and program components.

WILLIAM M. GARDNER, Inspector General
MASTEN CHILDERS II, Secretary
APPROVED BY AGENCY: November 15, 1994
FILED WITH LRC: November 15, 1994 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for December 21, 1994, at 9 a.m., in the Department for Health Services Auditorium, First Floor, Cabinet for Human Resources, Health Services Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by December 16, 1994, of their desire to appear and testify at the hearing: William K. Moore, Deputy Counsel, Administrative Law, Office of the Counsel, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Contact person: Ralph Von Derau, David Crane

(1) Type and number of entities affected: A maximum of 16 beds,

per area development district (ADD) except for ADD 7 (maximum 32 beds), and ADD's 6 and 15 (maximum 48 beds).

(2) Direct and indirect costs or savings on the: This program's history in Kentucky is insufficient to allow an exact estimate of any increase or decrease in costs associated with these amendments.

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public notice of intent hearing was requested, but only minimal impact expected.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No notice of intent public hearing was requested, but no impact expected.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: No additional reporting requirements imposed. Other effects unknown.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body: The costs should be minimal.

(a) Direct and indirect costs or savings: $500 for printing new regulation.

1. First year: $500 for printing costs.

2. Continuing costs or savings: No continuing costs should be associated with this amendment since printing costs are a normal agency expense.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No additional requirements are imposed.

(4) Assessment of anticipated effect on state and local revenues: No effect.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: General funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No notice of intent public hearing was held, but no economic impact expected.

(b) Kentucky: No notice of intent public notice hearing was held, but no economic impact expected.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The specific proposed amendments to the aforementioned administrative regulation have been arrived at through collaborative effort among service providers, legislators, and the cabinet (DSS, DMS, DMH/MR, and this office).

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: These changes will permit existing PRTFs to more consistently comply with staffing requirements, and will allow additional PRTFs to come on line sooner.

(b) State whether a detrimental effect on environment and public health would result if not implemented: If the proposed amendments are not implemented, staffing problems may affect the viability of the PRTF program due to cost considerations.

(c) If detrimental effect would result, explain detrimental effect: Closures of existing PRTFs and the failure of additional PRTFs to come on line will result in loss of service to the community.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No conflict.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Yes. The administrative regulation allows for some staffing variances for smaller facilities.

PROPOSED ADMINISTRATIVE REGULATIONS RECEIVED THROUGH NOON, NOVEMBER 15, 1994

DEPARTMENT OF TREASURY

20 KAR 1:080. Linked deposit.

RELATES TO: KRS 41.600 - 41.625
STATUTORY AUTHORITY: KRS 41.605, 41.625
NECESSITY AND FUNCTION: This administrative regulation sets out the procedures for the operation of the Linked Deposit Investment Program. It establishes policy, the reduced loan process, review and monitoring procedures, and criteria for approval.

Section 1. The Department of Treasury finds the following: there are small businesses and agribusinesses throughout the state experiencing economic stagnation or decline; higher interest rates can cause small businesses and agribusinesses in the state to suffer in profitability and competition; and interest rates can be factors in causing unemployment, particularly, for women and minorities.

Section 2. The Linked Deposit Investment Program shall provide available state investment funds for low cost loans through approved state financial institutions to accomplish the following: contribute to the economic revitalization of this state; provide for employment growth and stabilization in economically depressed areas; and promote alternate or additional agriculture production.

(1) In deciding which eligible small businesses or agribusinesses shall receive reduced rate loans, the Treasury shall consider the following in that linked depoists funds are invested:

(a) To assure that initiatives by women and minorities are supported equitably;

(b) To benefit the unemployed;

(c) To promote new, expanded and alternate crop production;

(d) To promote the further development of agribusiness and value added opportunities.

(2) In deciding whether to approve a linked deposit investment loan package the department shall:

(a) Confirm the eligibility of the applicant;

(b) The number and kind of jobs to be created or retained;

(c) The amount of the loan;

(d) The amount of money available for loans;

(e) Whether the availability of linked deposit financing is essential for the economic feasibility of the acquisition to be made;

(f) The feasibility of the proposed business or agriculture project;

(g) The financial feasibility of the loan to be made; and

(h) All other relevant factors.

Section 3. The eligible lending institution shall forward to the Treasury a loan package. The loan package shall include a letter of intent with the following information:

(1) Intent to make the loan;

(2) The loan amount;

(3) The loan term;

(4) The proposed repurchase agreement terms;

(5) The interest rate for the state;

(6) The interest rate for the application; and

(7) The interest rate normally offered by the eligible lending institution for repurchase agreements of similar nature, structure, amount and term.

Section 4. A loan package shall be reviewed by three (3) Treasury employees. Their recommendation shall be forwarded to the Treasurer, or his designee, for approval. Upon approval, the Treasury shall notify the Investment Commission staff to process the repurchase agreement.

Section 5. The department shall monitor the business or agribusiness development of loan applications to verify compliance.

FRANCES JONES MILLS, Treasurer
APPROVED BY AGENCY: November 14, 1994
FILED WITH LRC: November 15, 1994, at 9 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on December 28, 1994, at 1 p.m., in Room 125, Capitol Annex, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by December 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 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: Frank Leidermann, State Treasury, 183 Capitol Annex, Frankfort, Kentucky 40601, (800) 465-4722.

REGULATORY IMPACT ANALYSIS

Contact Person: Frank Leidermann

(1) Type and number of entities affected: This applies to those financial institutions, small businesses and agribusinesses who voluntarily participate in the Linked Deposit Program. This would also effect the Investment Commission, the Office of Financial Management and Economic Analysis, and the Treasury.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: This regulation will allow for reduced, low interest loans, using state funds to create or retain jobs and to expand crop production in those areas where the program is implemented. It may have an indirect effect in reducing cost of living expenses.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented. This regulation will help business and agribusiness in providing for low interest loans and assist financial institutions in providing for expanded low interest loan opportunities.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year: Due to its pilot program status there is minimal increase work to participants and should no required new employees. Paperwork and processing between the financial institution and Treasury will be minimal. The existing investments procedure used for repurchase agreements will be used, thus, not requiring new nor additional paperwork or procedures there.

2. Second and subsequent years: The second year should show no change from the first years. Subsequent years could show an increase in factors if funding for the program is increased.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Due to the program's pilot status there is minimal increase of work, paperwork and processing. No new employees or increased budgetary funds will be needed. The existing investments procedure and personnel used for repurchase agreements will be utilized, thus, not requiring new nor additional paperwork or processing there. No savings will be realized.

2. Continuing costs or savings: Only if additional investments funding are approved by the General Assembly will the first year, above, statement change in anyway in subsequent years.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Reporting will be required from the Treasury to the Investment Commission, the Governor's Office of Financial Management and Economic Analysis, and the Finance and Administration Cabinet. Minimal reporting and paperwork will be required between participating financial institutions and the Treasury.

(4) Assessment of anticipated effect on state and local revenues: If the estimated $12 million is invested in each of the first two years, a $360,000 loss in investment revenue will result. However, state tax revenue will increase due to the new or retained tax revenue generated. There is no negative effect on local revenue, while some increase will result due to new or retained tax generated at the local level.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current Treasury budgetary funds and revenue generated from unclaimed property reported to the state will be used.

(6) Economic impact, including effects of economic activities arising rom administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: Jobs will be created or retained, and new crops generated, thus, benefiting the economic situation in the area.

(b) Some 300 jobs will be created or retained state wide. Alternative crops opportunities will be made available for farmers. Increase crop production will occur.

(7) Assessment of alternative methods; reasons why alternatives were rejected: There were no alternative methods available to carry out the intent of the linked deposits legislation. The legislation required the Treasury to implement regulations.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No known effect.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No

(9) Identify any statue, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no known ones.

(10) Any additional information or comments: No

(11) TIERING: Tiering is only applicable to those participating financial institutions and the general public who voluntarily choose to participate in the program.

OFFICE OF ATTORNEY GENERAL
Department of Law

40 KAR 1:030. Open records and open meetings decisions.

RELATES TO: KRS 61.846, 61.880

STATUTORY AUTHORITY: KRS 15.180

NECESSITY AND FUNCTION: KRS 61.880 requires the Attorney General to issue legally binding decisions in disputes arising under the Open Records Law. KRS 61.846 requires the Attorney General to issue legally binding decisions in disputes arising under the Open Meetings Law. This administrative regulation is necessary in order to set forth the procedures to be used by the parties involved in such adjudications.

Section 1. Form. An appeal under the Open Records Law must include a copy of the written request for the records and a copy of the agency's written response, if the agency provided a response. An appeal under the Open Meetings Law must include a copy of the written complaint to the public agency and a copy of the agency's written response, if the agency provided a response. The Attorney General cannot consider an appeal that fails to conform to this requirement.

Section 2. Notice. Upon receiving an appeal, the Attorney General's Office will send a copy of the appeal to the public agency against whom the appeal is taken. The agency may provide a written response to the issues raised in the appeal. The agency shall send a copy of this response to the party taking the appeal. If the agency fails to provide such copy, the Attorney General will provide one upon request. The Attorney General will consider any response received before the decision is prepared; however, the Attorney General cannot agree to withhold action on the appeal beyond the time limit imposed by KRS 61.880(2).

Section 3. Additional Documentation. KRS 61.880(2) authorizes the Attorney General to request additional documentation from the agency against which an open records appeal is filed. If documents thus obtained are copies of documents claimed by the agency to be exempt from the Open Records Law, the Attorney General will not disclose them and will destroy the copies at the time the decision is rendered.

Section 4. Reconsideration. The Attorney General will not reconsider a decision rendered under the Open Records Law or the Open Meetings Law. Parties dissatisfied with a decision may appeal the decision to circuit court as provided in KRS 61.880(5) and 61.848.

Section 5. Appeals. A party taking an appeal to circuit court shall notify the Attorney General of the appeal. The Attorney General shall not be made a party to the appeal.

Section 6. Moot Appeals. If the requested documents are made available to the requesting party after an appeal is taken, the Attorney General will decline to issue a decision in the matter.

CHRIS GORMAN, Attorney General

APPROVED BY AGENCY: August 18, 1994

FILED WITH LRC: November 2, 1994 at 2 p.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on December 21, 1994, at 9 a.m., in Room 327, Capitol Annex, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by December 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: Amye Majors, Assistant Attorney General, Attorney General's Office, P.O. Box 2000, Frankfort, Kentucky 40602, (502) 564-7600.

REGULATORY IMPACT ANALYSIS

Agency Contact: Amye B. Majors

(1) Type and number of entities affected: All parties appealing to the Attorney General a denial under the Open Records Law or Open Meetings Law.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in

which the administrative regulation will be implemented, to the extent available from the public comments received. There will be no impact on the cost of living and employment in Kentucky as the regulation merely states the existing administrative practice of the Attorney General's Office.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. There will be no impact on the cost of doing business in Kentucky as the regulation merely states the existing administrative practice of the Attorney General's Office.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: There will be no additional compliance, reporting, or paperwork requirements.

2. Second and subsequent years: There will be no additional compliance, reporting, or paperwork requirements.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: There will be no additional costs to the promulgating administrative body.

1. First year: There will be no additional costs to the promulgating administrative body.

2. Continuing costs or savings: There will be no additional costs to the promulgating administrative body.

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.

(4) Assessment of the anticipated effect on state and local revenues: There is no anticipated effect on state or local revenue.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: No additional revenue will be used for implementation and enforcement of the regulation, as it merely states the existing administrative practice of the Attorney General's Office.

(6) To the extent available from public comments received, the economic impact, including effects of economic activities arising from administrative regulation: There is no anticipated economic impact.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The regulation merely provides, in the format of an administrative regulation, the administrative procedures that have been used for many years in the handling of appeals under the Open Records Law. The regulation applies those procedures to appeals under the Open Meetings Law, which have been authorized since 1992.

(8) Assessment of expected benefits: The regulation will have no effect, detrimental or otherwise, on public health or environmental welfare in Kentucky, as it merely states the existing administrative practice of the Attorney General's Office.

(9) Identify any state or federal statute or regulation that may conflict with, overlap, or duplicate the administrative regulation being promulgated: There is no such statute or regulation.

(10) Any additional information or comments: None

(11) TIERING: Was tiering applied? No. Tiering was not applied because all persons filing appeals to the Attorney General are treated uniformly under the law.

KENTUCKY REVENUE CABINET
Office of General Counsel
Division of Tax Policy and Research

103 KAR 15:080. Depreciation; calculation and recognition of "transition amount."

RELATES TO: KRS 141.0101
STATUTORY AUTHORITY: KRS 131.130(1), 141.050(4)

NECESSITY AND FUNCTION: This administrative regulation explains the requirements for and computation of the "transition amount" adjustment, how it relates to previous depreciation deductions, and how to report the "transition amount" on tax returns.

Section 1. General. (1) For taxable years beginning after December 31, 1993, the federal and Kentucky depreciation deductions, the Internal Revenue Code (IRC) Section 179 "election to expense" deduction, the basis of assets and the gain or loss from the disposition of assets shall be the same as determined under Chapter 1 of the IRC. KRS 141.0101(11) through (15) require that the adjusted Kentucky basis on the first day of the first taxable year beginning after December 31, 1993 be equal to the adjusted federal basis by calculating and reporting a transition amount.

(2) For taxable years beginning after June 30, 1984 but before January 1, 1994, taxpayers may have deducted different depreciation amounts for federal income tax purposes than for Kentucky income tax purposes. The difference in depreciation deductions results in different adjusted bases for Kentucky and federal income tax purposes.

Section 2. Determining and Reporting the Transition Amount. (1) A transition amount shall be determined as of the first day of the first taxable year beginning after December 31, 1993, by calculating the net difference between the adjusted Kentucky basis and the adjusted federal basis of all depreciable assets owned by the taxpayer on that date. The transition amount shall be reported on the Kentucky income tax return as follows:

(a) If the transition amount exceeds $100,000, it shall be recognized annually at the rate of twenty-five (25) percent of the transition amount for the first taxable year beginning after December 31, 1993 and the three (3) succeeding taxable years.

(b) If the transition amount does not exceed $100,000, the taxpayer may elect to report as described in paragraph (a) of this subsection or report the entire amount in the first taxable year beginning after December 31, 1993.

(2)(a) If the adjusted Kentucky basis exceeds the adjusted federal basis, the transition amount shall be deducted from gross income.

(b) If the adjusted Kentucky basis is less than the adjusted federal basis, the transition amount shall be added to gross income.

(3) The transition amount shall be calculated and reported on Form 762TS, Kentucky Depreciation Transition Schedule, which is hereby incorporated by reference. This form shall be used for the income tax return filed for the first taxable year beginning after December 31, 1993 and will be available after December 31, 1994. Copies may be obtained from the Kentucky Revenue Cabinet, 200 Fair Oaks Lane, Frankfort, Kentucky 40620.

(4) The tax treatment of the transition amount shall be determined by the activity from which it was derived. The transition amount related to activities subject to passive activity and at-risk rules must be included when computing income for the purpose of determining passive loss and at-risk limitations.

(5) For corporations, the transition amount shall not include amounts of Accelerated Cost Recovery System (ACRS) depreciation not allowed as a deduction in determining Kentucky net income for tax years beginning before July 1, 1984.

(6) Election.

(a) The election under subsection (1)(b) of this section shall be made with the filing of the income tax return for the first taxable year beginning after December 31, 1993.

(b) The election shall be made by checking the appropriate box on Form 762TS.

(c) A taxpayer's election to report the transition amount over four (4) years is irrevocable.

Section 3. Accelerated Recognition of Transition Amount Not Allowed. If the four (4) year period provided in Section 2(1)(a) of this

administrative regulation applies, the annual recognition of twenty-five (25) percent of the transition amount shall not be accelerated by:

(1) The disposition of any asset prior to expiration of the four (4) year period;

(2) The death or move from Kentucky of an individual taxpayer prior to expiration of the four (4) year period; or

(3) The withdrawal or dissolution of a corporation prior to expiration of the four (4) year period.

Section 4. Examples. (1) The aggregate adjusted federal basis of transition property is $40,000. The aggregate adjusted Kentucky basis of transition property is $50,000. The transition amount is $10,000. This entire amount may be deducted from Kentucky gross income in the first taxable year beginning after December 31, 1993 or reported over four (4) years by electing the provisions contained in Section 2 of this administrative regulation and deducting $2,500 for that taxable year and each of the three (3) succeeding taxable years.

(2) The aggregate adjusted federal basis of transition property is $40,000. The aggregate adjusted Kentucky basis of transition property is $35,000. The transition amount is $5,000. This entire amount may be reported as an increase in Kentucky gross income in the first taxable year beginning after December 31, 1993 or reported over four (4) years by electing under Section 2 of this administrative regulation to include $1,250 in gross income for that taxable year and each of the three (3) succeeding taxable years.

(3) The aggregate adjusted federal basis of transition property is $250,000. The aggregate adjusted Kentucky basis of transition property is $400,000. The transition amount is $150,000. This amount shall be deducted from Kentucky gross income at the rate of $37,500 for the first taxable year beginning after December 31, 1993 and each of the three (3) succeeding taxable years.

(4) The aggregate adjusted federal basis of transition property is $400,000. The aggregate adjusted Kentucky basis of transition property is $550,000. The transition amount is $150,000. The taxpayer sells all transition property in 1995. The transition amount shall be deducted from Kentucky gross income at the rate of $37,500 for the first taxable year beginning after December 31, 1993 and each of the three (3) succeeding taxable years without regard to the disposition of the assets.

KIM BURSE, Secretary

APPROVED BY AGENCY: November 11, 1994

FILED WITH LRC: November 14, 1994 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 22, 1994 at 10 a.m. in the Third Floor Training Room at 200 Fair Oaks Lane, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by December 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 to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jennifer C. Hays, Kentucky Revenue Cabinet, Division of Tax Policy & Research, 200 Fair Oaks Lane, Building #2, Frankfort, Kentucky 40620, (502) 564-6843.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jennifer C. Hays

(1) Type and number of entities affected: All individuals, corporations, partnerships, and trusts or estates deducting depreciation from gross income for income tax purposes and having previously had a difference between the federal and Kentucky amounts of depreciation will be impacted.

(2) Direct and indirect costs or savings on the entities affected: Savings will be incurred since taxpayers will no longer be required to maintain two sets of depreciation schedules to determine depreciation deduction differences for federal and Kentucky income tax purposes.

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: No anticipated impact.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: A small decrease due to recordkeeping simplification.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Compliance, reporting and paperwork requirements will be significantly reduced since Kentucky will now be requiring the depreciation deduction to be the same as the federal deduction.

2. Second and subsequent years: Same as (2)(c)1 above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No additional costs will be incurred by the cabinet. Indirect savings will be realized by reducing the number of manhours necessary to audit all income tax returns containing a depreciation deduction.

2. Continuing costs or savings: Same as (3)(a)1 above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Form 762 has been eliminated. Form 762TS will replace Form 762 for the transition year.

(4) Assessment of anticipated effect on state and local revenues: A slight decrease in state revenues is expected from the conversion from the Kentucky depreciation system back to the federal depreciation system. No local revenues will be changed.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Revenue Cabinet general budget.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No expected impact.

(b) Kentucky: No expected impact.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The conversion from the Kentucky system to the federal system is statutorily mandated by KRS 141.0101.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect: Not applicable.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None known.

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(10) Any additional information or comments: None

(11) TIERING: Is 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 15:090. Computing the amortization deduction for intangible assets.

RELATES TO: KRS 141.010
STATUTORY AUTHORITY: KRS 131.130(1), 141.050(4)
NECESSITY AND FUNCTION: This administrative regulation explains the provisions of income tax law pertaining to the allowable amortization deduction for intangible assets.

Section 1. Definitions. Definitions of terms used in this regulation shall be the same as those contained in Internal Revenue Code (IRC) Section 197, unless defined differently in KRS Chapter 141.

Section 2. Intangible Asset Amortization Rules. (1) IRC Section 197, contained in the 1993 Federal Revenue Reconciliation Act, provides that specified intangible assets shall be amortized over a fifteen (15) year period. For federal income tax purposes, IRC Section 197 is effective for intangible assets acquired after August 10, 1993. It also allows for retroactive application to intangible assets acquired after July 25, 1991.

(2) Kentucky adopted the provisions of IRC Section 197 for taxable years beginning on or after January 1, 1994. Kentucky did not adopt the retroactive provisions of IRC Section 197. Therefore, the Kentucky amortization deduction for 1991, 1992, and 1993 shall be determined in accordance with the IRC in effect December 31, 1989 or December 31, 1991 depending upon the year of acquisition of the intangible asset. For any Section 197 asset acquired prior to January 1, 1994, the following Kentucky and federal differences exist:

(a) The amount of amortization deductions claimed in taxable years beginning before January 1, 1994;

(b) The amount of accumulated amortization;

(c) The amount of adjusted bases; and

(d) The number of years amortized.

(3) For taxable years beginning after December 31, 1993, the Kentucky amortization deduction for Section 197 assets for the taxable year shall be the same amount as determined under IRC Section 197, limited to 100 percent of the cost of the asset. It is possible to fully amortize a Section 197 asset for Kentucky income tax purposes earlier than for federal income tax purposes or have a Kentucky adjusted basis that is not fully amortized. Differences in federal and Kentucky adjusted bases are recognized when calculating the gain or loss upon disposition of the intangible asset.

Section 3. Examples. (1) A calendar year taxpayer acquires goodwill in August of 1991 and in 1993 elects for federal income tax purposes to retroactively treat the goodwill as a Section 197 intangible asset. The allowable amortization deduction is claimed on amended federal returns for 1991 and 1992 and the original federal return for 1993. The amortization deduction is not allowable for Kentucky purposes prior to 1994. Therefore, there is no need to amend the Kentucky returns for 1991 and 1992, and the 1993 Kentucky return reflects no amortization deduction. Beginning with the calendar year 1994, the taxpayer shall deduct the same amount of amortization for Kentucky purposes as for federal purposes for the remainder of the fifteen (15) year amortization period provided by IRC Section 197. When the asset is fully amortized for federal purposes, the Kentucky deduction ceases even though an adjusted Kentucky basis remains. If the asset is disposed of, the difference in the adjusted Kentucky basis and the adjusted federal basis shall be recovered in the amount of gain or loss reported for Kentucky purposes.

(2) A calendar year taxpayer acquires a trademark in August of 1991 and in 1993 elects for federal income tax purposes to retroactively treat the trademark as a Section 197 intangible asset subject to the fifteen (15) year amortization rules. Prior to the Federal Revenue Reconciliation Act of 1993, trademark and trade name expenditures were amortized over sixty (60) months for both federal and Kentucky income tax purposes. Amended federal returns are filed for 1991 and 1992 reflecting the new Section 197 treatment. The original 1993 federal return is also filed reflecting the new Section 197 treatment. The amended federal returns reduce the previously claimed amortization deductions from five (5) year amortization amounts to fifteen (15) year amounts. Amended Kentucky returns are not needed for 1991 and 1992 because the Kentucky amortization amount does not change. The five (5) year amortization period continues to apply for the 1993 Kentucky return. Beginning with the calendar year 1994, the Kentucky deduction is the same amount as the federal deduction, until the adjusted Kentucky basis is reduced to zero. If the asset is disposed of before the adjusted federal basis is reduced to zero, the difference in the adjusted Kentucky basis and the adjusted federal basis will result in a difference in the calculated gain or loss for Kentucky and federal purposes.

KIM BURSE, Secretary
APPROVED BY AGENCY: November 11, 1994
FILED WITH LRC: November 14, 1994 at 2 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 22, 1994 at 10 a.m. in the Third Floor Training Room at 200 Fair Oaks Lane, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by Saturday, December 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 to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.
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 all Kentucky income taxpayers acquiring intangible assets after July 25, 1991.
(2) Direct and indirect costs or savings on the:
(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: None
(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: None
(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:
1. First year following implementation: Compliance, reporting and paperwork requirements will not be changed.
2. Second and subsequent years: Compliance, reporting and paperwork requirements will not be changed.
(3) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: Taxpayers who follow the guidance of this administrative regulation will file more accurate income tax returns. This guidance will reduce the potential costs of compliance by the Revenue Cabinet.
2. Continuing costs or savings: Same as (3)(a)1 above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No additional requirements.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Revenue Cabinet general budget.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No expected impact.

(b) Kentucky: No expected impact.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods considered did not meet the requirements of KRS Chapter 141 and the Internal Revenue Code in effect on December 31, 1993.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect: Not applicable.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None known.

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. The provisions of this regulation will be applied equally to all taxpayers.

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems

105 KAR 1:280. Federal restrictions on the purchase of service credit.

RELATES TO: KRS 16.505-16.652, 61.510-61.705, 78.510-78.852

STATUTORY AUTHORITY: KRS 61.645(9)(e)

NECESSITY AND FUNCTION: Various sections of KRS Chapters 16, 61 and 78 provide for the purchase of current service credit in the State Police Retirement System (SPRS), the Kentucky Employees Retirement System (KERS) and the County Employees Retirement System (CERS). The amount of money an eligible member may contribute to the retirement system is limited by 26 USC 415 and, therefore, the total amount of service an eligible member may purchase is limited. This administrative regulation sets out procedures to be followed in meeting the federal limits.

Section 1. No eligible member shall be allowed to purchase service credit under any statutory provision if the cost of the service purchase exceeds the maximum allowable amount for additional contributions pursuant to 26 USC 415. The system shall inform the eligible member when a service purchase exceeds the maximum allowable amount for additional contributions.

Section 2. If the eligible member has made a purchase based on the member's estimated current rate of pay, final rate of pay or final compensation for a fiscal year, and the member's actual current rate of pay, final rate of pay or final compensation as reported by the employer in that fiscal year is less than the amount needed to permit the purchase under 26 USC 415, then the service purchase shall be adjusted, to the extent allowable under the statutes, to an amount allowable under 26 USC 415. The excess purchase amount shall be refunded to the member, and the service associated with that excess purchase amount shall not be credited to the member in that fiscal year.

JOHN D. ROBEY, Chairman

APPROVED BY AGENCY: October 24, 1994

FILED WITH LRC: November 15, 1994 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 1994, at 9 a.m. at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by December 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 this 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 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: Pamala S. Johnson, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, KY 40601, (502) 564-4646.

REGULATORY IMPACT ANALYSIS

Agency Contact: Pamala S. Johnson

(1) Type and number of entities affected: All members of KERS, CERS and SPRS who make service purchases.

(2) Direct and indirect costs or savings to those affected: There may be a cost to individual members who could have afforded to purchase service in a lump sum who may be required to purchase the service over a period of years because of the federal restriction. Service costs generally rise with age and increased salary. For members who would have purchased under the installment purchase plan anyway, there will be no increase in cost.

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: There is no increase in paperwork for the individuals affected.

1. First year following implementation:

2. Second and subsequent years:

(3) Effects on the promulgating administrative body: The retirement system must monitor purchases to assure compliance with the federal limit on contributions. Since a final audit of each service purchase is conducted and this will become part of that final audit, no measurable increase in cost will occur.

(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: Additional reports will be required to monitor compliance.

(4) Assessment of anticipated effect on state and local revenues: This regulation will not affect state or local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: All administrative expenses are paid from employer contributions. There is no cost associated with this regulation.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: This regulation does not affect economic activities.

(a) Geographical area in which administrative regulation will be implemented:

(b) Kentucky:

(7) Assessment of alternate methods; reasons why alternatives were rejected: The retirement system must comply with the federal law in order to retain tax exempt status.

(8) Assessment of expected benefits: The retirement system will be in compliance with federal tax law which is necessary to maintain tax exempt status for the funds.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There is no affect on the public health or environmental welfare.

(b) State whether a detrimental effect on environment and public health would result if not implemented:

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Kentucky statutes governing service purchase do not restrict the amount a member may pay to purchase service. The federal law restricts the amount to 25% of salary earned in the plan year or $30,000, whichever is less.

(a) Necessity of proposed regulation if in conflict: Compliance with the federal restriction is necessary to maintain tax exempt status.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: The federal restriction must be applied.

(10) Any additional information or comments: For members who purchase service in increments or through the installment purchase provisions over a period of years, there will be little impact. Members who had planned to purchase large amounts of service at one time or right at the time of retirement may not be allowed to purchase the full amount of the service.

TIERING: Was tiering applied? Tiering does not apply. The federal restriction is the same for all individuals.

GENERAL GOVERNMENT CABINET
Board of Embalmers and Funeral Directors

201 KAR 15:100. Schools recognized by the board.

RELATES TO: KRS 316.030

STATUTORY AUTHORITY: KRS 316.210(4)

NECESSITY AND FUNCTION: KRS 316.030 requires all applicants for an embalmer's license to have completed a course of study of one (1) year in the science and art of embalming, disinfection, and sanitation in an accredited school of embalming recognized by the Board of Embalmers & Funeral Directors. The function of this regulation is to clarify which courses of study at accredited schools are recognized by the board.

Section 1. A course of study of one (1) year in the science and art of embalming, disinfection, and sanitation in an accredited school of embalming shall meet all of the following before being recognized by the board as satisfying the requirement of KRS 316.030:

(1) The course of study shall be at a school which was accredited by the American Board of Funeral Service Education Inc. when the applicant for an embalmer's license received a certificate, diploma, or degree from the school; and

(2) The course of study shall be at a school which required the applicant to attend classes on school premises for the entire year as opposed to a school which gave the applicant credit for correspondence courses or courses taken at home.

EDD PRESTON, President

APPROVED BY AGENCY: October 3, 1994

FILED WITH LRC: October 27, 1994 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held the 21st day of December, 1994, at 9 a.m. in the Capitol Annex, Room 127, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by the 16th day of December, 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 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 B. Pettus, Assistant Attorney General, Office of Attorney General, P.O. Box 2000, Frankfort, Kentucky 40602-2000, (502) 564-7600.

REGULATORY IMPACT ANALYSIS

Agency Contact: William B. Pettus

(1) Type and number of entities affected: Approximately 60-65 applicants for an embalmer's license each year in Kentucky.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: There is no direct or indirect costs or savings on the cost of living and employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: There is no direct or indirect costs or savings on the cost of doing business.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: There is no direct or indirect costs or savings on the compliance, reporting, and paperwork requirements the first year following implementation.

2. Second and subsequent years: There is no direct or indirect costs or savings on the compliance, reporting, and paperwork requirements the second and subsequent years.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There are no direct or indirect costs or savings the first year.

2. Continuing costs or savings: There are no continuing costs or savings.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no effects on reporting or paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: There is no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The source of revenue to be used for implementation and enforcement of this administrative regulation will be licensing fees.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be

implemented: No economic impact is anticipated in the geographical area.

(b) Kentucky: No economic impact is anticipated in Kentucky.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This regulation is being promulgated to clarify which courses of study in embalming at accredited schools are recognized by the board. No other alternatives were deemed appropriate.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No effects are anticipated on public health and environmental welfare.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effects on environment and public health would result if this administrative regulation were not implemented.

(c) If detrimental effect would result, explain detrimental effect: No detrimental effect would result.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict: No such statute, regulation, or policy exists.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.

(10) Any additional information or comments: There is no additional information or comments.

(11) TIERING: Is tiering applied? Tiering was not applied because all applicants are treated uniformly under the law.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

401 KAR 50:072. Acid rain permit.

RELATES TO: 401 KAR Chapter 50, KRS 224.01-010, 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR Parts 70.1-70.11, 72.1-72.96, 73.1-73.53, 75.1-75.67, 76.1-76.16, 77.1-77.6, 78.1-78.20, 42 USC 7651 to 7651o, 7661 to 7661f

STATUTORY AUTHORITY: 401 KAR Chapter 50, KRS 224.01-010, 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR Parts 70.1-70.11, 72.1-72.96, 73.1-73.53, 75.1-75.67, 76.1-76.16, 77.1-77.6, 78.1-78.20, 42 USC 7651 to 7651o, 7661 to 7661f

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. The federal regulation incorporated by reference in this administrative regulation establishes the criteria for Phase II affected sources in the acid rain program. The Commonwealth of Kentucky, in 42 USC 7651g(d)(1), is required to submit in accordance with Title V (42 USC 7661 to 7661f) a program to provide for permits during Phase II of the acid rain program.

Section 1. Definitions. As used in 40 CFR 72.1 to 72.96, the following term shall be defined as provided in this section:

(1) "Permitting authority" means, after the classification date defined in 401 KAR 50:035, Section 1(8), the Natural Resources and Environmental Protection Cabinet, except as provided by subsection (2) of this section.

(2) As used in 40 CFR 72.60 through 72.69 (40 CFR 72, Subpart F), "permitting authority" means the Administrator of the U.S. EPA.

Section 2. (1) 40 CFR 72.1 to 72.96 (40 CFR Part 72, Subparts A through I) and Appendixes A through D to 40 CFR Part 72, as published in the Code of Federal Regulations, Title 40, Parts 61 to 80, July 1, 1993, are incorporated by reference.

(2) The material incorporated by reference may be obtained, inspected, or copied at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

(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.

(3) 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.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: November 14, 1994

FILED WITH LRC: November 15, 1994 at 11 a.m.

PUBLIC HEARING: A public hearing to receive comments on the proposed regulation will be conducted on December 29, 1994, at 10 a.m. (ET) in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, 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. 362. 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 incorporates by reference the federal regulation for the acid rain program at 40 CFR Part 72. The regulation applies to each affected source and to each of the following units: units listed in Table 1 of 40 CFR 73.10(a) as Phase I units, existing units identified in Table 2 of 40 CFR 73.10(b); and various other existing utility units and new utility units. This administrative regulation is being proposed by the cabinet so that Kentucky may enforce the federal acid rain program regulation, 40 CFR Part 72. This regulation is also necessary for Kentucky to receive approval for its Title V permit program submittal pursuant to 42 USC 7661 through 7661f and 40 CFR Part 70.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented. There are no costs or savings beyond those which are described in the federal proposed rulemaking in Federal Register, 56 FR 63002, December 3, 1991, and the federal final rulemaking in Federal Register, 58 FR 3590, January 11, 1993, as amended at Federal Register 58 FR 15634, March 23, 1993.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented. This administrative regulation does not affect the cost of doing business in geographical

areas where affected sources are located beyond the costs described in the proposed and final federal rulemakings.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: There will be no compliance, reporting, or paperwork requirements beyond those required in the federal acid rain program regulation. Sources in Kentucky are subject to the same provisions as required of all other affected sources in the country.

2. Second and subsequent years: There will be no additional compliance, reporting, or paperwork requirements during the second and succeeding years beyond those described for the first year.

(3) 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.

(4) Assessment of anticipated effect on state and local revenues: This administrative regulation will have no effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The division's operating budget will be used to implement and enforce this administrative regulation.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation will have no economic impact in the geographical location of affected sources beyond those described in the proposed and final federal rulemakings.

(b) Kentucky: This administrative regulation will have no economic impact in any geographical location in Kentucky since all affected sources in the country are subject to the same provisions as those located in Kentucky.

(7) 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 acid rain regulation, (40 CFR Part 72), and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government. This regulation is also necessary for Kentucky to obtain approval of the state's Title V permit program.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Affected sources will benefit from this administrative regulation by obtaining permits from the state rather than the federal government. This administrative regulation will have no additional effects on public health and the environment beyond those described in the federal rulemaking.

(b) State whether a detrimental effect on environment and public health would result if not implemented: A detrimental effect on environment and public health would result if this regulation is not implemented.

(c) If detrimental effect would result, explain detrimental effect: If this regulation is not implemented, Kentucky's Title V permit program will not receive approval from the U.S. EPA. Without this approval, the federal government would be obliged to issue sanctions in the state. The ability of the cabinet to issue and enforce permits would also be endangered as well as the cabinet's obligation under the statutory mandate of KRS 224.10-100 to control air pollution and to protect the public health and environment.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, 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 administrative regulation with conflicting provisions: The administrative regulation is not in conflict.

(10) Any additional information or comments: The cabinet is promulgating this administrative regulation to incorporate by reference the federal acid rain program regulation, 40 CFR Part 72, so that Kentucky will be granted delegation of authority to enforce the provisions of the federal acid rain program regulation.

(11) TIERING: Is tiering applied? No. The cabinet is incorporating by reference this federal acid rain program regulation so that Kentucky may enforce the Phase II portion of the federal acid rain program. The federal regulation applies to all Phase I affected facilities, units identified as Phase II units in Federal Register 58 FR 15634, March 23, 1993, and certain other existing and new units. 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. A unit, part, or division of local government with an affected unit under the acid rain program is affected.

3. State the aspect or service of local government to which this administrative regulation relates. A fossil-fuel fired electric utility unit owned or operated by local government is an affected unit.

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 further explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 7651 through 7651o mandates the U.S. EPA to promulgate standards for Phase II of the acid rain program and provides for state oversight of certain elements. The federal regulations which implement this mandate to the state are found in 40 CFR Part 72, as published in the Code of Federal Regulations, Title 40, Parts 61 to 80, July 1, 1993. Subpart A (general provisions), Subpart B (designated representative), Subpart C (permit application requirements), and Subpart D (requirements for compliance plans and compliance options) affect units subject to acid rain emissions reduction requirements or emissions limits. Subpart E describes the contents of the permit issued to utility units subject to those requirements or limits and sets permit shield terms once the permit is issued. Subpart G requires issuing a Phase II permit to owners of utility units subject to

those requirements or limits. Subpart H defines the terms for permit revisions affecting utility units. Subpart I establishes compliance certification procedures affecting utility units. (Subpart F contains provisions for the U.S. EPA to regulate Phase II if a state program is not in force.) There are also four appendixes for use by permitted entities: Appendix A, Methodology for Annualization of Emissions Limits; Appendix B, Methodology for Conversion of Emissions Limits; Appendix C, Actual 1985 Yearly SO_2 Emissions calculations; and Appendix D, Calculation of Potential Electric Output Capacity.

2. State compliance standards. The federal acid rain program regulation provides compliance standards to control sulfur dioxide from all Phase II facilities in 40 CFR 72, Subparts A, B, C, D, E, G, H, and I, and provisions for maintaining those standards. This state regulation incorporates by reference the federal program regulations establishing procedures for Phase II in accordance with 40 CFR Part 72.

3. Minimum or uniform standards contained in the federal mandate. The standards for the state acid rain program appear at 40 CFR Part 72. Promulgation prior to January 1, 1995, is essential if the state is to obtain timely approval of the Title V permit program in accordance with 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. There will be no stricter requirements or additional responsibilities or requirements beyond those required by the federal acid rain program 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 50:076. Acid rain nitrogen oxides emission reduction program.

RELATES TO: 401 KAR 50:035, KRS 224.01-010, 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR Parts 70.1-70.11, 72.1-72.96, 73.1-73.53, 75.1-75.67, 76.1-76.16, 77.1-77.6, 78.1-78.20, 42 USC 7651 to 7651o, 7661 to 7661f

STATUTORY AUTHORITY: KRS 224.01-010, 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR Parts 70.1-70.11, 72.1-72.96, 73.1-73.53, 75.1-75.67, 76.1-76.16, 77.1-77.6, 78.1-78.20, 42 USC 7651 to 7651o, 7661 to 7661f

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. The federal regulation incorporated by reference in this administrative regulation establishes the requirements for emission limitations for nitrogen oxides from coal-fired utilities subject to Phase II regulations in the acid rain program.

Section 1. Definitions. As used in 40 CFR 76.1 to 76.5 and 76.8 to 76.15 (40 CFR Part 76), "permitting agency" means the Natural Resources and Environmental Protection Cabinet after the classification date defined in 401 KAR 50:035, Section 1(8).

Section 2. (1) 40 CFR 76.1 to 76.5 and 76.8 to 76.15 (40 CFR Part 76), as published in the Federal Register at 59 FR 13564 (March 22, 1994), are incorporated by reference.

(2) The material incorporated by reference may be obtained, inspected, or copied at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

(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.

(3) 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.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: November 14, 1994

FILED WITH LRC: November 15, 1994 at 11 a.m.

PUBLIC HEARING: A public hearing to receive comments on the proposed regulation will be conducted on December 29, 1994, at 10 a.m. (ET) in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, 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. 362. 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 incorporates by reference the federal regulation limiting emissions of nitrogen oxides at 40 CFR Part 76. The regulation applies to each affected source and to each of the following units: units listed in Table 1 of 40 CFR 73.10(a) as Phase I units, existing units identified in Table 2 of 40 CFR 73.10(b); and various other existing utility units and new utility units. This administrative regulation is being proposed by the cabinet so that Kentucky may enforce the federal acid rain program regulations in 40 CFR Part 76. The implementation of this regulation is also necessary for Kentucky to receive approval of the Title V permit program mandated pursuant to 42 USC 7661 through 7661f and 40 CFR Part 70.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented. There are no costs or savings beyond those which are described in the federal proposed rulemaking in the November 25, 1992, Federal Register (57 FR 55632) and the federal final rulemaking in the March 22, 1994, Federal Register (59 FR 13564) for nitrogen oxides only.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented. This administrative regulation does not affect the cost of doing business in geographical areas where affected sources are located since all affected sources in the country are subject to these provisions.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: There will be no compli-

ance, reporting, or paperwork requirements beyond those required in the federal acid rain program regulation. Sources in Kentucky are subject to the same provisions as required of all other affected sources in the country.

2. Second and subsequent years: There will be no additional compliance, reporting, or paperwork requirements during the second and succeeding years beyond those described for the first year.

(3) 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.

(4) Assessment of anticipated effect on state and local revenues: This administrative regulation will have no effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The division's operating budget will be used to implement and enforce this administrative regulation.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation will have no economic impact in the geographical location of affected sources beyond those discussed in the proposed and final federal rulemakings.

(b) Kentucky: This administrative regulation will have no economic impact in any geographical location in Kentucky beyond those discussed in the proposed and final federal rulemakings.

(7) 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 acid rain regulation, (40 CFR Part 76), and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government. This regulation is also necessary for Kentucky to obtain approval of the state's Title V permit program.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Affected sources will benefit from this administrative regulation by obtaining permits from the state rather than the federal government. This administrative regulation will have no additional effects on public health and the environment beyond those described in the federal rulemaking.

(b) State whether a detrimental effect on environment and public health would result if not implemented: A detrimental effect on environment and public health would result if this regulation is not implemented.

(c) If detrimental effect would result, explain detrimental effect: If this regulation is not implemented, Kentucky's Title V permit program will not receive approval from the U.S. EPA. Without this approval, the federal government would be obliged to issue sanctions in the state. The ability of the cabinet to issue and enforce permits would also be endangered as well as the cabinet's obligation under the statutory mandate of KRS 224.10-100 to control air pollution and to protect the public health and environment.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, 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 administrative regulation with conflicting provisions: The administrative regulation is not in conflict.

(10) Any additional information or comments: The cabinet is promulgating this administrative regulation to incorporate by reference the federal regulation for the nitrogen oxides emission reduction program of the acid rain program, 40 CFR Part 76, so that Kentucky will be granted delegation of authority to enforce the provisions of the federal acid rain program regulation.

(11) TIERING: Is tiering applied? No. The cabinet is incorporating by reference this federal acid rain program regulation so that Kentucky may enforce nitrogen oxides emissions limitations for the Phase II portion of the federal acid rain program. This federal regulation applies to all Phase I affected facilities, units identified as Phase II units at Federal Register 58 FR 15650, March 23, 1993, and certain other existing and new units. 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. A unit, part, or division of local government with an affected unit under the acid rain program is affected.

3. State the aspect or service of local government to which this administrative regulation relates. A fossil-fuel fired electric utility unit owned or operated by local government is an affected unit. 40 CFR Part 76 establishes requirements only for emissions of NO_x.

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 further explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 7651 through 7651o mandates the U.S. EPA to promulgate standards for Phase II of the acid rain program and provides for state programs to control emissions of pollutants such as nitrogen oxides. The federal regulation which implements this mandate to the state regarding NO_x control is found in 40 CFR Part 76, as published in the Code of Federal Regulations at 59 FR 13564 (March 22, 1994).

2. State compliance standards. The federal acid rain program regulation at 40 CFR Part 76 provides compliance standards to control nitrogen oxides emissions from all Phase II acid rain facilities. This state regulation incorporates by reference the federal acid rain program regulations establishing control of nitrogen oxides emissions found in 40 CFR Part 76.

3. Minimum or uniform standards contained in the federal mandate. The standards for controlling nitrogen oxides emissions during Phase II of the state acid rain program appear at 40 CFR Part 76.

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 acid rain program 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 57:130. National emission standard for benzene emissions from coke by-product recovery plants.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 61.130 to 61.139, 42 USC 7412

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 61.130 to 61.139, 42 USC 7412

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. The federal regulation incorporated by reference in this administrative regulation provides for the control of benzene emissions from affected sources. Delegation of implementation and enforcement authority for the federal National Emissions Standard for Hazardous Air Pollutants (NESHAP) regulation from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7412(d).

Section 1. Definitions. As used in 40 CFR 61.130 to 61.139, the following terms shall be defined as provided in this section:

(1) Except as provided by subsection (2) of this section, "administrator" means the Secretary of the Natural Resources and Environmental Protection Cabinet.

(2) As used in 40 CFR 61.136(d), "administrator" means the Administrator of the U.S. EPA.

Section 2. (1) 40 CFR 61.130 to 61.139, (40 CFR 61, Subpart L), National Emission Standard for Benzene Emissions from Coke By-product Recovery Plants, as published in the Code of Federal Regulations, Title 40, Parts 61 to 80, July 1, 1993, is incorporated by reference.

(2) The material incorporated by reference may be obtained, inspected, or copied at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

(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.

(3) 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.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: November 14, 1994

FILED WITH LRC: November 15, 1994 at 11 a.m.

PUBLIC HEARING: A public hearing to receive comments on the proposed regulation will be conducted on December 29, 1994, at 10 a.m. (ET) in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, 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. 362. 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 incorporates by reference the federal national emission standard for benzene emissions from coke by-product recovery plants, 40 CFR Part 61, Subpart L, as published in the Code of Federal Regulations, Title 40, Parts 61 to 80, July 1, 1993. The federal NESHAP regulation applies to each of the following sources at furnace and foundry coke by-product recovery plants: tar decanters, tar storage tanks, tar-intercepting sumps, flushing-liquor circulation tanks, light-oil sumps, light-oil condensers, light-oil decanters, wash-oil decanters, wash-oil circulation tanks, naphthalene processing final coolers, final-cooler cooling towers. It also applies to the following equipment that is intended to operate in benzene service: pumps, valves, exhausters, pressure relief devices, sampling connection systems, open-ended valves or lines, flanges or other connectors, and control devices or systems required by 40 CFR 61.135. The federal regulation also applies to benzene storage tanks, BTX storage tanks, light-oil storage tanks, and excess ammonia-liquor storage tanks at furnace coke by-product recovery plants.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented. There are no costs or savings beyond those which are described in the federal final rulemaking for this source category at Federal Register, 56 FR 47406, September 19, 1991.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented. This administrative regulation does not affect the cost of doing business in geographical areas where affected sources are located.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: There will be no compliance, reporting, or paperwork requirements beyond those required in the federal NESHAP regulation. Sources in Kentucky are subject to the same provisions as required of all other affected sources in the country.

2. Second and subsequent years: There will be no additional compliance, reporting, or paperwork requirements during the second and succeeding years beyond those described for the first year.

(3) 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.

(4) Assessment of anticipated effect on state and local revenues: This administrative regulation will have no effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The division's operating budget will be used to implement and enforce this administrative regulation.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation will have no economic impact in the geographical location of affected sources.

(b) Kentucky: This administrative regulation will have no economic impact in any geographical location in Kentucky.

(7) 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, (40 CFR Part 61, Subpart L), and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Affected sources will benefit from this administrative regulation by obtaining permits from the state rather than the federal government. This administrative regulation will have no additional effects on public health and the environment beyond those described in the federal rulemaking.

(b) State whether a detrimental effect on environment and public health would result if not implemented: The division anticipates no detrimental effect on the environment and public health if the administrative regulation is not implemented, since the federal regulation will be implemented and enforced by the U.S. EPA if Kentucky does not seek delegation.

(c) If detrimental effect would result, explain detrimental effect: No detrimental effect is anticipated.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, 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 administrative regulation with conflicting provisions: The administrative regulation is not in conflict.

(10) Any additional information or comments: The cabinet is promulgating this administrative regulation to incorporate by reference the federal NESHAP regulation, 40 CFR Part 61, Subpart L, so that Kentucky will be granted delegation of authority to enforce the provisions of the federal NESHAP regulation.

(11) TIERING: Is 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 regulation (40 CFR Part 61, Subpart L) establishes standards, procedures, and requirements for sources subject to 40 CFR Part 61, Subpart L. 42 USC 7412(d) allows the U.S. EPA to delegate authority for implementing and enforcing NESHAP regulations to the states.

2. State compliance standards. The federal regulation contains standards for sources subject to 40 CFR Part 61, Subpart L, and provisions for maintaining those standards. The requirements in the state regulation are identical to the federal regulation which is incorporated by reference.

3. Minimum or uniform standards contained in the federal mandate. The standards appear from 40 CFR 61.132 to 40 CFR 61.134. Compliance provisions and alternative means of emission limitations appears at 40 CFR 61.136. Test methods and procedures appear at 40 CFR 61.137. Provisions for alternative means for process vessels, storage tanks, and tar-intercepting sumps appear at 40 CFR 61.139.

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 57:270. National emission standard for benzene emissions from benzene storage vessels.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 61.270 to 61.277, 42 USC 7412

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 61.270 to 61.277, 42 USC 7412

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. The federal regulation incorporated by reference in this administrative regulation provides for the control of benzene emissions from affected sources. Delegation of implementation and

enforcement authority for the federal National Emissions Standard for Hazardous Air Pollutants (NESHAP) regulation from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7412(d).

Section 1. Definitions. As used in 40 CFR 61.270 to 40 CFR 61.277, the following terms shall be defined as provided in this section.

(1) Except as provided by subsection (2) of this section, "administrator" means the Secretary of the Natural Resources and Environmental Protection Cabinet.

(2) As used in 40 CFR 61.277, "administrator" means the Administrator of the U.S. EPA.

Section 2. (1) 40 CFR 61.270 to 61.277, (40 CFR 61, Subpart Y), National Emission Standard for Benzene Emissions from Benzene Storage Vessels, as published in the Code of Federal Regulations, Title 40, Parts 61 to 80, July 1, 1993, is incorporated by reference.

(2) The material incorporated by reference may be obtained, inspected, or copied at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

(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.

(3) 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.

PHILLIP J. SHEPHERD, Secretary

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REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback, Director

(1) Type and number of entities affected: This administrative regulation incorporates by reference the federal national emission standard for benzene emissions from benzene storage vessels, 40 CFR Part 61, Subpart Y, as published in the Code of Federal Regulations, Title 40, Parts 61 to 80, July 1, 1993. The federal NESHAP regulation applies to each storage vessel that is storing benzene having a specific gravity within the range of specific gravities specified in ASTM D 836-84 for Industrial Grade Benzene, ASTM D 835-85 for Refined Benzene-485, ASTM D 2359-85a for Refined Benzene-535, and ASTM D 4734-87 for Refined Benzene-545. These specifications are incorporated by reference as specified in 40 CFR 61.18. Except for storage vessels specified in 40 CFR 61.276(b), storage vessels with a design storage capacity less than 38 cubic meters (10,000 gallons) are exempt from this administrative regulation. The provisions of this administrative regulation shall not apply to the following: storage vessels used for storing benzene at coke by-product facilities; vessels permanently attached to motor vehicles such as trucks, rail cars, barges, or ships; and pressure vessels designed to operate in excess of 204.9 kPa and without emissions to the atmosphere. A source subject to the provisions of this administrative regulation that is also subject to applicable provisions of 40 CFR Part 60, Subparts K, Ka, and Kb, shall be required to comply only with the regulation that contains the most stringent requirements for that source.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented. There are no costs or savings beyond those which are described in the federal final rulemaking for this source category at Federal Register, 54 FR 50887, December 11, 1989.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented. This administrative regulation does not affect the cost of doing business in geographical areas where affected sources are located.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: There will be no compliance, reporting, or paperwork requirements beyond those required in the federal NESHAP regulation. Sources in Kentucky are subject to the same provisions as required of all other affected sources in the country.

2. Second and subsequent years: There will be no additional compliance, reporting, or paperwork requirements during the second and succeeding years beyond those described for the first year.

(3) 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.

(4) Assessment of anticipated effect on state and local revenues: This administrative regulation will have no effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The division's operating budget will be used to implement and enforce this administrative regulation.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation will have no economic impact in the geographical location of affected sources.

(b) Kentucky: This administrative regulation will have no economic impact in any geographical location in Kentucky.

(7) 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, (40 CFR Part 61, Subpart Y), and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Affected sources will benefit from this administrative regulation by obtaining permits from the state rather than the federal government. This administrative regulation will have no additional effects on public health and the environment beyond those described in the federal rulemaking.

(b) State whether a detrimental effect on environment and public health would result if not implemented: The division anticipates no detrimental effect on the environment and public health if the administrative regulation is not implemented, since the federal regulation will be implemented and enforced by the U.S. EPA if Kentucky does not seek delegation.

(c) If detrimental effect would result, explain detrimental effect: No detrimental effect is anticipated.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, 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 administrative regulation with conflicting provisions: The administrative regulation is not in conflict.

(10) Any additional information or comments: The cabinet is promulgating this administrative regulation to incorporate by reference the federal NESHAP regulation, 40 CFR Part 61, Subpart Y, so that Kentucky will be granted delegation of authority to enforce the provisions of the federal NESHAP regulation.

(11) TIERING: Is 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 regulation (40 CFR Part 61, Subpart Y) establishes standards, procedures, and requirements for sources subject to 40 CFR Part 61, Subpart Y. 42 USC 7412(d) allows the U.S. EPA to delegate authority for implementing and enforcing NESHAP regulations to the states.

2. State compliance standards. The federal regulation contains standards for sources subject to 40 CFR Part 61, Subpart Y, and provisions for maintaining those standards. The requirements in the state regulation are identical to the federal regulation which is incorporated by reference.

3. Minimum or uniform standards contained in the federal mandate. The emission standards appear at 40 CFR 61.271. Compliance provisions appear at 40 CFR 61.272 and alternative means of emission limitation appears at 40 CFR 61.273.

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 57:300. National emission standard for benzene emissions from benzene transfer operations.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 61.300 to 61.306, 42 USC 7412

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 61.300 to 61.306, 42 USC 7412

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. The federal regulation incorporated by reference in this administrative regulation provides for the control of benzene emissions from affected sources. Delegation of implementation and enforcement authority for the federal National Emissions Standard for Hazardous Air Pollutants (NESHAP) regulation from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7412(d).

Section 1. Definitions. As used in 40 CFR 61.300 to 61.306, the term "administrator" means the Secretary of the Natural Resources and Environmental Protection Cabinet.

Section 2. (1) 40 CFR 61.300 to 61.306, (40 CFR 61, Subpart BB), National Emission Standard for Benzene Emissions from Benzene Transfer Operations, as published in the Code of Federal Regulations, Title 40, Parts 61 to 80, July 1, 1993, is incorporated by reference.

(2) The material incorporated by reference may be obtained, inspected, or copied at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

(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.

(3) 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.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: November 14, 1994

FILED WITH LRC: November 15, 1994 at 11 a.m.

PUBLIC HEARING: A public hearing to receive comments on the proposed regulation will be conducted on December 29, 1994, at 10 a.m. (ET) in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, 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. 362. 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 incorporates by reference the federal national emission standard for benzene emissions from benzene transfer operations, 40 CFR Part 61, Subpart BB, as published in the Code of Federal Regulations, Title 40, Parts 61 to 80, July 1, 1993. The federal regulation applies to the total of all loading racks at which benzene is loaded into tank trucks, railcars, or marine vessels at each benzene production facility and each bulk terminal. Specifically exempted from this regulation are loading racks at which only the following are loaded: Benzene-laden waste (covered under 40 CFR 61, Subpart FF), gasoline, crude oil, natural gas liquids, petroleum distillates (e.g., fuel oil, diesel, or kerosene), or benzene-laden liquid from coke by-product recovery plants. An affected facility which loads only liquid containing less than 70 weight-percent benzene is exempt from the requirements of this administrative regulation, except for the record-keeping and reporting requirements in 40 CFR 61.305(i). An affected facility whose annual benzene loading is less than 1.3 million liters of 70 weight-percent or more benzene is exempt from the requirements of this administrative regulation, except for the recordkeeping and reporting requirements in 40 CFR 61.305(i).

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented. There are no costs or savings beyond those which are described in the federal final rulemaking for this source category at Federal Register, 55 FR 45804, October 31, 1990.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented. This administrative regulation does not affect the cost of doing business in geographical areas where affected sources are located.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: There will be no compliance, reporting, or paperwork requirements beyond those required in the federal NESHAP regulation. Sources in Kentucky are subject to the same provisions as required of all other affected sources in the country.

2. Second and subsequent years: There will be no additional compliance, reporting, or paperwork requirements during the second and succeeding years beyond those described for the first year.

(3) 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.

(4) Assessment of anticipated effect on state and local revenues: This administrative regulation will have no effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The division's operating budget will be used to implement and enforce this administrative regulation.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation will have no economic impact in the geographical location of affected sources.

(b) Kentucky: This administrative regulation will have no economic impact in any geographical location in Kentucky.

(7) 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, (40 CFR Part 61, Subpart BB), and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Affected sources will benefit from this administrative regulation by obtaining permits from the state rather than the federal government. This administrative regulation will have no additional effects on public health and the environment beyond those described in the federal rulemaking.

(b) State whether a detrimental effect on environment and public health would result if not implemented: The division anticipates no detrimental effect on the environment and public health if the administrative regulation is not implemented, since the federal regulation will be implemented and enforced by the U.S. EPA if Kentucky does not seek delegation.

(c) If detrimental effect would result, explain detrimental effect: No detrimental effect is anticipated.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, 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 administrative regulation with conflicting provisions: The administrative regulation is not in conflict.

(10) Any additional information or comments: The cabinet is promulgating this administrative regulation to incorporate by reference the federal NESHAP regulation, 40 CFR Part 61, Subpart BB, so that Kentucky will be granted delegation of authority to enforce the provisions of the federal NESHAP regulation.

(11) TIERING: Is 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 regulation (40 CFR Part 61, Subpart BB) establishes standards, procedures, and requirements for sources subject to 40 CFR Part 61, Subpart BB. 42 USC 7412(d) allows the U.S. EPA to delegate authority for implementing and enforcing NESHAP regulations to the states.

2. State compliance standards. The federal regulation contains standards for sources subject to 40 CFR Part 61, Subpart BB, and provisions for maintaining those standards. The requirements in the state regulation are identical to the federal regulation which is incorporated by reference.

3. Minimum or uniform standards contained in the federal mandate. The standards appear at 40 CFR 61.302. Monitoring requirements appear at 40 CFR 61.303 and test methods and procedures appear at 40 CFR 61.304.

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 63:070. Compliance extensions for early reductions of hazardous air pollutants.

RELATES TO: 401 KAR 50:035, 401 KAR 57:061, KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 63.70 to 63.81, Part 63, Appendix A, Part 70, 42 USC 7412(i)(5)

STATUTORY AUTHORITY: 401 KAR 50:035, 401 KAR 57:061, KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 63.70 to 63.81, Part 63, Appendix A, Part 70, 42 USC 7412(i)(5)

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. The federal regulation incorporated by reference in this administrative regulation provides for the extension of MACT permitting requirements pursuant to 401 KAR 50:035 and 401 KAR 57:061 for those affected sources which comply with its voluntary requirements.

Section 1. Definitions. As used in 40 CFR 63.70 to 63.81, the following terms shall be defined as provided in this section:

(1) "EPA" means the United States Environmental Protection Agency.

(2) "Permitting authority" means the Natural Resources and Environmental Protection Cabinet after the classification date as defined in 401 KAR 50:035, Section 1(8).

(3) "State" means the Commonwealth of Kentucky.

Section 2. (1) 40 CFR 63.70 to 63.81 (40 CFR Part 63, Subpart D), and 40 CFR Part 63, Appendix A as published in the Federal Register, 57 FR 61992, December 29, 1992, and as amended by Federal Register, 58 FR 62543, November 29, 1993, and by Federal Register, 59 FR 53110, October 21, 1994, is incorporated by reference.

(2) The material incorporated by reference may be obtained, inspected, or copied at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. and 4:30 p.m.:

(a) Director's Office, 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.

(3) Copies of the Code of Federal Regulations are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: November 14, 1994

FILED WITH LRC: November 15, 1994 at 11 a.m.

PUBLIC HEARING: A public hearing to receive comments on the proposed regulation will be conducted on December 29, 1994, at 10 a.m. (ET) in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, 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. 362. 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 incorporates by reference the federal provisions for Maximum Achievable Control Technology (MACT) standard compliance extensions for sources of hazardous air pollutants which comply with these voluntary provisions. The federal provision, 40 CFR, Part 63, Subpart D, was published in the Federal Register, 57 FR 61992-62002, December 29, 1992, and subsequently amended in the Federal Register, 58 FR 62540-62543, November 29, 1993, and in the Federal Register, 59 FR 53110, October 21, 1994. The Natural Resources and Environmental Protection Cabinet is mandated by KRS 224.20-110(2) to adopt an emissions reduction regulation that exactly mirrors the federal Clean Air Act Amendment standard. The adoption of this federal regulation coupled with the approval of Kentucky's Title V program submittal will allow the cabinet to administer the early reductions program.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented. There are no costs or savings beyond those which are described in the federal final rulemaking for this compliance extension at Federal Register, 57 FR 61992, December 29, 1992.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented. As participation in the emissions reductions program is completely voluntary, any costs or savings are solely at the discretion of the participating sources. However, as described in the Federal Register, 57 FR 61971, December 29, 1992, the program will allow sources the opportunity to design cost effective emission reduction approaches which may reduce the cost of compliance over the long term.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: There will be no compliance, reporting, or paperwork requirements beyond those required in the federal early emissions reduction regulation. Sources in Kentucky are subject to the same provisions as required of all other affected sources in the country.

2. Second and subsequent years: There will be no additional compliance, reporting, or paperwork requirements during the second and succeeding years beyond those described for the first year.

(3) 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.

(4) Assessment of anticipated effect on state and local revenues: This administrative regulation will have no effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The division's operating budget will be used to implement and enforce this administrative regulation.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation will have no economic impact in the geographical location of affected sources.

(b) Kentucky: This administrative regulation will have no economic impact in any geographical location in Kentucky.

(7) 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 early emissions reduction regulation and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Affected sources will benefit from this administrative regulation by obtaining permits from the state rather than the federal government. Public health and the environment will benefit from an earlier reduction of hazardous air pollutants from those sources that choose to participate in the early emissions reduction program.

(b) State whether a detrimental effect on environment and public health would result if not implemented: There is a potential detrimental effect to public health and the environment by not allowing sources the opportunity to reduce hazardous air pollutants earlier than would otherwise be required by a MACT standard.

(c) If detrimental effect would result, explain detrimental effect: See (b).

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, 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 administrative regulation with conflicting provisions: The administrative regulation is not in conflict.

(10) Any additional information or comments: The cabinet is promulgating this administrative regulation to incorporate by reference the federal early emissions reduction regulation, 40 CFR Part 63, Subpart D, so that Kentucky can have delegation of authority to enforce the provisions of the federal early emissions reduction regulation.

(11) TIERING: Is 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(i)(5) of the Clean Air Act (42 USC 7401 et seq.), mandates the U.S. Environmental Protection Agency to institute a permitting program which allows an existing source of hazardous air pollutants which reduces its emissions by 90% (95% for particulates) to meet an alternative emissions limitation and receive a six year extension for meeting the compliance date of a subsequently promulgated Maximum Achievable Control Technology (MACT) standard. The federal NESHAP regulation which implements this mandate is found in 40 CFR Part 63, Subpart D, as published in the Federal Register, 57 FR 61992 - 62002, December 29, 1992 and as amended in the Federal Register, 58 FR 62540 - 62543, November 29, 1993, and in the Federal Register, 59 FR 53110, October 21, 1994. 42 USC 7412(l) allows the U.S. EPA to delegate authority for implementing and enforcing NESHAP regulations to states, and the early reductions program is considered a NESHAP regulation.

2. State compliance standards. The federal early emissions reduction regulation, 40 CFR Part 63, Subpart D, contains standards for the reduction of emissions from all sources which voluntarily participate in this program. The provisions in the state regulation are identical to the federal regulation which is incorporated by reference.

3. Minimum or uniform standards contained in the federal mandate. The standards for existing sources of hazardous air pollutants, compliance extensions, demonstration of early reductions, and enforceable commitments appear from 40 CFR 63.72 to 40 CFR 63.75. Rules to be applied when more than one MACT standard applies to a source and for sources which emit radionuclides appear in 40 CFR 63.81. Appendix A to Part 63 is amended by adding Test Method 301 for field validation of pollutant measurement methods from various waste media.

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 early emissions reduction regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

DEPARTMENT OF STATE POLICE

502 KAR 10:035. Commercial driver's license skill testing.

RELATES TO: KRS 281A.160, 332.010, 49 CFR 383.75

STATUTORY AUTHORITY: KRS 281A.150(2), (3), 281A.160, 332.010

NECESSITY AND FUNCTION: KRS 281A.160 authorizes third parties to administer the skills test for commercial driver's licenses. This administrative regulation establishes procedures for authorization and testing.

Section 1. Application for Authorization. Persons desiring to administer the skills test for commercial driver's licenses shall make a written request to the Driver Testing Section of the Department of State Police. The request shall be accompanied by a copy of a current driver's training school or instructor's license, and proof of satisfactory completion of a CDL examiner's training course approved by the U.S. Department of Transportation, Federal Highway Administration (FHWA).

Section 2. Issuance of Authorization. Upon receipt of a written request from a qualified person the Driver Testing Section of the Department of State Police shall issue a letter of authorization to conduct the CDL skills test. The letter of authorization shall be considered an endorsement to the drivers training school or instructor's license and shall be subject to the same terms and conditions as school or instructor's license.

Section 3. Skills Test Requirements. Persons authorized to administer the CDL skills test shall be subject to the following additional requirements:

(1) Administration of skills tests shall comply with 49 CFR 383.75, Subparts G and H.

(2) Persons administering the skills tests shall, without deviation, administer the test in accordance with the Kentucky State Police Driver Testing Section CDL Examiner's Manual. The manual is hereby incorporated by reference. Copies of the manual may be obtained from the Driver Testing Section of the Department of State Police, 919 Versailles Road, Frankfort, Kentucky 40601.

(3) Persons administering the skills tests shall, following the road test, immediately call the Driver Testing Section of the Department of State Police and report the score given to the person tested.

Section 4. Processing Fee. A processing fee of twenty-five (25) dollars shall accompany the written request to administer the skills test.

JERRY W. LOVITT, Commissioner

APPROVED BY AGENCY: October 11, 1994

FILED WITH LRC: October 21, 1994 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 22, 1994 at 10 a.m. at Headquarters, Kentucky State Police, 919 Versailles Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 17, 1994, five days prior to the hearing, of their intent to attend. If no notification of intent to attend 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 regulations. 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 regulations to: Captain John Barton, Commander, Driver Testing Section, Kentucky State Police, 919 Versailles Road, Frankfort, Kentucky 40601, (502) 695-6338.

REGULATORY IMPACT ANALYSIS

Contact person: Captain John Barton

(1) Type and number of entities affected: All licensed driver's training schools and instructors, approximately 86 at present.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No costs or savings.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available

from the public comments received: $25 fee, and initial cost of doing business.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Cost of training and processing.

2. Second and subsequent years: Renewal applications and $25 processing fee.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Cost of processing requests, including inspections and verification of qualifications.

2. Continuing costs or savings: At least 3 additional examiners estimated at a cost of $150,000 per fiscal year.

3. Additional factors increasing or decreasing costs: Deminimus off-set of costs by the $25 processing fee.

(b) Reporting and paperwork requirements: New reports on inspection and monitoring of third party testers.

(4) Assessment of anticipated effect on state and local revenues: Increased expenditures.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Processing fee will not cover costs. Will require general fund expenditures. All dependent on number of parties applying to be third party testers.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of geographical area in which implemented and on Kentucky:

(b) State whether a detrimental effect on environment and public health would result if not implemented: N/A

(c) If detrimental effect would result, explain detrimental effect: N/A

(9) 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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. All qualified third parties are treated the same. All are charged the same processing fee and all will be subject to the same inspection, monitoring and regulations.

LABOR CABINET
Department of Workers' Claims

803 KAR 25:089. Workers' Compensation Medical Fee Schedule for Physicians.

RELATES TO: KRS Chapter 342

STATUTORY AUTHORITY: KRS 342.020, 342.035

NECESSITY AND FUNCTION: KRS 342.035 requires the Commissioner of the Department of Workers' Claims to promulgate administrative regulations to ensure that all fees, charges and reimbursements for medical services under KRS Chapter 342 are limited to charges that are fair, current, and reasonable for similar treatment of injured persons in the same community for like services, where treatment is paid for by general health insurers. The function of this administrative regulation is to regulate the fees of "physicians" as defined in KRS 342.0011.

Section 1. Definitions. (1) "Medical fee schedule" refers to the 1994 Workers' Compensation Medical Fee Schedule for Physicians.

(2) "Physician" shall have the same meaning as in KRS 342.0011, and may also include other health care or medical services providers to whom a procedure code listed in the medical fee schedule is applicable if another fee schedule of the Department of Workers' Claims does not apply.

Section 2. Services Covered. The medical fee schedule governs all medical services provided to injured employees by physicians under KRS Chapter 342, unless a lower fee is required by KRS 342.035 or a managed care plan approved by the commissioner pursuant to administrative regulations.

Section 3. Fee Computation. The appropriate fee for a procedure covered by the medical fee schedule is obtained by multiplying the listed unit value for the medical procedure by the applicable conversion factor. The resulting fee is the maximum fee allowed for the service provided.

Section 4. Incorporation by Reference. (1) The 1994 Workers' Compensation Medical Fee Schedule for Physicians is hereby incorporated by reference.

(2) Information and material is available for public inspection and copying at main, regional, and branch offices of the agency:

(a) Frankfort - Perimeter Park West - Building C, 1270 Louisville Road, Frankfort, Kentucky 40601;

(b) Louisville - Fourth Floor - The Meyer Building, 624 West Main Street, Louisville, Kentucky 40202;

(c) Lexington - 950 National City Plaza, Lexington, Kentucky 40507;

(d) Paducah - 220B North 8th Street, Paducah, Kentucky 42001;

(e) Pikeville - The Justice Building, 3rd Floor, 314-316 Second Street, Pikeville, Kentucky 41501.

(d) Office hours of each office are 9 a.m. to 4 p.m., Monday through Friday, inclusive, for this purpose. Copies of the medical fee schedule may be obtained from the agency upon payment of reproduction costs.

Section 5. 803 KAR 25:090, Workers' Compensation Medical Fee Schedule, is hereby repealed.

WALTER W. TURNER, Commissioner

APPROVED BY AGENCY: November 11, 1994

FILED WITH LRC: November 11, 1994 at noon

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 December 21, 1994. Individuals interested in attending this hearing shall notify this agency in writing by December 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, Kentucky 40601, (502) 564-5550.

REGULATORY IMPACT ANALYSIS

Contact Person: Valerie L. Salven

(1) Type and number of entities affected: This proposed administrative regulation will affect "physicians" as defined in KRS 342.0011 and some other medical services providers for whom CPT codes are listed; the employees who seek medical treatment under KRS Chapter 342; and the employers, self-insured employers, Special Fund, Uninsured Employers' Fund and insurance carriers making medical payments under the Kentucky Workers' Compensation Act. This regulation replaces 803 KAR 25:090.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. Pursuant to the mandate contained in House Bill 928 of the 1994 Regular Session of the General Assembly, this proposed administrative regulation is anticipated to result in a reduction of 10 percent of the total medical costs within the workers' compensation program; in combination with other regulations, a total reduction in medical costs of 25 percent is the goal. This will result in reduced costs to employers and insurance carriers who pay for workers' compensation medical benefits, and in reduced reimbursement overall to the providers of medical services. The comments that are summarized in the statement of consideration filed following the "notice of intent" hearing indicate that the cuts in some areas are greater than the cuts in others, but adjustments have been made in the proposed fee schedule with due consideration to the fact that some providers of medical services were typically reimbursed at a greater or lesser rate than other medical services providers under the 1989 medical fee schedule.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. See response to (a) above.

(c) Compliance, reporting and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: This regulation does not require additional reporting to the Department of Workers' Claims; it may actually result in less paper work for affected entities as a result of fewer bills being submitted on "by report" basis.

2. Second and subsequent years: Anticipated to be the same as the first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There will be an initial expense to the Department of Workers' Claims for the printing and distribution of the new fee schedule. This expense is expected to be around $10,000.

2. Continuing costs or savings: The agency expects to break even and to recover the expenses of printing through the sale of the medical fee schedule at cost.

3. Additional factors increasing or decreasing costs: None known at this time.

(b) Reporting and paperwork requirements: Printing and distribution of the new fee schedule.

(4) Assessment of anticipated effect on state and local revenues: None; no effect.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The Kentucky Workers' Compensation Funding Commission pursuant to KRS 342.122; in addition, the agency expects to recover the costs of printing the fee schedule through the sale of the medical fee schedule for physicians at cost. It is anticipated at this time that a charge of $35 will be made for the fee schedule in paper form or on magnetic disk.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation will implemented throughout the state of Kentucky, and will affect the reimbursement for some services rendered by out-of-state medical services providers. For further discussion of the economic impact see section (2), above.

(b) Kentucky: See response to (a) above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: KRS 342.035 requires the commissioner to promulgate administrative regulations to adopt a schedule of fees to ensure that all fees, charges, and reimbursements under KRS 342.020 shall be limited to such charges as are fair, current and reasonable for similar treatment of injured persons in the same community for like services, where treatment is paid for by general health insurers. In addition, House Bill 928 has directed the commissioner to promulgate a regulation at this time to effect a 25 percent reduction in total medical costs within the workers' compensation program. This regulation and other regulations being promulgated concurrently are expected to achieve the 25 percent reduction. The reductions made in this particular fee schedule were based upon analyses and the recommendation of the consultant with whom the commissioner executed a state personal services pursuant to House Bill 928; comments made during the "notice of intent" hearing process resulted in adjustments to the fee schedule.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No effect.

(b) State whether a detrimental effect on environmental and public health would result if not implemented: No effect.

(c) If detrimental effect would result, explain detrimental effect: Not applicable.

(9) 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: Since 803 KAR 25:090 is being repealed concurrently with the promulgation of this administrative regulation, there is no conflict, overlapping or duplication.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. All similarly situated or similarly licensed medical service providers to whom this regulation applies are treated equally and receive the same fees for services described in the schedule.

LABOR CABINET
Department of Workers' Claims

803 KAR 25:110. Workers' compensation managed health care plans.

RELATES TO: KRS Chapter 342

STATUTORY AUTHORITY: KRS 342.020, 342.035, 342.735

NECESSITY AND FUNCTION: The purpose of this administrative regulation is to establish procedures and standards for certification of workers' compensation managed health care system health care plans pursuant to KRS 342.020. The function of a managed care plan is to assure that quality medical care will be delivered to the injured employee at a reasonable cost so as to expedite the injured employee's recovery and facilitate return to work.

Section 1. Definitions. (1) "Commissioner" means the Commissioner of the Department of Workers' Claims.

(2) "Emergency care" means those medical services required for the immediate diagnosis or treatment of a medical condition that if not immediately diagnosed or treated could lead to serious physical or

mental disability or death, or medical services that are immediately necessary to alleviate severe pain. "Emergency care" does not include follow-up care, except when immediate care is required to avoid serious disability or death.

(3) "Gatekeeper physician" means any qualified physician, as defined in KRS 342.0011, acting within the scope of his license and designated by a managed care plan as a "gatekeeper" empowered to make referrals of patients to other providers for specialized care or diagnostic services.

(4) "Managed health care system" means a health care network that utilizes gatekeeper physicians, performs utilization review and does medical bill audits.

(5) "Managed care plan" means a written plan describing the operations of a managed health care system.

(6) "Provider" means any person or entity licensed, certified or registered to provide medical services.

(7) "Revocation" means the termination of a managed health care plan certificate to provide services under the Kentucky Workers' Compensation Act prior to expiration of the certificate.

(8) "Service area" means a geographic area consisting of a county or group of counties of which no county shall be subdivided.

Section 2. Certification Process. (1) All managed care plans shall be certified by the commissioner. Any managed health care system may apply to have a plan or plans certified by the commissioner. Managed health care systems may operate one (1) or more plans.

(2) Applications for initial certification and renewal shall be submitted, in triplicate, in a form acceptable to the commissioner and shall contain the following information:

(a) System identification.

1. System name and address.

2. Date and state of incorporation.

3. Name, address and phone number of each corporate officer and director, and of the person who will be the day-to-day plan administrator.

4. Name and address of each owner of more than five (5) percent of the stock or controlling interest in the entity.

5. Name, address and phone number of the medical director, who shall be a medical doctor (M.D. physician) and who shall oversee and monitor compliance with the quality care, utilization review and credentialing provisions of the managed care plan.

6. Name, address and phone number of the case manager who shall be qualified as either a certified case manager, certified rehabilitation counselor, certified insurance rehabilitation specialist or certified rehabilitation registered nurse who shall oversee and monitor case management provisions of the managed care plan.

7. Description of the system's organizational structure.

(b) System qualifications.

1. Description and map of the system's service area.

2. Name, address, phone number, and specialty of all participating providers, separately identifying those providers who shall serve as gatekeeper physicians. The list of available gatekeeper physicians shall include an appropriate choice of the different types of physicians described in KRS 342.0011. The system shall provide assurance that all licensing, registration or certification requirements have been met and are current for the providers to practice in Kentucky (or border states wherein the provider practices) and that each participating provider shall maintain in full force and effect a professional malpractice policy with limits of no less than $250,000 for an occurrence of professional negligence.

3. A specimen of the agreement that each class of medical provider shall execute to participate in the system.

4. Specimens of the materials which the system shall provide to workers setting forth the grievance procedure and form, the requirements and restrictions of the system, and the means of accessing services and treatment within and outside of the service area. The applicant shall detail the time and means by which the materials shall be delivered to employees and employers.

5. Specimens of materials directed at management employees informing supervisors of the necessity of channeling injured workers to the managed care plan providers and giving immediate notice to the employer, insurance carrier and plan of the occurrence of an injury.

Section 3. Financial Ability. Each managed health care system shall demonstrate to the commissioner that it has sufficient financial resources and professional expertise to perform all of the necessary functions of a managed health care system and managed care plan. Each managed health care system requesting certification shall demonstrate such resources and ability to the commissioner by the following:

(1) In the event the applicant has previously provided managed care or other similar medical and administrative services in the Commonwealth of Kentucky, the applicant shall provide a summary and description of the administrative and medical services provided, together with a list of representative entities for which managed care related administrative or medical services have been provided; and

(2) In the event the applicant has not previously provided services related to the delivery of managed care in the Commonwealth, the commissioner shall require, prior to certification, that the applicant post either a performance bond or cash surety deposit in an amount of $500,000 with the office of the commissioner (by use of Form MC-1 or MC-2) to demonstrate sufficient financial resources to provide all of the administrative and medical services required to be performed under a managed care plan. Such bond or cash surety shall be released by the commissioner sixty (60) days after the managed health care system demonstrates to the commissioner that all of its arrangements for rendering workers' compensation managed care services in the Commonwealth have been terminated.

(3) If the applicant has an audited financial statement addressing any of its prior operations for the preceding year, a copy of the applicant's most recent audited financial statement shall be submitted to the commissioner.

Section 4. Plan Qualifications. A copy of the managed care plan shall be submitted, in triplicate, with the application and shall demonstrate:

(1) Assurance of access to quality medical services in a prompt, effective manner for employees of employers using the managed care plan. The plan shall offer an adequate number of health care providers including gatekeeper, specialty and subspecialty physicians, and general and specialty hospitals to afford employees reasonable choice and convenient geographic accessibility to all categories of licensed care. The employee shall choose a gatekeeper physician when it becomes apparent that continuing care is required for an injury or disease compensable under KRS Chapter 342.

(2) That employers or insurers may contract with multiple managed health care systems in order to maximize access for their employees.

(3) That employees may access providers who are not participating plan providers:

(a) For emergency care as defined in Section 1 of this administrative regulation;

(b) When the employee is referred outside the managed care plan for medical services by a gatekeeper physician;

(c) When authorized treatment is unavailable through the managed care plan;

(d) To obtain a second opinion when a managed care plan physician recommends surgery.

(4) Mechanisms to ensure continuity of care upon termination of contracts between the managed health care system, the employer, and/or participating providers;

(5) Mechanisms for utilization review which shall prevent inappropriate, excessive or medically unnecessary medical services

and including:

(a) Treatment standards upon which utilization review decisions shall be based (including low back symptoms and injuries to the upper extremities and knees) assuring quality care in accordance with prevailing standards in the medical community of which the plan provider is a member. The standards shall conform to any practice parameters or guidelines for clinical practice adopted by the commissioner;

(b) Mechanisms requiring periodic review to determine that continued treatment of an injured employee is reasonable, appropriate and medically necessary and that treatment plans required by Section 12 of this administrative regulation have been timely prepared;

(c) Assurance that the managed health care system is certified or has contracted with a private review agent who is certified to conduct utilization review pursuant to the standards set forth in 906 KAR 1:080;

(d) Adequate procedures for credentialing providers and evaluating the quality and cost effectiveness of services delivered under the plan;

(6) Provisions for employer or carrier audit of the managed health care system's operations and the financial arrangements between the system and its providers.

(7) A grievance procedure meeting the requirements of Section 10 of this administrative regulation.

(8) Effective methods of informing employees, employers, and medical providers of the services provided by the plan and requirements imposed by the plan including a twenty-four (24) hour toll free phone number by which information may be obtained concerning plan operations, after-office-hours care and twenty-four (24) hour access to emergency care.

(9) A system to provide authorization numbers to medical providers and health facilities where preauthorization or continued stay review is required by the plan. Such authorization numbers shall be recorded in the treatment authorization code section of the appropriate billing forms.

(10) Aggressive case management by either a certified case manager, certified rehabilitation counselor, certified insurance rehabilitation specialist or a certified rehabilitation registered nurse to coordinate the delivery of health services and return to work policies; promote an appropriate, prompt return to work; and facilitate communication between the employee, employer and health care providers. The plan shall describe the circumstances under which injured employees shall be subject to case management and the services to be provided.

(11) A notice on Form MC-3 to be mailed to the Department of Workers' Claims for entry into the Department's computer database that indicates the employers who have become associated with a managed care plan.

Section 5. Plan Certification. (1) The commissioner shall notify the applicant in writing of the determination made upon the application for certification or modification thereof, within sixty (60) days of receipt of a complete application.

(2) A certificate shall be valid for a period of two (2) years and only for the service area and managed care plan or plans specified by the commissioner. Upon written request made at least sixty (60) days prior to expiration of the current certificate, the commissioner may recertify a plan for additional successive two (2) year periods. Geographical areas may be added upon the filing of a supplemental application demonstrating the managed health care system's ability to serve the expanded area.

(3) If an application does not meet the requirements for certification or expansion, the commissioner shall notify the applicant in writing and specify those items deemed deficient. The applicant is granted thirty (30) days from the date of notice by the commissioner to correct deficiencies through an amended application.

(4) Certifications of a managed care plan are not transferable. A new application for certification must be filed when fifty (50) percent or more of the ownership or controlling interest of a system has been transferred.

Section 6. Plan Modifications. (1) A managed health care system which either implements or experiences material variations as to any matter set forth in the original application or managed care plan shall obtain approval for such modification by filing a request for modification with the commissioner.

(2) Intended variations shall not be implemented until approved by the commissioner.

(3) A modification outside the control of the system must be filed with the commissioner within fifteen (15) days of its occurrence.

(4) Within fifteen (15) days of entering into an agreement with an employer or insurer to provide workers' compensation managed care services, the managed health care system shall submit notification thereof to the commissioner. The notification shall identify the employer or employers with whom the managed health care system has contracted and the certified managed care plan applicable to that employer. Notification shall be deemed approved unless disapproved by the commissioner in writing within fifteen (15) days of filing. The system shall promptly furnish any information deemed necessary by the commissioner to review the notice. When an employer or insurer terminates a contract with a managed health care system, the managed health care system shall file notification with the commissioner within fifteen (15) days of the occurrence, indicating the employers for whom managed care services have been terminated and the effective date of the termination.

Section 7. Suspension or Revocation of Certification. (1) The certification of a managed care plan by the commissioner may be suspended or revoked if:

(a) Service is not being provided according to the terms of the certified managed care plan, or in accordance with prevailing treatment standards, or in accordance with treatment standards or practice parameters adopted by the commissioner;

(b) The plan for providing services or the contract with the insurer or health care provider fails to meet the requirements of KRS Chapter 342 or this administrative regulation;

(c) Any material false or misleading information is intentionally submitted by the managed health care system or participating provider to the commissioner, the employer or the insurer; or

(d) The managed health care system knowingly or negligently utilizes a health care provider whose license, registration, or certification has been suspended or revoked, or who is otherwise ineligible to provide treatment of the type rendered to an injured employee.

(2) The commissioner may investigate the operations of certified managed health care systems at any time and the system and its providers shall cooperate in any investigation by the commissioner. Should the commissioner believe that grounds for termination or suspension of a managed care plan certification exist, written notice setting forth such grounds shall be mailed to the system. The system is granted fifteen (15) days from the date of the notice in which to file written response. Thereafter, the commissioner shall render a written decision by which the certification of the plan may be terminated, suspended or conditionally continued to permit the correction of deficiencies directed.

Section 8. Appeal of Commissioner's Action. Any managed health care system may seek review in the Franklin Circuit Court within thirty (30) days of the date of the commissioner's final decision concerning its managed care plan.

Section 9. Coverage. (1) All employees of an employer for whom a managed care plan has been approved by the commissioner shall obtain medical services compensable under KRS Chapter 342 from the certified managed care plan of the employer, except for those

injuries or diseases for which continuing treatment was initiated prior to the date the managed care plan for the employer was approved. However, when an employee under continuing care changes the designation of treating physician, the employee's provider choice shall be limited to providers under the certified managed care plan and medical services thereafter shall be obtained pursuant to the managed care plan.

(2) If initial emergency care following a compensable injury is rendered by a medical provider outside the managed health care plan, the injured worker may remain under the care of that provider so long as the provider complies with utilization review, reporting standards and quality assurance mechanisms prescribed by the employer's managed care plan. Reimbursement of these nonplan providers shall be at the level prescribed by applicable workers' compensation fee schedules.

Section 10. Grievance Procedure. (1) Each worker's compensation managed care plan shall contain an expeditious, informal grievance procedure to resolve disputes by employees and providers relative to the rendition of medical services. A detailed description of the employee grievance procedure shall be included in informational materials provided to employees and a detailed description of the provider grievance procedure shall be included in all provider contracts.

(2) The grievance procedure shall meet the following requirements:

(a) Notice. A grievance is made when a written complaint or written request is delivered by the employee or provider to the managed health care system setting forth the nature of the complaint and remedial action requested.

(b) Time frame to file grievance. The employee or provider shall file a grievance within thirty (30) days of the occurrence of the event giving rise to the dispute.

(c) Resolution. The managed health care system shall render a written decision upon a grievance within thirty (30) days of receipt by the managed health care system of the grievance.

(d) Arbitration. Managed care plans may provide for alternate means of dispute resolution including arbitration and mediation. In that event final resolution of a grievance shall not be subject to the time constraints set forth in paragraph (c) of this subsection. In all such cases resolution mechanisms shall be expeditious and where treatment matters are at issue reflect the need for prompt resolution.

(3) Record of grievance proceedings. The managed health care system shall maintain records for two (2) years of each formal grievance to include the following:

(a) A description of the grievance; the employee's name and address; names and addresses of the health care providers relevant to the grievance; and the managed health care system's and employer's name and address;

(b) A description of the managed health care system's findings, conclusions and disposition of the grievance.

(4) Appeal. Any employee or provider dissatisfied with the managed health care system's resolution of a grievance may apply for review by an administrative law judge by filing a request for resolution within thirty (30) days of the date of the system's final decision. Upon review by an administrative law judge the movant shall be required to prove that the system's final decision is unreasonable or otherwise fails to conform with KRS Chapter 342.

Section 11. Reporting. Each managed health care system having a certified managed care plan shall submit a report to the commissioner annually containing the following information:

(1) Number of employees treated by the managed care plan.

(2) Number of work-related injuries or diseases by ICD-9 code treated under the managed care plan in the preceding year.

(3) Breakdown by ICD-9 codes of injuries and diseases treated.

(4) Total medical costs.

(5) Average medical cost per injured employee by type of injury.

(6) Average medical cost per diseased employee by type of disease.

(7) Breakdown of medical cost elements as to type of physician utilized, hospital costs, drug costs, and other costs.

(8) Number of grievances filed, and summary of action taken.

(9) Number of days by type of injury and disease for which an employee has been released from work.

Section 12. Treatment Plans. Those sections of 803 KAR 25:096 concerning treatment plans and use of the Form 113 shall to the extent possible, apply to managed care plans. Each managed health care system shall retain treatment plans and make them available to the employee, employer Special Fund, Uninsured Employers' Fund, administrative law judges, or attorneys representing any of the parties, upon request.

Section 13. Provider Verification. (1) Each employer which provides medical services through a managed care plan will provide to the injured employee a written certification of workers' compensation managed care coverage as soon as practicable following notice of a compensable injury or disease requiring continuing medical services. The verification shall contain the following information:

(a) Employer name, address, and phone number;

(b) Name and telephone number of the managed health care system to be contacted; and

(c) Employee name and Social Security number.

(2) Possession of such verification is not to be construed as authorization for medical service or payment.

Section 14. Forms. (1) One (1) copy of Forms MC-1, MC-2, and MC-3 is filed herewith and incorporated by reference.

(2) Information and material is available for public inspection and copying at main, regional, and branch offices of the agency:

(a) Frankfort - Perimeter Park West - Building C, 1270 Louisville Road, Frankfort, Kentucky 40601;

(b) Louisville - Fourth Floor - The Meyer Building 624 West Main Street, Louisville, Kentucky 40202;

(c) Lexington - 950 National City Plaza, Lexington, Kentucky 40507;

(d) Paducah - 220B North 8th Street, Paducah, Kentucky 42001;

(e) Pikeville - The Justice Building, 3rd Floor, 314-316 Second Street, Pikeville, Kentucky 41501.

(d) Office hours of each office are 9 a.m. to 4 p.m., Monday through Friday, inclusive, for this purpose.

WALTER W. TURNER, Commissioner

APPROVED BY AGENCY: November 11, 1994

FILED WITH LRC: November 11, 1994 at noon

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 December 21, 1994. Individuals interested in attending this hearing shall notify this agency in writing by December 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: Employers who wish to provide workers' compensation medical services through a managed health care system, the managed health care systems seeking certification of their plans to provide services to workers' compensation patients, employees of employers using certified managed care plans, and insurance carriers.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. Pursuant to the mandate contained in House Bill 928 of the 1994 Regular Session of the General Assembly, this proposed administrative regulation in combination with other regulations being promulgated by the Department of Workers' Claims is anticipated to result in a reduction of 25 percent in total medical costs within the workers' compensation program. This will result in reduced costs to employers and insurance carriers who pay for workers' compensation medical benefits as the result of discounts negotiated between the managed health care systems and medical providers participating in a managed health care plan. The Kentucky Hospital Association provided the only public comments received concerning the notice of intent for 803 KAR 25:110, and general cost of living or employment concerns were not raised.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. The Kentucky Hospital Association noted that the proposed regulation recognizes the treatment requirements which hospitals must follow pursuant to federal law, and permits the billing of the workers' compensation payor for treatment sought after hours as the result of severe pain. KHA has supported the proposed managed care regulation. It is anticipated that managed health care plans will allow employers to assure the prompt delivery of quality medical care to injured employees at a reasonable cost, thereby expediting the injured employee's recovery and facilitating a return to work.

(c) Compliance, reporting and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Each managed health care system having a certified managed health care plan will be required to submit reports to the Cmmissioner each year concerning information on total medical costs, type of care provided, number of grievances filed, etc.

2. Second and subsequent years: Same as first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There will be additional costs to the Department of Workers' Claims as a result of the need to review and certify managed care plans. Costs involved will depend upon the number of plans that must be reviewed.

2. Continuing costs or savings: Costs should decrease slightly after the first years because some applications will be renewals rather than original applications.

3. Additional factors increasing or decreasing costs: None known.

(b) Reporting and paperwork requirements: Processing of applications for certification of managed care plans.

(4) Assessment of anticipated effect on state and local revenues: None; no effect.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The Kentucky Workers' Compensation Funding Commission pursuant to KRS 342.122.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation will be implemented throughout the state of Kentucky. For further discussion of the economic impact see section (2), above.

(b) Kentucky: See response to (a), above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: In an amendment to KRS 342.020, House Bill 928 provides that employers may provide medical services through a managed health care system by filing a plan to be approved by the commissioner pursuant to administrative regulations promulgated by the Commissioner of the Department of Workers' Claims.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No effect.

(b) State whether a detrimental effect on environmental and public health would result if not implemented: No effect.

(c) If detrimental effect would result, explain detrimental effect: Not applicable.

(9) 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.

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No, all applicants for certified managed care plans are required to meet the same minimum standards.

LABOR CABINET
Department of Workers' Claims

803 KAR 25:120. Training or education programs eligible for retraining incentive benefits.

RELATES TO: KRS Chapter 342

STATUTORY AUTHORITY: KRS Chapter 13A, 342.732(1)(a)

NECESSITY AND FUNCTION: KRS 342.732 requires the Commissioner of the Department of Workers' Claims to promulgate administrative regulations to approve bona fide training or education programs in which an employee may enroll, while continuing to work in the mining industry, and have payment of retraining incentive benefits made to the institution conducting the training or education program on a semimonthly basis.

Section 1. Definitions. "Bona Fide Training or Education Program" means a postsecondary education or training program that has been in existence for at least two (2) years, which provides not less than a four (4) month program of training to prepare students for gainful employment in an occupation other than the severance or processing of coal, which has been certified by the Commissioner of the Department of Workers' Claims as eligible for receipt of retaining incentive benefits (RIB) pursuant to this administrative regulation.

Section 2. Certification by Commissioner. (1) Any training institution or education program seeking certification from the commissioner of the Department of Workers' Claims as a "bona fide training or education program" shall apply by letter to the following address: Commissioner/Retraining Incentive Benefit Education Program Certification, Department of Workers' Claims, 1270 Louisville Road, Frankfort, Kentucky 40601.

(2) Each application shall:

(a) Provide assurance that tuition and other required instructional materials shall be paid in installments, each of which shall be payable not more often than bimonthly and shall not exceed on dollar amounts the sum granted the RIB student for like periods by the RIB award,

less the RIB student's travel expenses as set forth in Section 4 of this administrative regulation;

(b) Provide evidence that the successful completion of the training or education program shall qualify a student for employment other than work in the severance and processing of coal;

(c) Describe the training or education offered, and the professional experience of the instructional staff;

(d) Describe the history of the program relative to the number of students who participated, the number who completed the course, and the number of students who were successful in obtaining job placement in the field covered by the course;

(e) Provide assurances that funds paid to the program under this administrative regulation shall be applied only to tuition charges and the purchase of instructional materials; and

(f) Provide assurance that the insurance carrier or self-insured employer will be notified in writing within ten (10) days of the date that a RIB student ceases to participate in the program or graduates.

Section 3. Continuing Eligibility. The Commissioner of the Department of Workers' Claims shall certify the eligibility of a training or education program for RIB students following receipt of an application from the program adequate to assure that the criteria outlined in this administrative regulation have been meet. If at any time thereafter the commissioner has reason to believe that certification of the program should be terminated, the program shall be given notice of the termination of certification thirty (30) days in advance and shall have the opportunity to challenge the termination by requesting a hearing before the commissioner within the thirty (30) day notice period.

Section 4. Travel Expenses. An employee who participates in a bona fide training or education program pursuant to this administrative regulation may request reimbursement for travel expenses at a rate not to exceed that paid to state employees under 200 KAR 2:006 or other appropriate Finance and Administration Cabinet administrative regulations.

Section 5. Alternative Agreements. The RIB student, the training program and the employer or insurance carrier responsible for payment of RIB benefits may in writing agree that the time and amounts of payments to a bona fide training or education program may vary from that set forth in Section 2(2)(a) of this administrative regulation.

WALTER W. TURNER, Commissioner

APPROVED BY AGENCY: November 15, 1994

FILED WITH LRC: November 15, 1994 at noon

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 December 21, 1994. Individuals interested in attending this hearing shall notify this agency in writing by December 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, Kentucky 40601, (502) 564-5550.

REGULATORY IMPACT ANALYSIS

Contact Person: Valerie L. Salven

(1) Type and number of entities affected: Recipients of retraining incentive benefits under KRS 342.732(1)(a) who continue to work in the mining industry in the severance and processing of coal, and the insurance carriers and the self insurance employers who pay retraining incentive benefits.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. This administrative regulation is intended to implement KRS 342.732(1)(a), and to encourage miners experiencing early stage lung impairment as a result of exposure to coal dust to enroll in a bona fide training or education program that will enable them to eventually obtain employment at something other than the severance and processing of coal in the mining industry. There were no public comments received following publication of the notice of intent to promulgate an administrative regulation on this subject.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. No public comments have been received concerning this proposed administrative regulation.

(c) Compliance, reporting and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Postsecondary education or training programs that seek certification from the commissioner to be eligible for the payment of retraining incentive benefits must submit a letter of application and appropriate supporting documentation to the Department of Workers' Claims. Once certified, these programs must notify the insurance carrier or other payor whenever a retraining incentive benefits student ceases to participate in the program, and must report on the student's participation and progress on a not-less-than quarterly basis.

2. Second and subsequent years: A training or education program will not need to apply for recertification in later years, but will be required to continue to provide information on retraining incentive benefits students to the insurance carriers or other payers of the benefits.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Some additional costs as the result of the need to review and certify training and education programs under this regulation.

2. Continuing costs or savings: Same as the first year.

3. Additional factors increasing or decreasing costs: Number of programs that seek certification from the commissioner.

(b) Reporting and paperwork requirements: Processing of applications for certification.

(4) Assessment of anticipated effect on state and local revenues: None; no effect.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The Kentucky Workers' Compensation Funding Commission pursuant to KRS 342.122.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation will be implemented throughout the state of Kentucky, but will have its primary impact on those regions of the state in which the deep mining of coal is carried out.

(b) Kentucky: See response to (a) above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: House Bill 928 has directed the commissioner to

promulgate administrative regulations for the approval of "bona fide training or education programs".

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No effect.

(b) State whether a detrimental effect on environmental and public health would result if not implemented: No effect.

(c) If detrimental effect would result, explain detrimental effect: Not applicable.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplication: None

(a) Necessity of proposed regulation if in conflict: No conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Each training or education program that applies for certification must demonstrate that it meets certain minimum standards and will prepare students for gainful employment at work other than the severance and processing of coal in the mining industry.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction

815 KAR 8:010. Master heating, ventilation, and air conditioning (HVAC) contractor licensing requirements.

RELATES TO: KRS 198B.650 - 689

STATUTORY AUTHORITY: KRS 198B.654

NECESSITY AND FUNCTION: KRS 198B.654 requires the Board of Heating, Ventilation and Air Conditioning Contractors to promulgate administrative regulations requiring persons engaged in the heating, ventilation and air conditioning (HVAC) contracting business to be licensed effective July 1, 1995. This administrative regulation sets forth the required proof of experience, examination, fees, application form and other administrative requirements for licensing HVAC contractors.

Section 1. Definitions. (1) "Actively engaged" means that the applicant has personally contracted for HVAC business in Kentucky, such as installing, servicing and repair over the three (3) year period of time required by Section 6 of this administrative regulation.

(2) "Current valid Kentucky local government HVAC contractor license" means a document issued by any Kentucky local government which qualifies the person to engage in the HVAC business as a contractor. It shall not mean an occupational license tax document.

(3) "HVAC" means heating, ventilation and air conditioning, hydronic and burner service systems as defined in KRS 198B.650(1), (2), (8), (9) and (15).

(4) "Immediate" or "immediately" means the time period after January 1, 1990, in which the experience necessary to qualify one to be licensed may have occurred.

(5) "Master HVAC contractor" or "master" as defined by KRS 198B.650(12) and authorized to contract for and engage in the business of installation, maintenance, altering, remodeling and repair of HVAC systems. If the individual is representing a company, the license issued in the name of the individual shall also name the company.

(6) "Journeyman HVAC mechanic" or "journeyman" as defined by KRS 198B.650(10) and authorized to install, maintain, alter, remodel, and repair heating systems, ventilation systems, hydronic systems, burner service or cooling systems, under the supervision of a master.

(7) "Supervise" means exercising authority and responsibility for the direction of all persons engaged in carrying out the actual work on HVAC systems, including the authority to exercise independent judgment regarding activities of others acting under his direction.

Section 2. General Requirements. (1) Mandatory licensure. Effective July 1, 1995, any person, other than one exempted by KRS 198B.674, who is engaged in the business of HVAC contracting shall comply with applicable administrative regulations of the board set forth in this administrative regulation.

(2) Continuing education. Beginning July 1, 1996, each licensee shall complete ten (10) hours of continuing education, approved by the board, prior to renewal of the license for the next year.

(3) Supervision. The master shall supervise and be primarily responsible for all HVAC work performed by the employees and subcontractors of the licensee. The master shall assign each apprentice to the oversight of one (1) or more journeyman. The master shall not personally engage in actual installation, maintenance, alteration or remodeling or repair unless the master also possesses a journeyman license.

(4) Company license. A licensee who is an employee of a company whom the licensee is representing shall notify the board, in writing, if the licensee ceases to represent the company or if the name of the company changes, requesting a change of information on his license and paying the change of information fee listed in Section 8(5) of this administrative regulation.

Section 3. Initial Application Requirements. (1) Filing the application. Each applicant seeking a master HVAC contractor license shall meet all of the following application requirements:

(a) The applicant shall submit the Master HVAC Contractor License Application Form HVAC 1, November, 1994, hereby incorporated by reference, to the Department of Housing. Copies of the application form are available at the Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Frankfort, Kentucky, between 8 a.m. and 4:30 p.m., Monday through Friday.

(b) The completed application form shall be accompanied by a nonrefundable initial license application fee of $100; and

(c) The applicant shall submit proof of satisfactory completion of the examination required by Section 4 of this administrative regulation; and

(d) The applicant shall be an individual; and

(e) The applicant shall have and shall verify to the board the applicant's experience as a contractor in the business of installation, alteration, maintenance and performance of repairs and alteration of HVAC systems, as required by Sections 5 and 6 of this administrative regulation; and

(f) The applicant shall supply a certificate of insurance showing general liability insurance in the minimum amount of $500,000, including at least $300,000 for property damage. The named insurance carrier shall be a company which holds a certificate of authority from the Kentucky Department of Insurance; and

(g) If the applicant is an employee representing a company, the company name shall be stated on the application form. The company may provide the insurance certificates required by paragraph (f) of this subsection and shall be subject to this administrative regulation.

(2) Termination of application. The initial application shall remain pending until all requirements are met, up to a period of one (1) year after the date the application is submitted. At the end of one (1) year, the application shall be void.

Section 4. Examination Requirements. Except for those applicants seeking a license pursuant to Section 6 (the "grandfather clause") of this administration regulation, each applicant shall take and pass the examination administered in compliance with this section.

(1) The examination shall test the applicant's knowledge of codes, standards, laws and administrative regulations and of current technological and industry recommended practices with respect to the proper installation, maintenance, repair, remodeling or alteration of all types of HVAC systems.

(2) Reasonable accommodations will be made where necessary to provide accessibility to disabled applicants, upon request; and oral examinations may be given upon good cause shown.

(3) The applicant shall successfully complete the examination known as "Kentucky Master Heating, Ventilation and Air Conditioning Contractor Examination" with a passing grade of seventy-five (75) percent.

(4) Requests to sit for the examination shall be made directly to the testing company, the National Assessment Institute, 783 Old Hickory Boulevard, Suite 255, Brentwood, Tennessee 37027, or other testing agency approved by the board.

(5) The examination fee shall be fifty (50) dollars and shall accompany the application for examination.

(6) The examination shall be provided and administered by the approved testing agency as often as necessary but at least four (4) times a year at various locations.

(7) An applicant shall not retake an examination less than sixty (60) days from the date of his last examination.

(8) A passing score on the examination shall be valid for a period of two (2) years.

Section 5. Experience Requirements. All applicants shall meet the experience requirements of this section.

(1) Minimum experience. Each applicant shall have at least two (2) years experience. Applicants shall receive credit for experience as follows:

(a) Credit for experience in the HVAC business obtained after July 1, 1995, shall be for HVAC work under the supervision of a master.

(b) Credit for experience obtained during the three (3) years immediately preceding July 1, 1994, through July 1, 1995 (i.e., between January 1, 1990 and July 1, 1995), shall be for HVAC work as an actively engaged and lawfully established self-employed HVAC contractor/mechanic and for work as an actively engaged and lawfully qualified mechanic under another HVAC contractor.

(2) Records of experience. An applicant's experience shall be listed on the application form. Additional proof of experience may be requested by the board, prior to or after licensing, if the board has reason to believe that the experience shown is insufficient or nonexistent.

(3) "Grandfather" exception. Applicants seeking licensure without examination shall comply with the experience and other requirements of Section 6 of this administrative regulation.

Section 6. Grandfather Clause. (1) Applicants shall be licensed without examination pursuant to this section.

(2) Applicants filing applications prior to July 1, 1995, shall have either:

(a) A minimum of three (3) years experience actively engaged and lawfully established as a HVAC contractor immediately prior to July 1, 1994 (that is between January 1, 1990 and July 1, 1994); or

(b) A current valid Kentucky local government HVAC contractor license which has been in effect since at least July 1, 1994; or

(c) A minimum of eight (8) years public school HVAC experience immediately prior to July 1, 1994, pursuant to KRS 198B.662(4).

(3) To qualify for licensure without examination, the application shall be completed and all fees, including proof of insurance, shall be provided before the master HVAC contractor license shall be issued.

(4) The deadline for filing the fee and signed application form shall be July 1, 1995.

(5) Affidavit of experience. If applying under the grandfather clause, the applicant shall complete and file, with the application form, the "Grandfather Clause Affidavit of Experience" Form HVAC 1(a), November, 1994, hereby incorporated by reference. Copies are available at the Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Suite #1, Frankfort, Kentucky, between 8 a.m. and 4:30 p.m., Monday through Friday.

(6) Records of experience. Additional proof of experience may be requested by the board, prior to or after licensing, if the board has reason to believe that the experience shown or sworn to is insufficient or nonexistent.

Section 7. Renewal and Reactivation Requirements and Procedures. (1) Except for licenses placed in inactive status, application for license renewal shall be filed by each licensee no later than June 30 of each year.

(2) A renewal fee of fifty (50) dollars shall be paid prior to renewal. The department shall send renewal application cards to each licensee each year to be returned, together with the required fee.

(3) Renewal applications filed late, but no later than September 29, shall be accepted, but a restoration fee shall be added to the renewal fee.

(4) Failure to renew by September 29 shall void the license and the applicant shall comply with all requirements for a new license pursuant to Section 3 of this administrative regulation.

(5) Licenses which have been placed in inactive status are exempt from annual renewal. They shall be reactivated upon payment of a renewal fee for the year reactivated, the reactivation fee and compliance with continuing education requirements for each year of inactive status.

(6) The application for renewal or reactivation of a licensed master HVAC contractor shall be denied if any of the following occur:

(a) The applicant fails to pay the fees required for renewal, reactivation and restoration, if applicable; or

(b) The applicant fails to comply with the continuing education requirements of the board; or

(c) The applicant fails to provide the current insurance certificate.

Section 8. Special Service Fees. In addition to other fees required by this administrative regulation, the following fees shall also be applied:

(1) Restoration fee. The fee for renewal of expired licenses shall be fifty (50) dollars.

(2) Inactive status fee. A licensee may place his license in "inactive status" upon payment of twenty (20) dollars. Inactive status shall be maintained until such time as the licensee requests reactivation.

(3) Reactivation fee. A license shall be reactivated upon payment of a fee of twenty (20) dollars and compliance with Section 7(5) of this administrative regulation.

(4) Duplicate license fee. Verified lost or destroyed licenses shall be replaced upon payment of a ten (10) dollar fee.

(5) Change of information fee. The fee for the change of information required by Section 2(4) of this administrative regulation shall be fifteen (15) dollars. If a change of information request is simultaneous with license renewal, this fee shall not be applicable.

Section 9. Revocation or Suspension of Licenses. A license issued pursuant to this administrative regulation may be suspended or revoked by the board for any of the reasons stated in KRS 198B.672.

CHARLES A. COTTON, Commissioner, Chairman
EDWARD J. HOLMES, Secretary

APPROVED BY AGENCY: November 11, 1994

FILED WITH LRC: November 14, 1994 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Wednesday, December 21, 1994 at 2 p.m., local time, 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 December 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 in which case the person requesting the transcript shall have the responsibility of paying for same. 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 by the above date 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

Contact person: Judith G. Walden, General Counsel

(1) Type and number of entities affected: Approximately 1000 HVAC contractors across the state who will obtain a master contractor license.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: No impact on cost of living or employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: Additional cost of doing business for 1000 HVAC contractors will be $100,000 (1000 x $100).

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: This is a licensing program which does not involve permits and no additional paperwork is required. However, cost of license and cost of insurance could eliminate some of the smaller or repair contractors.

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Direct cost $25,800.

2. Continuing costs or savings: Direct cost $23,400.

3. Additional factors increasing or decreasing costs: Direct cost will increase significantly if the scope of the program mandate is expanded to include permits.

(b) Reporting and paperwork requirements: Administrative procedures must be established and records maintained.

(4) Assessment of anticipated effect on state and local revenues: $100,000 in additional state revenue in the current fiscal year. No local revenue.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: License fee of $100 each for 1000 HVAC contractors.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: Statewide

(b) Kentucky: Statewide

(7) Assessment of alternative methods; reasons why alternatives were rejected: This is a new program which is being implemented in strict compliance with the statutory mandate.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Licensing HVAC contractors will improve the safety and health of the public throughout the state by establishing minimum requirements for engaging in the HVAC business.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Services would not be delivered and the potential for health hazards relative to carbon monoxide, explosions and the environment would be greater.

(c) If detrimental effect would result, explain detrimental effect: In addition to effects on the environment and public health, the benefit of improved consumer protection would not be achieved.

(9) 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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Yes. Tiering was applied when the type of license (master, journeyman and apprentice) was established and the level of responsibility and fees were graduated accordingly.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction

815 KAR 8:020. Journeyman heating, ventilation, and air conditioning (HVAC) mechanic licensing requirements.

RELATES TO: KRS 198B.650 - 689

STATUTORY AUTHORITY: KRS 198B.654

NECESSITY AND FUNCTION: KRS 198B.654 requires the Board of Heating, Ventilation and Air Conditioning Contractors to promulgate administrative regulations requiring persons engaged in the heating, ventilation and air conditioning (HVAC) installation and repair business to be licensed effective July 1, 1995. This administrative regulation sets forth the required proof of experience, examination, fees, application form and other administrative requirements for licensing journeyman HVAC mechanics.

Section 1. Definitions. (1) "Actively engaged" means that the applicant has been employed in the HVAC trade in Kentucky, such as installing, servicing and repair, including supervision, management and estimating such systems over the three (3) year period required by Section 6 of this administrative regulation.

(2) "Current valid Kentucky local government HVAC mechanic license" means a document issued by any Kentucky local government which qualifies a person to engage in HVAC mechanical work. It shall not mean an occupational license tax document.

(3) "HVAC" means heating, ventilation and air conditioning, hydronic and burner service systems as defined in KRS 198B.650(1), (2), (8), (9) and (15).

(4) "Immediate" or "immediately" means the time period after January 1, 1990, in which the experience necessary to qualify one (1) to be licensed may have occurred.

(5) "Master HVAC contractor" or "master" as defined by KRS 198B.650(12) and authorized to contract for and engage in the business of installation, maintenance, altering, remodeling and repair of HVAC systems.

(6) "Journeyman HVAC mechanic" or "journeyman" as defined by KRS 198B.650(10) and authorized to install, maintain, alter, remodel, and repair heating systems, ventilation systems, hydronic systems, burner service or cooling systems, under the supervision of a master HVAC contractor.

Section 2. General Requirements. (1) Mandatory licensure. Effective July 1, 1995, any person engaging in HVAC work shall comply with the applicable requirements in this administrative regulation.

(2) Continuing education. Beginning July 1, 1996, each journeyman licensee shall complete ten (10) hours of continuing education, approved by the board, prior to renewal of the license for the next year.

(3) The journeyman shall be physically on site, personally observe and be responsible for each apprentice assigned to the journeyman

in carrying out the installation, alteration and repair of HVAC systems and shall otherwise operate under the general direction of the master.

Section 3. Initial Application Requirements. (1) Filing the application. Each applicant seeking a journeyman license shall meet all of the following application requirements:

(a) The applicant shall submit the journeyman HVAC Mechanic Application Form HVAC 2, November, 1994, hereby incorporated by reference, to the Department of Housing. Copies of the application form are available at the Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Suite 1, Frankfort, Kentucky, between 8 a.m. and 4:30 p.m., Monday through Friday.

(b) The completed application shall be accompanied by a nonrefundable initial license application fee of fifty (50) dollars; and

(c) The applicant shall submit proof of satisfactory completion of the examination required by Section 4 of this administrative regulation; and

(d) The applicant shall be an individual; and

(e) The applicant shall have and shall verify to the board the applicant's experience in the installation, alteration, maintenance and performance of repairs on and alteration of HVAC systems, as required by Sections 5 and 6 of this administrative regulation; and

(2) Termination of application. The initial application shall remain pending until all requirements are met up to a period of one (1) year after the date the application is submitted. At the end of one (1) year, the application shall be void.

Section 4. Examination Requirements. Except for those applicants seeking a license pursuant to Section 6 (the "grandfather clause") of this administrative regulation, each applicant shall take and pass the examination administered in compliance with this section.

(1) The examination shall test the applicant's basic knowledge of codes, standards and of current technological and industry recommended practices with respect to the proper installation, maintenance, repair, remodeling or alteration of HVAC systems.

(2) Reasonable accommodations will be made where necessary to provide accessibility to disabled applicants, upon request; and oral examinations may be given upon good cause shown.

(3) The applicant shall successfully complete the examination known as "Kentucky Journeyman Heating, Ventilation and Air Conditioning Mechanic Examination" with a passing score of seventy (70) percent.

(4) Requests to sit for the examination shall be made directly to the testing company, the National Assessment Institute, 783 Old Hickory Boulevard, Suite 255, Brentwood, Tennessee 37027, or other testing agency approved by the board.

(5) The examination fee shall be forty (40) dollars and shall accompany the application for examination.

(6) The examination shall be provided and administered by the approved testing agency as often as necessary but at least four (4) times a year at various locations.

(7) An applicant shall not retake an examination less than sixty (60) days from the date of his last examination.

(8) A passing score on the examination shall be valid for a period of two (2) years.

Section 5. Experience Requirements. All applicants shall meet the experience requirements of this section. (1) Minimum experience. Each applicant shall have at least two (2) years experience. Applicants shall receive credit for experience as follows:

(a) Credit for experience working in the HVAC trades obtained after July 1, 1995, shall be HVAC work under the supervision of a master.

(b) Credit for experience obtained during the three (3) years immediately preceding July 1, 1994 through July 1, 1995 (i.e., between January 1, 1990 and July 1, 1995), shall be for work as an actively engaged and lawfully qualified self-employed contractor/mechanic and for work under another HVAC contractor in Kentucky.

(2) Records of experience. Additional proof of experience may be requested by the board, prior to or after licensing, if the board has reason to believe that the experience shown is insufficient or nonexistent.

(3) A minimum of 3,000 work hours to be completed as part of the two (2) years experience requirement of subsection (1) of this section.

(4) Education may be substituted for experience, pursuant to KRS 198B.658(4), subject to the prior approval of the board.

(5) "Grandfather" exception. Applicants seeking licensure without examination shall comply with the experience and other requirements of Section 6 of this administrative regulation.

Section 6. Grandfather Clause. (1) Applicants shall be licensed without examination pursuant to this section.

(2) Applications filed prior to July 1, 1995, shall have either:

(a) A minimum of three (3) years experience actively engaged and lawfully qualified working on HVAC systems as a self-employed contractor/mechanic or under the supervision of another HVAC contractor immediately prior to July 1, 1994 (i.e., between January 1, 1990 and July 1, 1994); or

(b) A minimum of eight (8) years public school HVAC experience immediately prior to July 1, 1994, pursuant to KRS 198B.662(4).

(3) To qualify for licensure without examination, the application shall be completed with all required fees paid prior to issuance of the journeyman license.

(4) The deadline for filing the fee and signed application form shall be July 1, 1995.

(5) Affidavit of experience. If applying under the grandfather clause, the applicant shall complete and file with the application form the "Grandfather Clause Affidavit of Experience Form HVAC 2(a), November, 1994", hereby incorporated by reference. Copies are available at the Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Suite 1, Frankfort, Kentucky, between 8 a.m. and 4:30 p.m., Monday through Friday.

(6) Records of experience. Additional proof of experience may be requested by the board, prior to or after licensing, if the board has reason to believe that the experience shown or sworn to is insufficient or nonexistent.

Section 7. Renewal Requirements and Procedures. (1) Applications for license renewal shall be filed by each licensee no later than June 30 of each year.

(2) A renewal fee of twenty-five (25) dollars shall be paid prior to renewal. The department shall send renewal application cards to each licensee each year.

(3) Renewal applications filed late, but no later than September 29, shall be accepted, but a restoration fee shall be added to the renewal fee.

(4) Failure to renew by September 29 shall void the license and the applicant shall comply with all requirements for a new license pursuant to Section 3 of this administrative regulation.

(5) The application for renewal of a licensed journeyman HVAC mechanic shall be denied if any of the following occur:

(a) The applicant fails to pay the fees required for renewal and restoration, if applicable; or

(b) The applicant fails to comply with the continuing education requirements of the board.

Section 8. Special Services and Fees. In addition to the initial license application fee, examination fee, and renewal fee, the following special fees shall be applied:

(1) Restoration fee. The fee for renewal of expired licenses, pursuant to Section 7(3) of this administrative regulation, shall be twenty-five (25) dollars.

(2) Duplicate license fee. Verified lost or destroyed licenses shall be replaced upon payment of a ten (10) dollar fee.

Section 9. Revocation or Suspension of License. A license issued pursuant to this administrative regulation may be suspended or revoked by the board for any of the reasons stated in KRS 198B.672.

CHARLES A. COTTON, Commissioner, Chairman
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: November 11, 1994
FILED WITH LRC: November 14, 1994 at 2 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Wednesday, December 21, 1994 at 2 p.m., local time, 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 December 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 in which case the person requesting the transcript shall have the responsibility of paying for same. 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 by the above date 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

Contact person: Judith G. Walden, General Counsel
(1) Type and number of entities affected: Approximately 2000 HVAC mechanics across the state who will obtain a journeyman contractor license.
(2) Direct and indirect costs or savings on the:
(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: Additional cost of living or employment for 2000 HVAC journeyman mechanics will be $100,000 (2000 x $50).
(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: No impact on cost of doing business.
(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: This is a licensing program which does not involve permits and no additional paperwork is required.
1. First year following implementation: None
2. Second and subsequent years: None
(3) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: Direct cost $51,800.
2. Continuing costs or savings: Direct cost $47,100.
3. Additional factors increasing or decreasing costs: Direct cost will increase significantly if the scope of the program mandate is expanded to include permits.
(b) Reporting and paperwork requirements: Administrative procedures must be established and records maintained.
(4) Assessment of anticipated effect on state and local revenues: $100,000 in additional state revenue in the current fiscal year. No local revenue.
(5) Source of revenue to be used for implementation and enforcement of administrative regulation: License fee of $50 each for 2000 HVAC journeyman mechanics.
(6) Economic impact, including effects of economic activities arising from administrative regulation, on:
(a) Geographical area in which administrative regulation will be implemented: Statewide
(b) Kentucky: Statewide
(7) Assessment of alternative methods; reasons why alternatives were rejected: This is a new program which is being implemented in strict compliance with the statutory mandate.
(8) Assessment of expected benefits:
(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Licensing journeyman mechanics will improve the safety and health of the public throughout the state by establishing minimum requirements for employment as an HVAC mechanic.
(b) State whether a detrimental effect on environment and public health would result if not implemented: Services would not be delivered and the potential for health hazards relative to carbon monoxide, explosions and the environment would be greater.
(c) If detrimental effect would result, explain detrimental effect: In addition to the effects on the environment and public health, the benefit of improved consumer protection would not be achieved.
(9) 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
(10) Any additional information or comments: None
(11) TIERING: Is tiering applied? Yes. Tiering was applied when the type of license (master, journeyman or apprentice) was established and the level of responsibility and fees were graduated accordingly.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction

815 KAR 8:030. Apprentice heating, ventilation, and air conditioning (HVAC) mechanic registration and certification requirements.

RELATES TO: KRS 198B.650 - 689
STATUTORY AUTHORITY: KRS 198B.654
NECESSITY AND FUNCTION: KRS 198B.654 requires the Board of Heating, Ventilation and Air Conditioning Contractors to promulgate administrative regulations requiring persons engaged in the business of heating, ventilation and air conditioning (HVAC) contracting to be registered effective July 1, 1995. This administrative regulation sets forth the requirements for registration and certification of apprentice.

Section 1. Registration of Apprentices. (1) Effective July 1, 1995, all apprentices, as defined by KRS 198B.650, shall be registered with the board and comply with this administrative regulation.
(2) Each individual registered with the board shall be issued an HVAC certificate of apprenticeship pursuant to KRS 198B.658(3) and this administrative regulation.
(3) The HVAC registration form shall be updated annually by the apprentice and submitted to the board:
(a) To indicate changes of address or employer; and
(b) To record work hours under the supervision of a master contractor.
(4) The certificate of registration shall authorize an individual to work in the HVAC trade under the direct supervision of at least one (1) journeyman HVAC mechanic as well as the general supervision of a master contractor.
(5) The application of registration shall include the license number and signature of the supervising master contractor.

Section 2. Initial Application for Apprentice Certificate of Registration. (1) Registration shall be accomplished by completing and filing the HVAC Apprentice Registration Form HVAC 3, November, 1994, hereby incorporated by reference, to the Department of Housing. Copies of the registration form are available at the Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Frankfort, Kentucky, between 8 a.m. and 4:30 p.m., Monday through Friday.

(2) The initial application fee shall be ten (10) dollars.

Section 3. Certificate Rnewal Rquirements. (1) Certificates shall expire on June 30 of each year.

(2) Each apprentice shall renew the registration annually by July 1 by completing and filing the HVAC Apprentice Registration Form HVAC 3, November, 1994.

(3) Failure to be registered with the board shall disqualify an apprentice from work until the apprentice shall renew the registration.

(4) The fee for renewal shall accompany the registration form.

(5) The renewal fee shall be five (5) dollars.

Section 4. Minimum Number of Hours of Experience. (1) The minimum number of work hours to be completed by an apprentice as part of the required two (2) years of experience to apply for an HVAC journeyman mechanic license pursuant to 815 KAR 8:020 and shall be 3,000 work hours.

(2) The apprentice shall retain personal records of employment hours which substantiate the experience necessary to apply for a journeyman HVAC mechanic.

CHARLES A. COTTON, Commissioner, Chairman
EDWARD J. HOLMES, Secretary

APPROVED BY AGENCY: November 11, 1994

FILED WITH LRC: November 14, 1994 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Wednesday, December 21, 1994 at 2 p.m., local time, 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 December 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 in which case the person requesting the transcript shall have the responsibility of paying for same. 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 by the above date 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

Contact person: Judith G. Walden, General Counsel

(1) Type and number of entities affected: Approximately 1000 would-be HVAC mechanics across the state who will register with the HVAC apprenticeship program.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: Additional cost of living or employment for 1000 HVAC apprentices will be $10,000 (1000 x $10).

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: No impact on cost of doing business.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: This is a registration program and no additional paperwork is required.

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Direct cost $10,000.

2. Continuing costs or savings: Direct cost $9,000.

3. Additional factors increasing or decreasing costs: Direct cost will increase in relation to the number of participants and will be self-supporting.

(b) Reporting and paperwork requirements: Administrative procedures must be established and records maintained.

(4) Assessment of anticipated effect on state and local revenues: $10,000 in additional state revenue each fiscal year. No local revenue.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Registration fee of $10 each for 1000 HVAC apprentices.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: Statewide

(b) Kentucky: Statewide

(7) Assessment of alternative methods; reasons why alternatives were rejected: This is a new program which is being implemented in strict compliance with the statutory mandate.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Registering apprentices will enhance the safety and health of the public throughout the state by establishing minimum requirements for employment as an HVAC apprentice mechanic as they prepare for licensing as journeyman HVAC mechanics or contractors (master HVAC license).

(b) State whether a detrimental effect on environment and public health would result if not implemented: Overall program to abate potential health and safety hazards would be diminished.

(c) If detrimental effect would result, explain detrimental effect: Training and education of personnel to assure the responsibility for HVAC installations would be lessened.

(9) 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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Yes. Tiering was applied when the type of license (master, journeyman or apprentice) was established and the level of responsibility and fees were graduated accordingly.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of the November 10, 1994 Meeting

The November meeting of the Administrative Regulation Review Subcommittee was held on Thursday, November 10, 1994, at 10 a.m. in Room 149 of the Capitol Annex. Chairman Tom Kerr called the meeting to order, and the secretary called the roll. The minutes of the October 5, 1994 meeting were approved.

Present were:

Members: Representative Tom Kerr, Chairman; Senators John David Preston, Tom Smith, Nick Kafoglis; Representatives Woody Alllen, Jim Bruce and Tommy Lee.

LRC Staff: Greg Karambellas, O. Joseph Hood, Tom Troth, Patrice Carroll, Susan Wunderlich, Peggy Jones, Donna Valencia, Susan Eastman, Don Hines, Donna Hall, Tommy Greenwell, Doug Terry, Angie Watson, Bonnie Brinly, Ethel Alston.

Guests: Lori Flanery, Executive Branch Ethics Committee; Mike Schwendeman, Attorney General's Office; Eddie Mattingly, Revenue Cabinet; Ronal D. Pritchert, George Wright, Tom Bennett, Pete Pfeiffer, Edwin F. Crowell, Department of Fish and Wildlife Resources; Carl Breeding, Phillip Shepherd, Kathryn M. Hargraves, John Hornback, Millie Ellis, Gerry Ennis, Aaron Keatley, Jerri L. Wallace, Jim Villines, Dave Rosenbaum, Bert Harberson, Barbara Foster, Natural Resources and Environmental Protection Cabinet; Jack Damron, Brenda Priestly, Department of Corrections; John C. Barton, Kentucky State Police; Joe England, Transportation Cabinet; Betty Edwards, Neal Kingston, Kevin Noland, Susan S. Goins, Cindy Schweickart, David Thurmond, Fran Salyers, Carol Tuning, Ed Reidy, Thomas C. Boysen, Department of Education; Helen Mountjoy, State Board of Education; Karen Doyle, Cabinet for Human Resources; Michael Hammons, Kentucky Health Policy Board; Tony Sholar, Kentucky Chamber of Commerce; Dandridge F. Walton; Ted Bradshaw, KOA-KOTA; Mike Porter, Kentucky Dental Association; John Cooper, Kentucky Bankers Association; Jim Carloss, Kentucky Association of Realtors; Hank List, Kentucky Utilities Company; W. Stephen Wilborn, Kentucky Petroleum Commission; Bill Caylor, Kentucky Coal Association; John Nichols, Associated Industries of Kentucky; Lucy May, Lexington Herald-Leader; Charles Wolfe, The Associated Press; Mark Schauer, The Courier Journal; Bill Bishop; Shirley Daniel, Eagle Forum; David Keller, KSBA; Susan Perkins Weston, Ronda Harmon, Kentucky Association of School Councils; Alicia J. Sells, Wayne Young, Kentucky Association of School Administrators; Michael W. Wooden, Jefferson County Public Schools; Roger S. Pankratz, Lori Henderson, Kentucky Institute for Education Research; Donald McKinney, Hardin County Board of Education; Bill Wooldridge, Hardin County Education Association; Kay Sharon, Lois W. Gray, Hardin County Schools; Alice H. Davis, Daphine Cox, William H. McCann, Cindy Heine, Prichard Committee; Phil Eason, Green River Regional Educational Cooperative; Martin Cothran, The Family Foundation; Charles Muntz, Practitioners' Alliance For Educational Reform; Dr. George K. Cunningham; Thomas H. Crawford, Robert N. Ronau, University of Louisville; Jim Becker, Western Kentucky University; Marianne McAdam, Kentucky Association for Health Physical Education Recreation; Rayma K. Beal, Kentucky Alliance for Arts Education; Karen C. Jones, Kentucky PTA; Wade Mountz, Jeffrey C. Mando, KSBESE; Molly Sullivan, Kentucky Association of Educational Supervisors; Janet Carrico, KEA; Camille Wagner, PPIE; Carl Campbell, DSMRE; Mike Helton, MMLEK; Clara Wilson, Committee on Education - Fayette County; Nancy Oldham; Ellen A. Wolkensperg; Jody Curry; Linda S. Levstik; Connie Bridge; Peter Winograd; Cindy Rausch; Dennis Dio Parker; Bill Bush; Bill Kunnecke; Marti McKenney; Sylvia Griendling; Thaxter & Martha Hodum; Glenn I. Burns; Gerald Beeler; Donna Shedd; Emily Loudermilk; Thomas & Marlene Ashby; Kathleen Darbro; Janet Whitley; Jim & Nancy Neukam; Peg Jones; Kathy Lousigmont; Anita & David Leong; Carol Fischer; Gippy Graham; Lorraine Beeler; Edward D. Deters, Sr.

The Administrative Regulation Review Subcommittee met on Thursday, November 10, 1994, and submits this report:

The following administrative regulation, as amended, was found deficient by the Subcommittee:

Natural Resources and Environmental Protection Cabinet: Department of Environmental Protection: Environmental Protection

401 KAR 100:010. General administrative hearing practice provisions. The cabinet supplemented the record regarding this administrative regulation to clarify that Section 3(1)(a) was not intended to modify the common law doctrine of res judicata and collateral estoppel.

In response to questions from subcommittee staff, cabinet personnel stated that: (1) the provisions relating to res judicata and collateral estoppel are intended to be consistent with the common law and with surface mining administrative regulations; (2) although the language in this administrative regulation relating to: (a) admissibility of hearsay evidence; and (b) taking judicial notice of technical and scientific facts is different than KRS 13B.090 it is not intended to function differently; (4) the language relating to hearsay evidence and judicial notice is taken from current surface mining administrative regulations; (5) the cabinet does not believe it can be in default in its own proceedings even though CR 55.04 provides for default judgment against the Commonwealth if a claimant establishes his claim or right to relief by satisfactory evidence; (6) the cabinet can be sanctioned for failure to timely act.

In response to a question from Senator Preston, cabinet personnel stated that: (1) the burden of proof regarding an order to abate or alleviate a hazard is set by statute; (2) the terms of the statute require that an emergency exist; (3) once the order is issued a party has a right to appeal entry of the order to abate and alleviate; and (3) the individual appealing the order must appear and show cause why the order should not be entered.

Senator Preston moved that the administrative regulation failed to comply with KRS 224.10-410 as it relates to the burden of proof for the following reasons: (1) Section 14(5) provides that the cabinet has the burden of going forward to show there is a condition to be abated and alleviated; (2) Section 14(5) improperly states that "the person named in the order to abate or alleviate shall have the ultimate burden of persuasion that the condition or activity does not violate KRS 224.10-410, or that the condition or activity has been discontinued, abated or alleviated..."; (3) The burden of proof must always be upon the cabinet to prove that the condition does in fact exist; (4) KRS 224.10-410 provides that: "as soon as possible thereafter, not to exceed ten (10) days, the secretary shall provide the person or persons an opportunity to be heard and present proof that such condition or activity does not violate the provisions of..." Section 14(5); (5) KRS 224.10-410 gives the opportunity for the person named in the order to have a due process hearing, but it does not shift the burden to that person to show that the condition does not exist.

In response to a question from Representative Bruce, cabinet personnel stated that they did not wish to defer this administrative regulation.

The motion of Senator Preston to find this administrative regulation deficient for failing to comply with statutory authority as set out above was adopted.

The Subcommittee determined that the following administra-

tive regulations, as amended by the promulgating agency and the Subcommittee, complied with statutory requirements:

Department of Law: Division of Consumer Protection

40 KAR 2:220 & E. Application procedure for obtaining going-out-of-business sale permits in excess of two (2) sales in a four (4) year period. This administrative regulation was amended to: (1) correct statutory citations pursuant to KRS 13A.222(4)(l); and (2) set standards for determining both valid and invalid business reasons for conducting a going out of business sale.

Tourism Cabinet: Department of Fish and Wildlife Resources: Fish

The Statuary Authority paragraph of each of the following five administrative regulations was amended to delete KRS Chapter 13A.

301 KAR 1:085. Mussel shell harvesting. In response to a question by Representative Bruce, agency personnel stated that the mussel sanctuary from the eastern boundary of Mammouth Cave National Park to about twenty-five miles upstream was endangered by activity outside the sanctuary, and had increased the protected zone to the bottom of the Green River Dam.

Game

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

301 KAR 2:140. Seasons for wild turkey.

301 KAR 2:260E. Crow hunting season. In response to a question by Senator Preston, agency personnel stated that: (1) the closed season was anytime other than September 1 through November 7 and January 5 through February 28; and (2) A license was not required for shooting crows that were committing depredations, such as crop destruction. In response to questions raised by Representative Allen, agency personnel stated that: (1) crows destroying crops could be taken at any time without a license; (2) because federal requirements were communicated late, the agency was pressed for time and had to promulgate an emergency administrative regulation in order to meet federal guidelines; and (3) the agency would consider the needs of farmers to prevent depredation by crows and apply a common sense approach to such situations.

Hunting and Fishing

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

Natural Resources and Environmental Protection Cabinet: Administration

400 KAR 1:090. Administrative hearings practice provisions. This administrative regulation was amended to delete the requirement that petitioners list other interested parties when filing initiating complaints with the cabinet.

In response to questions from subcommittee staff cabinet personnel stated that: (1) the term "reasonable administrative practice" is intended to mean that common sense will prevail in administrative proceedings, and discretion will be exercised in a reasonable manner to allow full and fair hearings; (2) the language relating to "reasonable administrative practice" is also in the surface mining administrative regulations; (3) this administrative regulation still requires a petitioner to list related actions in his petition; (4) although a hearing officer can order parties to mediation the parties cannot be ordered to settle a case; (5) the provisions relating to mediation have attempted to address the provisions of KRS 13B requiring agencies to promulgate administrative regulations to facilitate informal dispute resolution; and (6) a directed recommendation will only be granted after the non-moving party has had the opportunity to present all his or her evidence.

In response to a question from Senator Smith cabinet personnel stated that: (1) the mediation provisions in this administrative regulation are limited; (2) the hearing officer may order the parties to mediation in the hopes that they may resolve their differences; and (3) if the parties are unable to mediate the dispute they can remove the case from mediation and none of the negotiations may be used in the hearing.

Senator Smith objected to this administrative regulation but did not move that it be found deficient.

Division of Air Quality: New Source Performance Standards

The following 38 administrative regulations were amended to incorporate federal regulations by reference rather than adopt them without change.401 KAR 60:100. Standards of performance for petroleum refineries.

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.

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.

401 KAR 60:150. Standards of performance for sewage treatment plants.

401 KAR 60:160. Standards of performance for primary copper smelters.

401 KAR 60:170. Standards of performance for primary zinc smelters.

401 KAR 60:180. Standards of performance for primary lead smelters.

401 KAR 60:190. Standards of performance for primary aluminum reduction plants.

401 KAR 60:250. Standards of performance for coal preparation plants.

401 KAR 60:260. Standards of performance for ferroalloy production facilities.

401 KAR 60:330. Standards of performance for stationary gas turbines.

401 KAR 60:340. Standards of performance for lime manufacturing plants.

401 KAR 60:370.Standards of performance for lead-acid battery manufacturing plants.

401 KAR 60:380. Standards of performance for metallic mineral processing plants.

401 KAR 60:390. Standards of performance for automobile and light-duty truck surface coating operations.

401 KAR 60:400. Standards of performance for phosphate rock plants.

401 KAR 60:420. Standards of performance for ammonium sulfate manufacture.

401 KAR 60:440. Standards of performance for pressure sensitive tape and label surface coating operations.

401 KAR 60:450. Standards of performance for industrial surface coating: large appliances.

401 KAR 60:460. Standards of performance for metal coil surface coating.

401 KAR 60:470. Standards of performance for asphalt processing and asphalt roofing manufacture.

401 KAR 60:480. Standards of performance for equipment leaks of VOC in the synthetic organic chemicals manufacturing industry.

401 KAR 60:490. Standards of performance for the beverage can surface coating industry.

401 KAR 60:500. Standards of performance for bulk gasoline terminals.

401 KAR 60:540. Standards of performance for the rubber tire manufacturing industry.

401 KAR 60:560. Standards of performance for volatile organic compound (VOC) emissions from the polymer manufacturing industry.

401 KAR 60:580. Standards of performance for flexible vinyl and urethane coating and printing.

401 KAR 60:590. Standards of performance for equipment leaks of VOC in petroleum refineries.

401 KAR 60:600. Standards of performance for synthetic fiber

production facilities.

401 KAR 60:620. Standards of performance for petroleum dry cleaners.

401 KAR 60:630. Standards of performance for equipment leaks of VOC from on-shore natural gas processing plants.

401 KAR 60:640. Standards of performance for on-shore natural gas processing: SO_2 emissions.

401 KAR 60:680. Standards of performance for wool fiberglass insulation manufacturing plants.

401 KAR 60:700. Standards of performance for volatile organic compound (VOC) emissions from synthetic organic chemical manufacturing industry (SOCMI) reactor processes.

401 KAR 60:730. Standards of performance for calciners and dryers in mineral industries.

General Standards of Performance

401 KAR 63:100. General provisions.

401 KAR 63:300. National emission standards for coke oven batteries.

401 KAR 63:320. National perchloroethylene air emission standards for dry cleaning facilities.

Department for Surface Mining and Reclamation and Enforcement: Performance Standards for Surface Mining Activities

405 KAR 16:010. General provisions. This administrative regulation was amended to delete the term "outcrop barrier" because the term was not defined.

Performance Standards for Underground Mining Activities

405 KAR 18:010. General provisions. This administrative regulation was amended to delete the term "outcrop barrier" because the term was not defined.

Justice Cabinet: Department of Corrections: Office of the Secretary

501 KAR 6:030. Kentucky State Reformatory. Jack Damron, representing the Department, appeared before the Subcommittee. This administrative regulation was amended KSP 10-01-05 to change "must" to "shall" to comply with the drafting requirements of KRS Chapter 13A.

501 KAR 6:140. Bell County Forestry Camp. BCFC07-05-01 was amended to identify the specific part of 29 CFR 1910 cited. An additional subpart F was added to this policy to enumerate required protective and entry equipment.

Transportation Cabinet: Department of Vehicle Regulation: Division of Motor Carriers

601 KAR 1:025. Transporting hazardous materials by air or highway. Joe England, representing the Department, appeared before the Subcommittee. This administrative regulation was amended to incorporate a recently published document which appeared in the November 3, 1994 Federal Register, relating to requirements for the manufacture, qualification, and maintenance of cargo tank motor vehicles, and to make that amendment read in Section 2(1) that these changes shall be "implemented" January 5, 1995, and that compliance with the changes is authorized on the effective date of this administrative regulation "if prior" to January 5, 1995.

The Subcommittee determined that the following administrative regulations complied with statutory requirements:

Executive Branch Ethics Commission

9 KAR 1:050E. Approval of outside employment of a public servant.

Revenue Cabinet: Administration

103 KAR 8:041. Repeal of 103 KAR 8:040, 8:050 and 8:060. In response to a question by Representative Bruce, agency and Subcommittee staff stated that the: (1) repeal of administrative regulations was required because the General Assembly had transferred control of the subject matters to the Treasury: and (2) Subcommittee had reviewed the new Treasury administrative regulations at its last meeting.

Natural Resources and Environmental Protection Cabinet: Administration

400 KAR 1:001. Definitions for 400 KAR Chapter 1.

400 KAR 1:030. Administrative service of process, computation of time and filing of documents.

400 KAR 1:040. Administrative discovery. In response to questions from subcommittee staff cabinet personnel responded that: (1) Section 1(2)(d) mirrors language found in the Rules of Civil Procedure regarding discovery of opinions from expert witnesses; (2) the cabinet does not intend to shield its employees from discovery by designating them as expert witnesses; and (3) all parties in these proceedings will be treated as if they were in state and federal court.

In response to a question from Senator Smith, cabinet personnel stated that: (1) defining who is or is not an expert witness depends in large part on the issue before the hearing officer; (2) a qualified expert will be permitted to give opinions concerning his particular area of expertise; (3) a person may be designated as an expert either through significant academic training or significant practical experience; (4) by asking appropriate questions about a witnesses training and experience an attorney can lay a proper foundation for allowing the witness to give his expert opinion on a given issue; and (6) the hearing officers will rely on the Kentucky Rules of Evidence to determine when individuals can give opinion testimony.

Senator Smith expressed concern that: (1) the hearing officers at Natural Resources are employed by the Cabinet; (2) these hearing officers may not be impartial; and (3) the Cabinet's experts are often times an inspector who has no real expertise in an area.

Representative Kerr stated that: (1) this administrative regulation appears to be an attempt to conform to the Civil Rules regarding expert witnesses; (2) it is clear that opinions of experts to be used at trial are discoverable; (3) opinions of experts not intended to be used at trial are not discoverable except on a showing of exceptional circumstances.

Representative Kerr asked how the cabinet would treat a witness who was not hired by the Cabinet for the hearing but was a full time employee of the cabinet.

Cabinet personnel responded that: (1) employees of the cabinet would be treated in the same way as any other witness; (2) if that person is going to be a witness at trial then his or her testimony is discoverable; (3) the preferred way to obtain this testimony is by interrogatory; and (4) if the individual is consulted but not intended to be called at trial then the testimony is not discoverable.

Department for Surface Mining and Reclamation and Enforcement: General Provisions

405 KAR 7:015. Documents incorporated by reference. Bill Kaylor from the Kentucky Coal Association and Billy Shelton, from the law firm of Baird, Baird and Jones in Pikeville spoke against this administrative regulation.

Mr. Kaylor stated that: (1) Mr Shelton will speak on specific issues relating to 405 KAR 7:095; (2) there are broad areas of concern about this administrative regulation; (a) the Coal Association objects to the incorporation by reference of documents like the policy manual on a routine basis; (b) the policy manual has many onerous provisions; (c) the operator should be given an additional ten (10) good faith points when an operator is attempting to achieve rapid compliance; (d) the cabinet is requiring additional penalty points rather than good faith points; and (e) fifteen (15) additional penalty points are added when there is a "probability of occurrence" in Section 3(2)(a); (3) there are three specific problems in the penalty assessment manual where the state procedure is more stringent than the federal minimum requirements in violation of KRS 350.465(2), including: (a) how to treat penalties for an imminent danger cessation order (IDCO); (b) assessment of penalties for noncorrectable violations; (c) the increase

in penalties for top soil violations; and (4) the amendments to this administrative regulation do nothing other than increase the fines for coal operators.

Regarding the IDCO, Mr. Shelton stated that: (1) the current penalty assessment manual was drafted in July 1983; (2) on page 35 and 36 of the old manual the assessment officer gives the basis for assessing the IDCO; (3) when an inspector sees a violation that "is causing or can reasonably be expected to cause imminent and significant danger to the environment or public health" an safety the inspector may issue an IDCO; (4) currently the assessment manual provides that penalty points be assessed for each performance standard violated in the IDCO; (5) there is no additional cessation order assessment for the number of days the IDCO is in effect as is the case when the cessation order has been issued for failure to abate; (6) the assessment is based on the number of days beginning with the date of the abatement deadline and running until the danger is abated or until thirty days have expired; (7) the fact that an abatement order was issued mandates that a penalty be assessed for each performance standard violated regardless of the point assessment; (8)in the new manual at page 15 the cabinet proposes that the imminent danger penalty be calculated from the date of issuance for each day the imminent danger exists up to a maximum of thirty days; (9) this new provision has the effect of "double dipping" the operator in that: (a) a penalty is assessed upon a finding of noncompliance; and (b) an additional penalty is assessed for an IDCO which involves the same occurrence contained in the non-compliance; (10) the cabinet is not abiding by its current administrative regulation, because; (a) they are assessing a penalty for each day the imminent danger exists without having these new administrative regulation in effect; (b) there are many cases currently pending where a violation has been abated before the abatement deadline so there should be no violation assessed; but (c) the cabinet is still assessing penalties for the violations; and (d) the cabinet's current policy is contrary to their own administrative regulation; (11) the cabinet wants the enhanced penalty for an IDCO to act as a deterrent; (12) however an IDCO already has enhanced penalties without the "double dipping" provision; (13) generally an assessment for noncompliance, where an IDCO has been issued, is already much greater than a simple finding of noncompliance; (14) when an IDCO is issued: (a) the inspector may stop coal removal; (b) five (5) history points are placed on a company's record for an additional year leading to increased penalties for normal violations during that one year period; and (c) the noncompliance penalty cannot be terminated to zero; (15) the federal government does not assess additional penalties for an imminent danger cessation order; and (16) therefore the administrative regulation violates 350.465.

Regarding assessment for noncorrectable violations Mr. Shelton stated that: (1) under the current manual, each violation is assessed based on a total number of points; (2) if the violation is assessed at: (a) 30 points or less; (b) there is not more than: (i) 21 or more seriousness points, (ii) 18 or more degree of fault points; and (iii) 15 or more history points, the violation is terminated; and (c) the points are reduced to zero; (3) the current procedure is consistent with federal law; (4) however under this proposed administrative regulation on page 2 of the manual, a phrase has been added providing that "a penalty may be assessed if the violation is noncorrectable"; (5) federal law does not provide for an additional penalty if the violation is noncorrectable; (6) under the propose administrative regulation penalties have the potential of being more severe than the federal penalties.

Regarding assessment of penalties for top soil violations, Mr. Shelton stated that: (1) the proposed administrative regulation provides that: "if topsoil is lost from only a small portion of the entire disturbed area, the damage would remain within the permit area and 1 to 7 points would be assigned, for consistency the following chart should be used in determining damage points..."; (a) the chart provides that for: (i) .1 acre, 1 point is assessed; (ii) greater than .6 acres, 7 points are assessed; (b) in certain cases topsoil loss of .6 acres may justify a 7 point penalty but when a permit has 500 acres of topsoil disturbance with an alternate topsoil plan a 7 point violation is not warranted when there is only a .6 acres topsoil loss; and (2) the assessment officer should look at all factors before determining the point violation.

Senator Preston asked which issues would justify a finding of deficiency. Mr. Shelton stated that the cabinet has exceeded its statutory authority in assessing penalties related to: (1) IDCOs; and (2) noncorrectable violations.

Cabinet personnel responded that: (1) KRS 350.990 gives the cabinet specific statutory authority to assess point violations; (2) it is in everyone's interest to know how the cabinet will calculate the penalties; (3) the cabinet has had a written procedure for calculating penalties since 1983; (4) the cabinet writes in excess of 3000 violations a year; (5) 68% of those violations terminate and zero penalty is assessed; (6) the issue Mr. Shelton raised regarding the IDCO is not a matter of stringency or consistency; (a) pursuant to KRS 350.130 the cabinet is required to issue a notice of noncompliance when a violation is found; (b) the cabinet is required to issue an IDCO if the violation is not abated; (c) federal law does not have a provision consistent with KRS 350.130 which requires two separate findings of violation; (7) if an inspector observes a violation, a notice of noncompliance must be issued; (8) depending on the seriousness of the violation the cabinet is required by Kentucky law to take the additional step of issuing an IDCO; (9) the IDCO requires only those measures be taken that are necessary to abate the imminent danger and not necessarily the entire violation; (10) if you assess only the noncompliance then the only additional penalty is the 5 history points which have very little deterrent effect for creating a situation that causes imminent harm to the environment; (11) there is no double dipping; (12) an assessment of noncompliance is required by KRS 350.130 and then an additional IDCO must be issued if the situation warrants.

Senator Smith stated that: (1) there is a problem with the use of the word "probability of violation" because the standard is too subjective; (2) a finding of "imminent danger" can also be very subjective; (3) it appears this administrative regulation is more stringent than federal regulation.

Cabinet personnel responded that: (1) there is subjectivity in the penalty assessment process; (2) the proposed manual provides an appropriate standard and does it's best to limit subjectivity; (4) without the manual there would be additional subjectivity; (5) the procedure under state law is different than the federal procedure not more or less stringent; and (6) the difference in Kentucky's procedure is required by KRS 350.130; (7) for example, under federal law if a violation is found that creates an imminent threat to the environment the federal government issues a cessation order for the violation; (8) the state procedure under KRS 350.130 requires a 2 step process; (a) issuance of a notice of violation; and (b) issuance of an IDCO.

Chairman Kerr asked if the Cabinet would be willing to defer the administrative regulation because the language relating to probability of occurrence was vague. By way of example, the chairman stated that a finding of: (1) "no probability of occurrence" is zero points; (2) "insignificant probability of occurrence" is 1 to 4 points; (3) "unlikely probability of occurrence" is 5 to 9 points.

Cabinet personnel agreed to defer the administrative regulation so that staff can look at the issues raised.

Representative Allen asked if the fines remain constant regardless of whether an operator has omitted a reclamation activity or whether a natural occurrence has prohibited the reclamation.

Cabinet personnel responded that: (1) the inspector must take into account the extent to which the operator is free of fault regarding a violation; (2) an operator may be fined even if the violation was not technically his fault; and (3) the degree of fault does have a significant impact on the amount of the fine.

Representative Allen asked: (1)how much a year is paid in fines;

and (2) what happens to the money collected.

Cabinet personnel responded that: (1) last year the cabinet collected a little over 2 million dollars; (2) the first $800,000 goes into the general fund; and (3) the remainder of the money goes to the Kentucky Bond Pool Commission to underwrite reclamation bonds.

Representative Allen pointed out that the money should be used for maintaining the program rather than going into the general fund.

Bond and Insurance Requirements

405 KAR 10:010. General requirements for performance bond and liability insurance.

Performance Standards for Surface Mining Activities

405 KAR 16:020. Contemporaneous reclamation.

Justice Cabinet: Department of State Police: Driver Training

502 KAR 10:035E. Commercial driver's license skill testing. Captain John Barton of the Kentucky State Police appeared before the Subcommittee representing the Department. It was pointed out that this emergency administrative regulation needed the addition of two citations, one in the relates to section and one in the statutory section. The Regulation Compiler stated that she had the authority to do that and would do so.

Department of Education: Office of Learning Programs Development: Office of District Support Services: School Administration and Finance

702 KAR 3:270. SEEK funding formula. Kevin Noland, Kentucky Department of Education, Associate Commissioner, Office of Legal Services, stated that this administrative regulation: (1) establishes the financial calculation for the Support Education Excellence in Kentucky (SEEK) funding formula, (2) is the mechanism for the disbursement of state funds to school districts established by statute and the Budget Bill; (3) was promulgated upon request by the State Auditor's Office; and (4) does not create additional requirements for school districts.

Glen Burns, Nicholasville, objected to the way the SEEK monies are utilized generally. He stated that: (1) school administrators view the SEEK money as "money from heaven", and spend it without allowing the people to vote for or against such spending which created a debt and subsequently a lien upon his property; (2) he was told at a school board meeting that the bond indebtedness for education for elementary, middle, and high schools, was 37 million dollars, with interest to be paid on this figure to reach almost 70 million dollars in the next twenty-five years; (3) in the last four years, Jessamine County had an increase of 298 students; (4) he was told that educational facilities could not be expanded under KERA, because each school must have a minimum of one acre of land for each 100 students, and believes this would require purchasing more land and the creation of more indebtedness; (5) under KERA, there appears to be no requirement that school boards hold "open" budget public hearing; and (6) budget decisions are made by school administrators and school districts in "closed" work sessions, and are summarily passed in open public sessions. He objected to this process because it permits approval of budgetary decisions without input from the public who have to pay for these decisions. Mr. Burns added that: (1) school administrators in Jessamine County have increased their expenditures by over 5 million dollars in the last five years; (2) since KERA went into effect in 1990, property taxes have almost tripled, which he felt was not right; (3) he and his wife will have to pay approximately $25,000 of their pensions for education in Jessamine County in the next twenty-five years to pay off these debts; (4) because it seems there are no solutions to be found in the state Legislature, a group of Jessamine County citizens plan to hire legal counsel to propose a type of proposition to the Kentucky Constitution, similar to the California "Proposition 13", to protect individual homes; (5) when he purchased a home in Illinois in 1979 the taxes on his home totaled $1,250, and, upon retiring in 1987, taxes had increased to $3,240, and (6). requested that Kentucky not follow this pattern, because he and his wife live on a pension and cannot afford to have their home taxed at this rate.

Chairman Kerr stated that: (1) he understood Mr. Burn's objections to be directed to the method by which the education is funded in Kentucky, rather than any specific provisions in this administrative regulation; and (2) while the Subcommittee always invites public input and discussion, the Subcommittee was not a forum for general discussion on the funding of education as such, but limited to whether the administrative regulations before it comply with statutory authority and legislative intent.

Kevin Noland stated that the statute provides for public hearings on the budget and issues of local discretion on how monies are spent, and that individual concerns are more appropriately first directed to the local school boards.

In response to Chairman Kerr's question whether Jessamine County was one of the "growth districts" affected by House Bill 810, which permits the school board to raise taxes without being subject to voter approval, Mr. Burns stated that Jessamine County raised taxes 13%.

Chairman Kerr stated that, although the Legislature gave districts the authority to implement taxes, local school boards are still subject to the Open Meetings Laws which generally requires a public meeting with an opportunity for public comment.

Senator Preston encouraged Mr. Burns to be patient for another 14 months at which time the Legislature would try to get him some relief.

Senator Smith acknowledged that: (1) Kentucky property taxes are much less than they are in Illinois; and (2) railroad private pensions are taxable. He added that Mr. Burns should also direct his efforts to obtaining exemptions for portions of retirement pensions.

Bureau of Learning Results Services: Learning Results Services

703 KAR 4:060. Academic expectations. Kevin Noland, Kentucky Department of Education, Associate Commissioner, Office of Legal Services, stated that: (1) the academic expectations are merely an attempt to further explain, in general terms, the goals set out by the Legislature in KRS 158.6451; (2) the State Board is deliberately trying to avoid mandating a state-wide curriculum, because KRS 160.345 and 160.290 require specific curriculum decisions to be made at the school district level; (3) he believes KRS 158.6451 requires the State Board to develop a "model" curriculum framework, not a mandated curriculum; and (4) the intent of this administrative regulation was not to adopt specific topics on exactly what children must and must not learn in school.

Jeff Mando, State Board member, stated that: (1) the board has studied, received public comment and approved this administrative regulation which clarifies the work of the Council of School Performance Standards; (2) this administrative regulation focuses on high academic achievement in core subjects necessary for students, and supports the theme that all students can learn at high levels; (3) resource materials published by the Department are available in the field, and serve as guides for teacher and administrators in the schools, such as: (a) "Transformations: Curriculum Framework"; (b) content guidelines; and (c) released assessment items; which serve to assists teachers in achieving the academic goals. He added that: (1) some have objected because they believe that the academic expectations are vague and lack academic content; (2) the Board believes that: (a) specifics listed in the academic expectations would equate to state mandates and would result in over regulation of curriculum in the schools; (b) KERA and the Legislature does not want a state mandated curriculum; (c) if the Board were to draft specific content areas, it would impede the statutory authority of local schools who, through their school councils, are charged with making curriculum decisions; and (d) the academic expectations do not create some type of social agenda, or social engineering, and the Board does not function to create a framework for some type of new world order. Mr. Mando stated that: (1) if students can use basic math and communication skills, understand and apply principles of math and

science, social studies, arts and other disciplines, think and solve problems, which is what these academic expectations reflect, this is an agenda which the Board will gladly promote; (2) the Board believes that in enacting this administrative regulation, it has accurately reflected Legislative intent, and acted in accord with the statutory authority given to the State Board; and (3) the Board requests a favorable consideration by the Subcommittee.

In response to Chairman Kerr's inquiry whether the expectations are "measurable", Kevin Noland responded: (1) some educators will state that the expectations are measurable, while others will differ; and (2) "measurability" is not critical to this discussion, because; (a) it is not the Board's place to enter each classroom and enforce the academic expectations; and (b) statutes grant discretion over this to local school districts.

Chairman Kerr asked specifically what academic expectation #2.34, which states that "Students perform physical movement skills effectively in a variety of settings", means and how achievement of the goal measured is measured.

Commissioner Thomas Boysen stated that: (1) the issue appears to be whether the Board should specify all the skills and the application of those skills that students should be able to know; (2) if this is done, the goals are trivialized and a communication problem is created, because people are buried in information about intentions; (3) the State Board sets high standards, challenging academic content, improving results and tough tests, and the assessment system is built out of the expectations by the practitioners and several hundred teachers who: (a) are serving on content advisory committees; (b) produce content guidelines; (c) produce released items and performance events which are published around the state; and (4) in a multitude of ways it is made clear to the professionals what they are accountable for.

Ed Reidy, Deputy Commissioner Leaning Results Services, stated: (1) the academic expectations are measurable; (2) the definition of that measurement is found in the items themselves; (3) to know the extent to which the expectations have been accomplished, the Department has released a series of items to see exactly how students are being asked to demonstrate their ability to meet those expectations; and (4) these assessment items are released annually.

Chairman Kerr asked : (1) whether the academic expectations stand on their own and are measurable, or must be explained by ancillary documents; and (2) if ancillary documents are required, were they incorporated by reference in this administrative regulation.

Mr. Noland responded: (1) the expectations stand on their own as learner goals; and (2) the academic expectations were not intended to be a mandate, but rather a resource outlining general goals to be used by teachers. He added that: (1) the real concern appears to be what exactly are on the KIRIS tests; (2) the KIRIS items are drafted by teachers who know their topic areas best; and (3) 168 teachers in Kentucky serve on advisory committees that develop the test questions.

In response to Senator Preston's question as to the specific statutory sections upon which this administrative regulation is based, Mr. Noland responded: (1)(a) KRS 156.070(1), which provides that the State Board shall have management and control of the common schools; and (b) KRS 156.070(4), which gives authority for the State Board to enact administrative regulations to implement its management and control of the public schools; (2) KRS 158.6455, which directs the State Board to promulgate administrative regulations to establish a system of determining successful schools, rewards, and sanctions; and (3) KRS 158.645, 158.6451, 158.6453, 158.6455, which require the establishment of learner goals and assessment programs.

In response to Senator Preston's question whether the academic expectations stand on their own and do not require reference to any other documents, Mr. Noland stated the expectations are: (1) statements of general learner goals; (2) an attempt to further clarify the learner goals set out by the statute KRS 158.6451; (3) the content guidelines are resource materials used at the local level to assist teachers, but are not a part of the administrative regulation with incorporates by reference the academic expectations document; (4) KRS 158.6451 requires the State Board to establish a model curriculum framework, which the State Board has developed and entitled "Transformations"; (5) "Transformations" is not set out or incorporated by reference in this administrative regulation because the State Board views this document as: (a) simply resource material which represents a "model" curricula; and (b) not a mandated curricula.

Subcommittee Staff stated that regardless of whether a statute mandates a curriculum or not, when an agency is implementing or interpreting a statute, documents developed to implement a Legislative directive and used to establish guidelines or standards, must be incorporated by reference in an administrative regulation pursuant to KRS Chapter 13A.100, or set out in the administrative regulation.

Mr. Noland disagreed, stating: (1) that many printed materials exist which are used by state agencies to explain programs or services, and the education documents referred to are simply resource materials and not documents used to "implement or interpret a statute"; and (2) that the KRS Chapter 13A provisions voiding a document that is not in regulation form, and is used to implement or interpret a statute, is not a concern to the State Board because the model curriculum framework is a resource and not a mandate.

Representative Allen stated that in all his years in the General Assembly, he has not seen an issue that has created more turmoil and dissatisfaction throughout this state than KERA, and asked Commissioner Boysen to explain why this is the case.

Commissioner Boysen replied: (1) several surveys in the past several months indicate that: (a) most parents appear to hold a more favorable view of KERA; (b) the more parents know about KERA, the more favorable they are; (c) the opinion of most professionals is largely favorable; (2) KERA itself grew out of dissatisfaction with the performance level of students in Kentucky, which is also true of performance throughout America; (3) education reform is fundamentally an economic development activity to try to get this generation of Americans and Kentuckians to get the habits of work, academic skills, and the ability to get along with one another, which will place them well in the workforce; (4) although the public is concerned about areas of KERA, in the mainstream it is quite favorable; and (5) the data the Department has about student performance improving 20% in the last two years, is very favorable.

In response to Senator Preston asked whether teachers are advised that use of the document, "Transformations", is not mandatory, Mr. Noland responded that they were.

Emily Loudermilk, parent of a middle school child in Shelby County, commented that: (1) she has served on a list of committees and activities at her child's schools to be able to see the impact that KERA has on her children and the staff of the schools; (2) children are being side-tracked from the basics; and (3) teachers and principals are intimidated and forced to keep quiet about their dislike of KERA because their job or a good evaluation depends on their silence.

She described an example of her concern as follows: one night while helping her son with Social Studies, there was a paper in his notebook entitled "Dead Beat Dads"; In talking with her son she found that he thought the paper had been graded, but no marks or grade were on the paper; It was an assignment in Social Studies based on an article from the Courier-Journal that was read to the class one day, and the next day students were told to write their opinions based on the article. After reading the paper over, she still could not understand the academic connection of using almost 2 hours of vital classroom time. Her son may now realize the problems other children have with their home life, but what connection did this have with academics since there were no corrections made on the paper by the teacher; (4) she asked the teacher if her son's paper was graded, and if so:

(a) what was the grade?, to which the teacher replied, "He got a C."; (b) what was his grade based upon, and the teacher's response was: "He was graded on his opinion"; and (c) how can does one grade on her son's opinion?, to which the teacher's response was: "This is KERA, there is no right or wrong answer."; (5) she discussed her concerns with the principal, who then questioned the teacher and found that the mistake the teacher made was not having a rubric grading scale developed for the assignment; (6) next year when her son takes the 8th grade KIRIS test many of the open response questions will require him to form an opinion or to convey his attitudes based on a short story or picture; She provided the Subcommittee with a copy of one such 4th grade KIRIS test; (7) all 8th grade teachers will be concentrating on this type of open response question, as the teachers jobs are at stake and each school must improve a certain percentage so it will not go into crisis; (8) parents have the right of freedom of speech and to form opinions and to keep them to ourselves if we so desire, our children, students under KERA do not have this right; (9) KERA has gone to an excessive extreme and has taken our schools down a very costly avenue; (10) parents do not know how their children are doing academically, and schools are assessed on the average of a whole student body that changes yearly; (11) emphasis on writing throughout the curriculum can be a useful tool if taught correctly, it should at least include usage in spelling, grammar, English vocabulary, and even penmanship; (12) KERA is failing our children when it expects them to write opinions based on little or no knowledge of the subject; and (13) Commissioner Boysen should be made aware of a survey conducted in Shelby County in which over 200 teachers were surveyed, with 103 teachers responding; The survey indicated opposition to KERA and expressed concerns relating to teacher intimidation by school officials.

Jody Curry stated that she: (1) was a parent of a child in Oldham County, a parent representative on the school based decision making council and a satisfied customer; (2) supported education reform in Kentucky and has seen the successful implementation of KERA at Centerfield School in Oldham County; (3) had seen the teaching of basic skills in this school; (4) although teaching methods may be new, her daughter knows the basics; (5) implementation has been difficult for parents, teachers and students, but the KERA experience has been successful in Oldham County; and (6) does not want mandated curricula or values, but rather broad, general terms that she can work with in her community, which are provided by this administrative regulation.

Dr. Thomas H. Crawford, Associate University Provost, University of Louisville stated that: (1) he has served on the faculty since 1961, currently teaches a introductory chemistry class of over 250 students, and has formerly taught an honors chemistry class limited to students with strong high school preparation in chemistry and good ACT scores; (2) mentioned this experience to stress that he has had experience with students at both ends of the spectrum of academic preparation; (3) many of the students in the introductory chemistry class have poor preparation in math and science, and limited problem solving skills; (4) he believes that basic math and science preparation needs to be refined; (5) he is one of the three founders of the Louisville area chemistry alliance; (6) he applauds the extensive efforts of the Department in rewriting the original outcomes,is pleased with the present academic expectations, and supports their adoption as the academic guidelines for KERA; and (7) encourages the use of different teaching strategies in the classroom, such as: collaborative learning, discovery learning, problem solving, critical thinking, self-assessment.

Karen Jones, First vice-president, Kentucky PTA, stated that: (1) clarification of the academic expectations have helped parents and students to better understand student achievement; and (2) the Kentucky PTA supports adoption of this administrative regulation.

Rayma Beal, Kentucky Alliance for Arts Education, stated that: (1) she was also speaking on behalf of several arts organizations, Kentucky Theater Association, Kentucky Art Education Association; (2) the Alliance supports the academic expectations, and believes that they expectations of curriculum goals that students can achieve; (3) while recognizing that students develop at different rates, the Alliance believes that the goal of competence means the ability to use and demonstrate the array of knowledge and skills described in the academic expectations; (4) the inclusion of the arts, dance, music, drama and visual arts, practical living, health and physical education and vocational studies provides students with a broad based understanding of knowledge for making informed, personal decisions; (5) Goals 3 and 4 contributed to the development of individual and responsible group membership, because business leaders are looking for the skills found in these goals, and it would be appropriate to include these at the end of the 58 academic expectations with an asterisk to make sure teachers include them in classroom activities and discussions; (6) Kentucky Theater Association President, Tony Hay, has stated that: (a) the Association believes that the academic expectations offer the best framework for the continuing resurgence for academic excellence in Kentucky; (b) the framework provides a sound basis for learning and teaching, and any attempt to undermine the core assumptions will result in severe restrictions on the freedom of the teacher to teach and the student to learn; and (7) the Kentucky Art Education Association: (a) recommends that the academic expectations be adopted as law, because the areas addressing the arts and humanities are in line with the new national standards in the arts that have been adopted as part of Goals 2000; and (b) believes that adoption of these expectations will make Kentucky one of the first states to fully adopt, implement, and assess these national standards in the arts.

Dr. Marianne McAdam, representing the Kentucky Association for Health, Physical Education, Recreation and Dance, and a professor at Eastern Kentucky University, stated that the Association: (1) supported the revised academic expectations; (2) trusted the judgment of the professionals who spent hours and careful thought producing the document; and (3) members have been involved since KERA's inception, and support KERA.

Thomas Ashby, Owensboro, stated that the expectations in the administrative regulation were not "measurable" and requested the Subcommittee to find the administrative regulation deficient. A detailed summary of Mr. Ashby's testimony can be found in the October 1994, Administrative Regulation Review Subcommittee Report to the Legislative Research Commission.

Marlene Ashby, Owensboro, teacher, stated that: (1) she has taught for 27 years and finds that the expectations: (a) lack academic content; (b) make no mention of basic skills in the core academic areas; (c) omit facts, dates and knowledge of historical figures that are considered the basis of literacy; (2) objectively measurable standards are not possible because the expectations are unspecified, broad, general and vague; (3) the Department responds to this contention by saying that other sources are used to complete measurement of the expectations; (4) she is required by her principal to specify which goal and expectation corresponds to her lesson plans; and (5) the expectations make it difficult to determine right and wrong answers. She requested that the Subcommittee find the administrative regulation deficient.

In response to Senator Preston's question, Ms. Ashby stated she: (1) uses the document "Transformations" when preparing for her lesson plans; and (2) is required by her principal to use it when she turns in her lesson outlines, specifying by each the specific goal or expectation to be used.

In response to Representative Lee's inquiry, she stated that she understood that the Department has made it clear in today's testimony that she is not "required" by the Department or State Board to use this document. She added that she is required to use it by her school principal who reasons that if the school is determined to be a "crisis school", she have a copy of each teacher's efforts to follow the suggested curriculum verbatim.

Dr. Jim Becker, Western Kentucky University, head of the

department of Teacher Education stated that he: (1) supported the academic expectations; and (2) 26 superintendents of the districts that comprise the Green River Educational Consortium, also supported this regulation.

Dr. George Cunningham, University of Louisville School of Education professor, with a specialization in educational psychology, assessment, measurement and testing, stated that: (1) he was in favor of educational reform and KERA, and the best way to support this reform was for the Subcommittee to find the administrative regulation deficient; (2) two types of education reform exist: (a) one, embedded in the KERA legislation, provides that: 1. we should have high academic standards; and 2. accountability; and (b) the second type is outcome based education, which has been rejected in recent years by several states; (3) although this type of reform includes the idea of accountability, it specifically does not emphasize high academic standards; (4) instead of reflecting high academic standards, the expectations advocate something other than high standards; and (5) these expectations were not measurable. He added that the original legislation called for the outcomes or expectations to be measurable for two reasons: (a) legally, because when the sanctions and rewards are given, there will likely be court cases over testing and validity; (b) to support validity, schools will be forced to show that a test is related in some way to curriculum, expectations, goals or objectives; (c) the Department contends that the expectations are not supposed to be related to the KIRIS tests, which will cause many problems in a court of law, since you cannot claim that a test is valid because it measures what's on the test; (d) the issue of fairness arises because even though the expectations are said to provide an opportunity for local control of the curriculum, there are state tests which students in grades 4th, 8th and 11th grades must take, and schools, teachers and principals are evaluated based upon that test; (e) careers will go up or down based upon that test; (f) some teachers will get sizable rewards, and, out of a sense of fairness, teachers need to know what it is that they will be assessed on; and (6) if the Subcommittee finds this administrative regulation deficient, it will allow the Subcommittee to play a role in deciding whether KERA will continue to be an education reform that stands for high academic standards and accountability, or an outcome based education oriented form.

Senator Kafoglis asked Dr. Cunningham if the expectations were not adopted by the Subcommittee, what would he recommend be used in their place that is more measurable. Dr. Cunningham stated that: (1) in the technical manuals of the KIRIS test, it states that the validity of the test is based upon its connection to the expectations; (2) it seems to be that more work is required to have the test and expectations measure the same thing; (3) the Department has stated that the KIRIS tests are separate and apart from the expectations, while the expectations are an attempt to further explain the learning goals adopted by the Legislature, and KIRIS test are intended to assess student performance for the purpose of determining school success; and (4) that he did not understand how to determine school success separately from the learning goals.

Senator Kafoglis stated that the Subcommittee has previously heard testimony suggesting specific things that should be measured, and it would seem too difficult to find consensus on a particular list of subjects that should be tested.

Dr. Cunningham added that: (1) while he does not believe that a specific list is possible, the expectations do not mention english, literature, grammar, algebra, calculus, chemistry, biology, or other core areas; and (2) listing the core areas does not require specifying specific topics or information students need to learn in each of them.

Dr. Robert Ronau, Associate Professor, University of Louisville, specializes in secondary math education, stated that he supported the administrative regulation.

Kathleen Darbro, parent from Mt. Washington, opposed the administrative regulation. A detailed summary of her testimony can be found in the October 1994, Administrative Regulation Review Subcommittee Report to the Legislative Research Commission.

Chairman Kerr read from the Department's "Summary Statement", in the introduction to the academic expectations document, which stated that the State Board, in March, directed the Commissioner to clarify what students are to know and do, and to present a list of measurable academic expectations of students' knowledge and performance to replace the original 75 outcomes.

Commissioner Boysen stated that: (1) the academic expectations are measurable; (2) any test he has seen involves the judgment of professionals in deciding on the particular test items that are going to probe the knowledge and skill that is being measured, whether it is the bar exam, CTBS or SAT; (3) there are several hundred Kentucky educators who generate items, decide what the scoring guides are, establish the standards, and are guided by the 4 KERA goals and these academic expectations; (4) in 1989, fifty governors decided that states should get their academic standards together or they would fail to be globally competitive; (5) Kentucky, alone, has done it; (6) the reason for Kentucky's success is that it has relied upon professionals to decide what the distribution of items should be, for example, in social studies test, economics and geography are tested in addition to history; and (7) the system in place in Kentucky for making these expectations measurable is the teachers in its schools.

Janet Whitley, Lexington, parent, stated that: (1) she has three sons, all of whom attended public schools last year; (2) two of her sons are still in public school magnet programs this year, but the youngest son, Eric, has been moved back to private school for 5th grade; (2) the beginning of the 93-94 academic year found Eric placed in a 4-5 split "intermediate" class; (3) his teacher was team teaching with another teacher and she quickly discovered that Eric's teachers took KERA very seriously; (4) the academic expectations were posted in the halls and in the classroom, and each report card included a list of academic expectations that the class had worked on for the previous nine weeks; (5) her experience with a classroom, based on these goals, was a year with little academic progress, and asked the Subcommittee to declare these academic expectations deficient; (5) she had parent-teacher conferences, talked with the principal and visited the classroom, but despite these efforts, it was difficult to determine what her son was learning, partly due to a curriculum that denigrated standard measurements of knowledge, devalued the acquisition of factual information and celebrated cooperative learning; (6) after moving her son from private school to public school, his scores dropped significantly after six and a half months in public school, despite the fact that his grades were excellent - all A's and A+'s, except for 1 B in Social Studies; (7) it appeared language mechanics and expression were not being tested, because the only valued outcome she could find that related to these important basic skills was "communicate ideas and information through writing" (#11 under Goal 1); (8) although her son again received A's both nine weeks in language arts, his SAT score dropped to 83, down from 92 and 07 the previous 2 years; (9) she had no idea where spelling fits in with the academic expectations, as her son has only had 2 spelling tests in six and a half months; (10) when the legislature passed KERA, it did not intend for academic achievement to go down in core subjects like reading, language arts and spelling; (10) the Subcommittee should find this administrative regulation deficient; and (11) the earlier testimony given by the vice president of the state PTA that PTA members supported this administrative regulation, does not reflect her opinion since she was never polled concerning this administrative regulation.

Charles Muntz, speaking for the following groups associated through the Practitioners' Alliance for Educational Reform: (Kentucky Federation of the Council for Exceptional Children; Kentucky Council of Administrator of Special Education; Kentucky Association for Gifted Education; Kentucky Association of School Administrators; Kentucky Association of Elementary School Principals; Kentucky Association of School Superintendents; Kentucky Association of School Counselors; stated that: (1) the Practitioners' Alliance for Educational Reform

supported the continued use of the academic expectations for Kentucky students; (2) educators believed that the present academic expectations are based on the comments of thousands of Kentuckians; and (3) and significant change at this point could create major difficulties for school councils and other educators, because the academic expectations form an integral part of the curriculum of Kentucky's schools.

In response to Representative Allen's question whether all the groups he represents supported this administrative regulation, Mr. Muntz replied that each association has a member represented on the Practitioners' Alliance for Educational Reform.

Jim and Nancy Neukam, parents from Owensboro, stated that (1) the academic expectations were too vague, nonacademic, and did not comport with Legislative intent; (2) the U.S. Secretary of Education, Richard Riley report, "Putting Learning First", which condemned Kentucky outcomes because (a) they "contain such vague statements as 'students will make sense of the variety of materials they read...; and (b) do not define what 'make sense of might mean."; (3) did not advocate a state curriculum, but rather a definition of the basic skills that students should achieve; and (4) recommended that the administrative regulation be found deficient. A detailed summary of their testimony can be found in the October 1994, Administrative Regulation Review Subcommittee Report to the Legislative Research Commission.

Peg Jones, parent from Corbin and teacher of adult education, objected to the academic expectations. A detailed summary of her testimony can be found in the October 1994, Administrative Regulation Review Subcommittee Report to the Legislative Research Commission. She added: (1) the outcomes do not promote consistency in teaching and accuracy in testing; (2) parents receive conflicting answers on what is or is not being taught; (3) a teacher's definition of KERA's curriculum varies with every teacher; and (4) the Department states that those who are critical of education reform are confused; (5) if this is so, it is the direct result of the ambiguous expectations which make it impossible to ascertain what our children are learning.

Linda Levstik, University of Kentucky, Professor, College of Education, Chair of the committee that developed the social studies expectations, stated that: (1) the current expectations provide a framework for teachers to teach more substantive content, such as history and geography, than has previously been the case; (2) the intent of the "historical perspective" expectation is that in order for students to perform or come up with some sense of historical perspective, they must first observe, interpret and analyze historical data found in a body of knowledge; (3) the expectations imply a body of knowledge, and do not have to be listed because this would take away the local control initiatives of KERA; (4) the expectations provide for the kinds of learning many Kentuckians have said that they want; (5) there is a difference between the intent of KERA and the academic expectations as implemented: (6) Many of the examples given by those today in opposition to the administrative regulation represent individual situations which: (a) do not relate to the intent of KERA or the academic expectations; and (b) relate to a teacher who may be having difficulty implementing the reform, or may not understand it, or is openly hostile to KERA; and (6) she encouraged the Subcommittee to approve the administrative regulation.

Martin Cothran, The Family Foundation, asked that the Subcommittee find this administrative regulation deficient. A detailed summary of his testimony can be found in the October 1994, Administrative Regulation Review Subcommittee Report to the Legislative Research Commission.

Mr. Cothran added that: (1) the academic expectations should be specific, academic and measurable, but are not; (2) while the Department has for some time taken the position that the academic expectations were the state's learning goals and were set out in measurable terms, it appears to have taken a different position on the status of these expectations; (3) the Department now seems to be indicating that "the academic expectations are merely an effort to further explain the general learning goals set out in statute at KRS 158.6451 (with the exception of goals three and four)."; (4) he did not know why Senate Bill 92 deleted the "measurability" language in KRS 158.6451, but felt it had something to do with the fact that legislators assumed that the mandate contained in that statute for the Council for School Performance Standards to frame the goals in measurable terms had already been accomplished, and that the language was no longer relevant; (5) if the Department views these expectations as merely "further explanations," a lot of needless controversy, time, and effort could have been saved if this had been made clear months ago; (6) in "Transformations," the outcomes are said to: (a)"represent a new vision of what we expect and what the future demands" (Transformations, volume II, p.3); (b) be "the determinant of student success" (p.9); (c) establish questions and tasks on the assessment which are "based on the learner outcomes" (p.66); (d) be the "predetermined criteria" through which learning is demonstrated (p.8); (e) be the "specific enabling outcomes which facilitate the achievement of the six goals" (p.6); and (f) be "the basis for curriculum and assessment" (p.42); (7) the Department not only appears to be backtracking on these positions which were the result of a Legislative mandate, but is downplaying the importance of the expectations by saying that it doesn't matter whether this administrative regulation is approved or declared deficient; (8) if these expectations are not the goals in measurable terms, this should have been made clear at the beginning of this process; (9) interested persons started the process that resulted in this proposed administrative regulation by talking about clarity and writing in language that a normal person could understand; (10) his organization and others criticized the process, because they felt that the problem was not restricted to the lack of clarity and included a lack of academic substance, a lack of specificity and a lack of measurability; and (11) now the expectations represent ambiguity, instead of confusion.

In response to Representative Lee's question whether he had children in public schools, Mr. Cothran stated that he does not any longer, because he: (1) made the decision to remove his son from a model KERA classroom, because his spelling and sounding out of words was being discouraged; and (2) did not want to put his children through that.

Dr. Connie Bridge, University of Kentucky, Professor and Associate Dean of the College of Education, former Director of the Institute on Education Reform at the University, stated that her testimony represented merely her personal views and not those of the University. She stated that: (1) the historical process through which the present expectations were developed: (a) began in 1989, continued with input from numerous educators throughout the state, and represented the best thinking of the teachers at that time; (b) this spring, the expectations were further defined, so as to be more measurable and precise; (c) the present version does provide direction for the teachers in our schools; (2) the Subcommittee should approve these expectations as Kentucky has spent millions of dollars in staff development, curriculum committee development, and assistance in each district to help schools develop curriculums that achieve the expectations in the ways they see fit; (3) the expectations are purposefully broad to enable each school and teacher to arrive at the expectations in the way that they see fit in their community and in their school; (4) she has been in a lot of primary classrooms and seen excellent teaching, as well as poor teaching; (5) the Institute has conducted state wide studies of the primary programs throughout the state, in 1993 and 94, taking random sample observations and study of classrooms throughout the state: (a) educators have seen a remarkable increase in the amount of reading and writing that primary children are doing; (b) now children are reading real books largely through writing about what they are learning and writing many more compositions than they did in the past and the consequences of this is evidenced in the improved scores on the writing assessment; and (6) she encouraged the Subcommittee to approve the regulation so that teachers can have the security of knowing that this is what they

are going to need to be doing.

Dr. Peter Winograd, University of Kentucky, Professor, College of Education, Chairman of the Department of Curriculum and Instruction, stated that: (1) he supported the administrative regulation; (2) the current expectations are built on six years of consensus building involving a wide cross section of Kentucky citizens; (3) the expectations are purposefully broad to address the most crucial kinds of learning that really give a sense of vision about what we really expect from our children; (4) the expectations respect the freedom of local schools and local teachers to focus on basic skills and other specific content that they feel is most important for their children and their local districts; (5) the recent survey done by the University of Kentucky Survey Research Center, this spring, of the entire state of Kentucky revealed that over 90% of citizens polled are still very supportive of these particular goals; (6) the current expectations are: (a) based on a long term cross section of lots of public involvement and lots of public support: (b) the basis for four years of professional development; (c) the basis for four years of curriculum development and instructional lesson development; and (d) the basis for one of the most valid comprehensive and rigorous assessment systems we have in the United States; (7) the vision outlined by KERA asks a lot from Kentucky educators and educators are asking for some major changes from the way things have been done; (8) for four years a lot of professional development of teachers, administrators, and folks involved in cite based councils has been based on these expectations; (9) the expectations are also the basis for four years of curriculum guides and instructional lessons; and (10) his area is reading and writing, and he spends a lot of time in schools and has seen: (a) some really fantastic lessons produced by teachers in those areas dealing with reading and writing; and (b) after four years of implementation, that children are doing better in the area of reading and writing.

Representative Allen questioned the survey and commented on the high percentage, 90%, of the people in the state that it stated supported KERA.

Dr. Winograd stated that the survey: (1) was conducted across Kentucky; (2) the margin of error for the survey was slightly less than 4%; (3) found support for KERA goals; (4) over 90% of the citizens polled either strongly supported or somewhat supported each of those six; and (5) an interesting thing was the highest amount of strong support were for goals that focused on developing students ability to become self-sufficient individuals and to develop their abilities to become responsible members of family work group and community and as you recall those were the goals that were the strongest most strongly voiced and put forth by the business community.

Cindy Rausch, parent from Prospect, Kentucky. A detailed summary of Ms. Rausch's testimony can be found in the October 1994, Administrative Regulation Review Subcommittee Report to the Legislative Research Commission. Ms. Rausch added that: (1) last week she received a letter requesting that she attend a meeting held by the DOE on Monday, November 7th, at 3 p.m.: (a) she attended the meeting and listened to the Department's reasons why they felt that putting the expectations in a regulation was really unnecessary, but they said since the State Board had already started the process they were going to comply; (b) she also listened to the Department explain why the expectations did not need to be measurable. (The Department cited SB 92 as to the reason why the outcomes no longer needed to be in "measurable terms.); (c) the Department's Statement of Consideration from the June 29, 1994, public hearing written by and signed by Commissioner Boysen, Joseph Kelly and Kevin Noland, states "KRS 158.6451 requires that the learning goal be stated in measurable terms that define the expectations for students; However the letter sent to Chairman Kerr last week by the Department, states that HB 92 removed the requirement that the expectations must be measurable; These documents contradict each other; (d) the Department has also indicated that the expectations were no more relevant to the assessments than the content guidelines, course outlines, "Transformations"; Therefore, she was very surprised when she read the High School Restructuring report submitted on October 28, 1994, that the: 1. expectations would be used to develop "Individual Graduation Plans for students which would then be used to determine if a student has successfully completed high school; 2. assessment, which measures these expectations, would be placed into a students permanent record; (2) the Subcommittee should rely on House Bill 256 in considering whether the expectations must still be measurable, as it states that: (a) goals three and four are not to be measured, thereby implying Goals 1,2,5 and 6 are to be measured; and (b) the State Board "shall adopt by administrative regulation the formula for determining successful schools"; Since successful schools are determined by improvement on the KIRIS assessment which measures the expectations, then they must be measurable; (3) she still has not received an answer to her question: Who Has The Ultimate Authority Over her Child...The Parent Or The State?; She described the contents of a letter she received from the Department of Education which stated: (a) the law (including federal and state law) does not give each parent the right to condition his or her child's attendance at public school or participation in any particular activity, inducing the KIRIS assessment; (b) the law does not give each parent the right to have his or her child opt out of the particular testing; (c) for parents who choose to fulfill the compulsory attendance obligation by enrolling their children in public school we [the Department] encourage them to understand the importance of the participation of all students in the KIRIS assessment; and (4) this means to her that when a parent enrolls their child in the public school they wave their parental right to control what activities their child participates in.

Kevin Noland responded to Ms. Rausch's comments stating: (1) public schools cannot obviously force particular beliefs on any student as that would violate one's religious beliefs; (2) the Department is not asserting that this be done; (3) there are two U.S. Supreme Court cases that talk about exposure to information and hold that it is not a violation of ones constitutional rights and local school boards and schools have a lot of discretion in that area.

Dennis Parker, employee in the training center at Toyota in Georgetown and a concerned parent stated: (1) that he is on the front lines where Kentucky education meets the work place and the worker; (2) despite the fact that Toyota has hired a quality workforce, he sees a lot of deficiencies; (3) we would like to be spending our educational resources on instruction time and teaching courses that promote the successful skills needed in his particular industry, however, much time is spent

remediating basic skills; (4) he fully supports the academic expectations and would also like to make the point that they must been seen in the context of the entire KERA; (5) the expectations are broad as they should be, because they allow a lot of flexibility at the local level and that is another strength of what Kentucky Education Reform is all about; and (6) KERA is a very attractive piece that Kentucky can offer to outside businesses to come to the state and we are tickled pink with it.

Dr. Bill Bush, Professor at the University of Kentucky, College of Education, stated that he: (1) specializes in mathematics education and was both, originally involved in drafting the student outcomes in 1991 and in working on the academic expectations; (2) strongly supports the expectations for three reasons, with comments relating to mathematics; (a) first, the academic expectations, as drafted, were aligned and taken from a document called the "National Council of Teachers and Mathematics Evaluation and Curriculum Standards for School Mathematics", this document; 1. was produced in 1989 and adopted by the National Council of Teachers of Mathematics based on input of over 100,000 of our teachers and educators across the country; 2. is based on practice and research of what we know about what children should learn in grades K-12 and how they should learn the different types of mathematics; (b) secondly, a state curriculum based on a set of specific skills does not work; and (c) third point, is that the academic expectations allow teachers and school councils

choice about what their students learn

In response to Senator Preston's question whether additional resources materials, such as the contents in the Transformations document are needed to really flush out the expectations, Dr. Bush replied that there were.

Glenn Burns expressed concerns: (1) that present school hours are not long enough at Paul Lawrence Dunbar High School; (2) reading KRS 158.060(1) which provides that a schools day is supposed to be a six hour instructional day, except for handicapped children and children attending the primary school program; and (3) that the Subcommittee should see that 6 hours of instruction a day is given to increase students academic expectations;

Chairman Kerr clarified that the definition of a school day was not the subject of this administrative regulation, nor before the Subcommittee for consideration, and suggested that Mr. Burns refer the matter to the Education Committee.

Bill Kunnecke, teacher at North Marshall Middle School in Western Kentucky, stated that: (1) he asks his students facts, and then they talk about why they are important and why they are connected to other things; (2) KERA has encouraged him to do innovative things; (3) he is presently on sabbatical and its partly because of KERA: (a) the National Science Foundation sees Kentucky has moving forward in education, so they gave him an opportunity to work with other teachers; (b) has taught for 8 years; (4) he supports the academic expectations; and (5) some people say that the expectations are vague, but he sees them instead as broad which allows teachers to honor their intelligence as a professional to help determine how they are going to achieve the goals.

In response to Senator Preston's question whether the Transformations document was used to assist in his understanding of the expectations, Mr. Kunnecke replied, that is was a very helpful document is assisting him in his curriculum development.

Marti McKenney, parent and teacher, stated that she has given written and oral comments at the Department's public hearing on 703 KAR 4:060 on June 29th, and testified at this subcommittee's hearing in October; she still finds that specific questions were not answered at all and others were non-answers. A detailed summary of Ms. McKenney's testimony can be found in the October 1994, Administrative Regulation Review Subcommittee Report to the Legislative Research Commission. Ms. McKenney: (1) again reiterated her concern that the Department of Education continues to refer to Transformations, content guidelines, the KIRIS assessment, and other sources, which are not laws or documents that have been put into regulation form; (2) detailed the following questions which have not been answered by the Department: (a) How are rights...responsibilities defined? (2.15); (b) Will our students be taught American civics and government correctly? (2.15). The United States is a Republic, yet it is not even mentioned in the social studies area; (c) Is this an academic or a thought restructuring process? (2.16); (d) What is the correct understanding of "interpretation of historical events"? (2.20); (e) Please note that expectation # 2.10 is the only place that even a derivative of the word history is mentioned in the expectations; (3) stated that the reason for the Department's nonanswers seems to be because the "academic expectations" are so vague that they are not measurable and surely are not objective; (4) stressed that: (a) if measuring the expectations is not necessary, then why have them?; (b) if KERA is truly local control, as it constantly touted, then the "academic expectations" should be written by local teachers and educators in their districts; and (5) the goals are law, the "academic expectations" redefine those goals.

Sylvia Griendling, former teacher from Hardin County, parent of two public school children: (1) asked the Subcommittee to approve the regulation because her children, and she need the assurance that the academic excellence that is afforded us by the KERA will continue; (2) stated that the goals and academic expectations are the basis of assessment for her children; and (3) many assessment components drive our schools curriculum.

Gerald Beeler, Owensboro, stated that there are lack of academics in the academic expectations, giving numerous examples.

Phil Eason, Executive Director Green River Educational Cooperative which comprises 26 school districts, offered his own views and opinions and not those of the cooperative, stated: (1) very little consistent quality content can exist if there are no expectations, as educational issues very often are messy and controversial during the different stages of development and implementation; (2) if the legislature is going to demand accountability which is what the public is demanding from our schools there must be some guidelines such as these academic expectations on which accountability system can be built; and (3) prior to 1990, there were hardly any goals and expectations for the schools to use except those that happen to be developed school by school; It would be impossible to have a meaningful evaluation or accountability system if we went back to operating that way.

Shirley M. Daniel, Eagle Forum of Kentucky, Lexington, stated that: (1) the purpose of the Subcommittee hearing was to approve or disapprove of an administrative regulation regarding the valued outcomes or academic expectations as they are now called and as set forth in The Kentucky Education Reform Act of 1990; (2) regardless of whether nor not SB 92 which was passed in the 1994 session deleted the "in measurable terms" language from the KERA statute, that does not release this body from its task; (3) KRS Chapter 13A which has to do with the duties of this subcommittee and its requirements, still require that the regulation be clearly defined, otherwise, any administrative agency could take any law which the legislature passed and come back, get an amendment put on an obscure piece of legislation and bypass the legislature and its intent entirely; (4) there is but one point to consider here today, do the valued outcomes or academic expectations result in a system in which there is accountability?: (a) in 1990, as legislators or citizen observers, the key word for the entire system of outcome based education or performance based education, as it was then called, was "accountability"; (b) the accountability component resulted in one of the tightest top-down managed systems of outcomes based education in America; (5) the Kentucky Department of Education, KDE, would have some believe that the outcomes or expectations are "fluff" and that the "resource materials" developed at the state level are just "suggested guidelines", the goals and the resulting outcomes were the foundation and all the subsequently-developed materials were "room additions."; (6) the entire reform is based on these goals and resulting outcomes, now the Department explains that the expectations are not set in concrete; (7) it is any wonder that parents and teachers do not trust the KIRIS?; (8) incredibly the KDE suggests that those of use who oppose the expectations have them confused with the KIRIS, however, we do not have them confused, they are clearly what the KIRIS assessments and all other resulting documents are based on; and (9) we have a responsibility to future generations of Kentucky's children to stop this charade of having outcomes and exceptions as slippery as a greased pig at a country fair, education is not a game.

Lois Gray, Superintendent of Hardin County Schools, stated that: (1) the Board of Directors of the Kentucky Association of School administrators endorse this administrative regulation; (2) the expectations: (a) are very clear and stand on their own; (b) represent a working document which we know we will be reviewed each year; and (c) are certainly understood by the teachers in Hardin County; and (3) educational professionals developed this document to aid schools in curriculum development.

Representative Lee thanked Superintendent Gray for her testimony and applauded her good work in Hardin County, which is the third largest school system in Kentucky.

Senator Smith also thanked Superintendent Gray for her testimony and mentioned an unrelated education issue in Hardin County. He described a situation in which the transportation of special needs children to group homes "for profit", is placing a burden on the

school budgets.

Superintendent Gray responded: (1) that the community is concerned that there is a large percentage of students who come into the Hardin County community unannounced, who are committed to the Cabinet for Human Resources for a variety of reasons; (2) many students require: (a) one instructional assistant per student; (b) adjustments in the learning environment; and (3) acknowledged that it has resulted in a resource drain, disproportionate to their district.

Commissioner Boysen stated that his staff will be meeting with superintendents who are affected, and representatives with the Cabinet to address this issue.

Baxter and Martha Hodum, Glasgow, opposed the administrative regulation, saying: (1) the expectations are not measurable, nor academic; (2) he has yet to hear an explanation of how Goal 2.34-Students perform physical movement skills effectively in a variety of settings, is measured; and (3) urged the Subcommittee to find this administrative regulation deficient.

Neil Kingston, Associate Commissioner, Office of Curriculum, Assessment, and Accountability Services, responded that there are a number of aspects to the measurability of this expectation, and the following are various components of this expectation: (1) physical education; (2) evaluation of the various health benefits of various physical activities; and (3) using scientific principles for learning and improving motor skills.

Bill McCann, Chairman of The Prichard Committee for Academic Excellence, and Cindy Heine, Associate Executive Director, stated that: (1) the Committee supports 703 KAR 4:060 as adopted by the State Board for Elementary and Secondary Education; (2) the expectations were generated by education, business and civic leaders from Kentucky, through the Council on School Performance Standards; (3) Hundreds of: (a) Kentuckians were asked what they thought students should know and be able to do when they exited the public schools; (b) elementary, secondary, and college level teachers, who are experts in their subject areas, further defined the goals in measurable terms as required by the 1990 General Assembly; (4) the expectations include basic skills as well as the acquisition and use of knowledge to solve problems and enjoy democratic participation; (5) Ed Prichard's belief was that it is education's responsibility to "open the way to a larger life" for all people, to bring them "into fuller participation in the life of the community and a fuller enjoyment of all the benefits which this rich and productive society has brought to so many of us."; (6) the Committee believes that these expectations lead us in that direction; (7) for too long in Kentucky, students have met the low expectations set for them as demonstrated in high drop out statistics and high rates of adult illiteracy; (8) in 1990, the General Assembly established much higher expectations for all students and as results from the 1993-94 assessments demonstrate, students can and are doing better as we set our sights higher; (9) these goals and expectations were created in Kentucky by Kentuckians; (10) this regulation should be considered as a dynamic document that is: (a) adjusted over the years as Kentucky's needs change; and (b) is a job best left in the hands of the State Board for Elementary and Secondary Education; (11) another option would be to reestablish the Council on School Performance Standards and ask it to conduct a regular review with widespread public input; and (12) the Committee recommends that this subcommittee accept this regulation as it stands.

In reply to Chairman Kerr's question whether Ms. Heine was a member of the Education Coalition and supported the coalition's recently adopted statement relating to the expectations, she answered: (1) yes she was a member; and (2) read the following statement adopted by the Coalition at a November 4th, 1994 meeting: "The Coalition supports the present regulation on Academic Expectations with the proviso that an inclusive and deliberative process be established for substantive review. The "structure and timing" of the review would be subject for further discussion."; and (3) the Coalition recognizes the importance of looking at changes in society which need to be reflected in the expectations.

Camille Wagner: (1) stated that the expectations are vague and not measurable. A detailed summary of her testimony can be found in the October 1994, Administrative Regulation Review Subcommittee Report to the Legislative Research Commission; (2) read from an article, "Making Standards Good", found in the fall 1994 issue of the American Federation of Teacher's periodical, "The American Educator"; The article states that Kentucky is an example of a state who's standards are not specific enough to guide local districts toward a core curriculum and matching content based assessments; California, in contrast, provides its standards in terms of grade by grade curriculum framework, thus providing substantial, common, clear guidance to all players in the educational system; (3) raised additional concerns relating to expectation #2.32-Students demonstrate strategies for becoming and remaining mentally and emotionally healthy; and (4) requested that the Subcommittee find the administrative regulation deficient.

Janet Carrico, President of the Kentucky Education Association stated that: (1) she concurs with the proviso made by the Education Coalition's November meeting, that a "process" be established for full review and comprehensive input resulting in an inclusive and deliberative process; (2) the expectations are merely guidelines and not a prescription; (3) the expectations are necessary resource tools for Kentucky teachers; (4) in order to reach the high standards set forth in KERA, Kentucky's students must have a rigorous preparation; (5) there is a misunderstanding that basic skills are not a part of the expectations, as they are; and (6) encouraged the Subcommittee to approve the administrative regulation.

Libby Marshall, member Kentucky School Boards Association: (1) also supports the proviso adopted by the Education Coalition, that calls for a full and substantive review of the academic expectations; (2) states that the Association: (a) is concerned about stability and continuity, that is, that the expectations are the targets to which teachers are teaching to; (b) supports the administrative regulation; (c) is aware that concerns still exist among educators and parents asking whether these expectations are offering the highest academic standards; (d) calls on the State Board or the General Assembly to help groups find the process for addressing those concerns; (e) does not believe that the statute requires a mandated state curriculum; (3) stated that: (a) when the expectations were adopted, that three of the major associations asked the State Board at that time for a more deliberative and inconclusive process; (b) the KSBA's Board of Directors has directed its spokespersons to: "advocate in every forum, that people are brought to the table without questioning their motivation, their beliefs or political persuasions, as public education must be the consensus of the public that supports it"; and (4) recommends that the Subcommittee approve the administrative regulation.

Commissioner Boysen: (1) summarized by saying that the Department appreciates the Subcommittee's time in hearing all the testimony; (2) states that he appreciates the energy that it put into the quest for academic standards and he sees more agreement than disagreement; (3) asked the Subcommittee to look at what Kentucky has, that is, a system with high standards, challenging academic content, tough test, improvements in student performance; (4) Kentucky is way out in front of what other states are doing; (5) stated that the issue of specificity has been addressed a great deal by the Council on School Performance Standards and by the State Board in its review of the expectations; and (6) states that there are two questions in curriculum: (a) "What?" - that is what do the students know and are they able to do?; (b) there is another set of questions, "How does this get done?", which looks the breath of definition that exist in how the instruction is done, for example: 1. what books do students read; 2. what programs of studies are available; 3. graduation requirements; 4. course guidelines.

Senator Preston stated that he is in favor of education reform and moved that the Subcommittee find the administrative regulation

deficient as the Subcommittee is: (1) reviewing the administrative regulation and the eight pages of academic expectations, the material incorporated by reference, to determine if it is consistent with KRS Chapter 13A; (2) not reviewing any ancillary documents outside the administrative regulation.

Senator Preston outlined how the administrative regulation does not comply with the statute as follows: (1) the incorporated by reference document, the Academic Expectations, is explained, implemented and compounded by the use of ancillary documents such as the Transformations document and content guidelines; (2) many persons testified today that they use the Transformations document, either voluntarily or implicitly nonvoluntary; This presents a problem in that the Subcommittee does not have before it for consideration, this document, as part of the administrative regulation; (3) it is because of this reason that the regulation does not comply with KRS 13A.100, which provides that: "any administrative body with prescribes regulations, shall prescribe each statement of general applicability, policy, procedure, memorandum...or other form of action that implements; interprets; prescribes law or policy;" and (4) the Transformations document, is the implementing document for this administrative regulation, however, it has not been incorporated by reference in this administrative regulation.

Representative Allen seconded the motion.

Representative Lee disagreed saying: (1) he believes the administrative regulation and the incorporated document does stand alone; (2) other reference materials, such as textbooks and ancillary resources are often used to develop curriculum; and (3) the administrative regulation does comply with statutory authority and he urged defeat of the motion.

A roll call vote was requested by Senator Kafoglis.

Senator Kafoglis voted to defeat the motion, explaining: (1) that it is encouraging that the testimony reflects the need and desire for measurable, accountable standards. He sees a great deal of agreement in this regard; (2) he has concerns that if the Subcommittee does not approve the administrative regulation, that it will be difficult to achieve a real consensus on what kind of expectations the state should have; (3) the Department has made a good faith effort to develop the standards in consulting a broad range of interests and groups; and (4) a great number of professional educators are in support of the administrative regulation.

Chairman Kerr voted to approve the motion to find that the administrative regulation fails to comply with KRS 13A.100, saying: (1) he does not believe that the administrative regulation and incorporated materials, standing alone, can be interpreted on their own as they are not measurable and are vague; and (2) the expectations are supposed to represent the target to aim for in education reform, but they fail to represent a target that one can identify.

The motion failed, and the administrative regulation was approved.

Kentucky Health Policy Board: Administration

909 KAR 1:010E. Kentucky Health Policy Board meetings, minutes and transactions.

The Subcommittee had no objections to emergency administrative regulations which had been filed.

The following administrative regulations were deferred to the next Subcommittee meeting, unless otherwise noted, upon agreement by the Subcommittee and the promulgating agency:

Board of Medical Licensure

201 KAR 9:005. Ethical conduct.

Department of Agriculture: Weights and Measures; Motor Fuel

302 KAR 79:010E. Testing and inspection program.

Natural Resources and Environmental Protection Cabinet: Department for Surface Mining and Reclamation and Enforcement: Surface Effects of Noncoal Mining

405 KAR 5:001. Definitions for 405 KAR Chapter 5.

405 KAR 5:015. General provisions.

405 KAR 5:021. Permit and license fees.

405 KAR 5:025. License requirements.

405 KAR 5:030. Permit requirements.

405 KAR 5:035. Signs and markers.

405 KAR 5:038. Blasting.

405 KAR 5:040. Access roads and haul roads.

405 KAR 5:045. Protection of cultural and environmental resources.

405 KAR 5:050. Protection of the hydrologic balance.

405 KAR 5:055. Permanent and temporary impoundments.

405 KAR 5:060. Handling of materials.

405 KAR 5:065. Premining and postmining land use.

405 KAR 5:070. Revegetation.

405 KAR 5:075. Contemporaneous reclamation.

405 KAR 5:080. Reclamation bond.

405 KAR 5:085. Enforcement.

405 KAR 5:095. Administrative hearings, informal settlement conferences, and general practice provisions.

405 KAR 5:096. Repeal of 405 KAR 5:010 and 405 KAR 5:020.

General Provisions

405 KAR 7:095. Assessment of civil penalties.

Performance Standards for Surface Mining Activities

405 KAR 16:200. Revegetation.

Performance Standards for Underground Mining Activities

405 KAR 18:200. Revegetation.

Transportation Cabinet: Office of Minority Affairs

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

600 KAR 4:020E. The disadvantaged, minority and women business enterprise program.

Department of Education: Bureau of Learning Results Services: Office of Instruction

704 KAR 3:455. Instructional material and textbook adoption process. Libby Marshall, Director of Governmental Relations, Kentucky School Boards Association, stated that: (1) a similar administrative regulation was once brought before this Subcommittee and found to be deficient, as the Subcommittee determined that the restriction placed on local board of educations was not in compliance with the statute; (2) the statute provides that if a local board does not approve a school council's plan for text books and instructional materials, the council may appeal to the Commissioner of Education; (3) the issue of concern to the Association is one that was previously urged, and the Subcommittee agreed, that this statutory language allows citizens, parents and taxpayers to "appeal" to the local board of education if they are in objection to the content and substance of textbooks and instructional materials that are adopted by the school; (4) the Department of Education's interpretation was that the review of the local board of education was limited to budgetary considerations only, and not to substance or content. The Administrative Regulation Review Subcommittee rejected this interpretation, and in the 1994 General Assembly this same interpretation was rejected again when House Bill 67, which incorporated the Department's limiting language, was defeated; (5) the Association believed: (a) that the defeat of House Bill 67 resolved the interpretation question on this issue; (b) that the existing statutory language was upheld and governed this question; however, the State Board meeting in which the present administrative regulation was approved, Department staff commented that they were still holding to the "limiting" interpretation, and that the local board's review was limited to financial considerations alone; (6) historically, when objections to the content of

instructional materials and textbooks are raised by parents and citizens, the local board is usually in the role of educating parents and citizens on the educational value of the material and are often in the position of defending the decision of the educational professionals; Therefore, the Association members are not asking for this authority lightly, however, in rare circumstances there are very serious objections to the content of these materials.

The Association: (1) believes that citizens and parents should have access to their locally elected board, to a body outside of the school council which originally made the decision adopting the textbooks and instructional materials; and (2) asked that the Department of Education go on the record before the Subcommittee stated their interpretation of the local board of education's statutory authority to review the content of instructional materials and textbooks when issues are raised by the citizens of a particular community.

Kevin Noland, Kentucky Department of Education, Associate Commissioner, Office of Legal Services, stated that: (1) The Association's issue was addressed in the Department's "Statement of Consideration"; (2) objections raised by Ms. Marshall to a particular provision in the previous form of this administrative regulation, which was subsequently found deficient by the Subcommittee approximately two years ago, the objectionable provision has been deleted in the present administrative regulation; (3) the issue is whether the local board's scope and review authority is limited to a determination as to whether the local school council's plan is affordable, or does it also include oversight of the selection of textbook materials; (4) two conflicting statutes appear to raise a question relating to the scope of local school board's review as follows: (a) KRS 156.439 provides an appeal mechanism to the Commissioner of Education, if a school board and school council cannot agree, and the local board has not approved the school council plan on selection and purchase of textbooks and instructional materials; and (b) the School based decision making statute, KRS 160.345(2)(g), provides that the school council shall select and determine textbooks and instructional materials; (5) House Bill 67, in the 1994 General Assembly, would have resolved this issue as it would have: (a) amended KRS 156.439 to remove any local board approval of council textbook and instructional material plans; and (b) removed the appeal to the Commissioner of Education; that version of HB 67 was passed by the house, however the Senate added a floor amendment which would: 1. require a local board to approve the school council's textbook and instructional material plan; 2. permit the board to reject the plan if the council has insufficient funds or if the plan lacked educational merit; and additionally, 3. restore the provision allowing the school council to appeal the board's decision to the Commissioner; the Senate passed HB 67 with the floor amendment, however, the House refused to concur and the bill was not enacted; This resulted in the lack of a clear legislative mandate; (6) even, absent a clear legislative directive on the scope of review, the existing statutes have been in effect for four years, and the Department has not received one appeal to the Commissioner; (7) the Association appears to be asking the Subcommittee to decide a legal issue that the Legislature could not agree upon in the 1994 General Session; (8) at the State Board's in which this administrative regulation was approved, the Department staff did not take a position on the issue, and has chosen not to at this time as this is a legal issue which is premature for the Department to decide when: (a) no appeals have previously been made to the Commissioner; and (b) the 1996 General Assembly will likely take up this issue again.

Chairman Kerr summarized by saying: (1) he understands that the Department is not taking a position on this issue as no one has appealed a decision to the Commissioner; (2) at some point in the future there may be a situation where a school board refused to approve a school council plan because of the school council decision relating to textbooks and instructional materials.

Ms. Marshall: (1) acknowledged that Chairman Kerr was correct in that the Department will likely be faced with an appeal in the future and will be forced to take a position at some point; (2) stated that the Department appears to be sandbagging on its interpretation of the law and there is an inherent problem for local boards of education when the Department states that it is not taking a position; (3) stressed that local boards have to know when two hundred parents come to a board meeting and express concerns regarding the types of textbooks and instructional materials which have been selected; (4) pointed out that the board must be able to respond by either stating: (a) we are sorry, the school board can do nothing; (b) we will ask the school council to reconsider a selection; (c) if nothing can be resolved, the board has the right to go on the record that the board disapproves of the material. This record would then reflect the board's disapproval if the appeal went before the Commissioner; (5) disagreed with Mr. Noland's view of the defeat of House Bill 67, stating that the debate on the floor of the Senate addressed assurances that local boards of education have the right to review textbooks and instructional materials on their content.

Mr. Noland stated: (1) that the Department takes issue with the Association's characterization that it is "sandbagging"; (2) reiterated that Chairman Kerr two years ago, in the Subcommittee's review of the administrative regulation that was a predecessor to the present administrative regulation, acknowledged that the two conflicting statutes relating to this issue were "clear as mud"; (3) the State Board and the Department do not have a position on this issue and made that clear in the minutes of the State Board meeting.

In response to Chairman Kerr's inquiry, Mr. Noland stated: (1) that the present administrative regulation does not address an appeal procedure as it was removed; and (2) he assumed that the implementation of House Bill 344 (Administrative Procedures Act) would provide an appeal mechanism.

Chairman Kerr closed by: (1) recapping that the Department does not plan to make a public statement today for the record: and (2) advising: (a) Ms. Marshall that it may not be appropriate for the Subcommittee to decide the issue either; and (b) that with conflicting statutes, the interpretation will have to be interpreted by the courts, if the Legislature does not address the issue through legislation.

In response to Representative Bruce's question concerning who selects textbooks, a Department representative stressed that the selection process is quite involved as follows: (1) in August of each year a review team of twenty-four people, made of up local school people, i.e., school teachers, educators and lay citizens, who: (a) review the materials which are bid; (b) make a recommendation as to whether the materials are placed on the state multiple list; (2) the state textbook commission, composed of ten people, made of up educators, lay citizens, and a university person, make a final decision whether an item is officially placed on the state multiple list; (3) schools purchase from the list with the approval of their site-based council or the local board if there is not a council in place.

Representative Bruce: (1) expressed concern that some books approved for the lower levels are what he would describe as "raunchy" books; (2) stated he has seen these books and resents their approval; acknowledged that he agreed with Ms. Marshall that the school board should be allowed to appeal the approval of the school council's selection of textbooks and instructional materials; and (3) stressed that one of the worst things hurting KERA is approval of these types of reading materials for Kentucky's children, without an opportunity for parents and citizens to complain of their usage.

Ms. Marshall reiterated that she believes that the Department is accountable to the interpretation of law set out by this General Assembly and she is troubled that the Department would say to the Subcommittee that they do not see themselves as bound by that interpretation.

Mr. Noland summarized for Representative Bruce that: (1) if a teacher is using a particular book or instructional material that a parent finds objectionable, he recommends that they first express their concern: (a) to the teacher; (b) secondly, the principal; and finally, (c) the school council or local board; and (2) the only items

that are on the state multiple lists are textbooks, therefore, individual teachers often use other books or instructional materials which they select on their own.

Representative Bruce stated that he will attempt to correct that in the next General Assembly.

Chairman Kerr restated that: (1) the Department has made it clear that they are unwilling at this time to take a position; and (2) it would appear that a school board might consider acting on a parent complaint and leave the decision to be challenged in a court of law and a determination made that the school board either does or does not have the authority to make such decisions.

Helen Montjoy, State Board of Education Member from Western Kentucky stated: (1) she is a former local board member and local board chair who is well aware of the problems of trying to meet the needs of students while balancing community standards as they relate to instructional materials; (2) decisions made by school councils, relating to plans for textbook purchase and textbook and supplemental book approval, include the input from two parents who serve on each council; (3) usually committees are formed within each school, which are made up of parents and educators, who review these materials; (4) Ms. Marshall's concerns are well received, however, the issue is not one of failure to accommodate, but rather a difference of opinion; and (5) the State Board is awaiting further direction from the Legislature regarding these conflicting statutes.

Representative Bruce suggested the Department defer this administrative regulation for one month and attempt to resolve this issue with concerned parties. The Subcommittee approved the motion.

Senator Smith asked: (1) a related question concerning transportation of grade school students; (2) if parents requests that the local board shorten the length of time a child is transported on a bus and the board does not render any decision, what recourse does the parent have to appeal such indecision.

The Department responded that if: (1) a parent is unhappy with the transportation of their children they should direct their concerns first to the: (a) principal; (b) transportation department; (2) secondly, go to the local school board to make sure that the bus is traveling on the most efficient and direct route; and (3) the local board takes no action, there does not exist, at this time, an appeal mechanism for parents to utilize.

Department of Mines and Minerals: Division of Mining

805 KAR 5:060. Electrical mine safety standards.

Cabinet for Human Resources: Department for Social Services: Children's Residential Services

905 KAR 7:240 & E. Kentucky Educational Collaborative for State Agency Children.

The Subcommittee adjourned at 6:05 p.m. until December 8, 1994 at 10 a.m. in Room 327 of the State Capitol.

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates F2

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 F11

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 F22

The Subject Index is a general index of regulations published in VOLUME 21 of the Administrative Register, and is mainly broken down by agency.

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Replaced	3324	8-24-94
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12 KAR 1:135E	3167	5-13-94
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907 KAR 1:023E	3185	4-29-94
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32 KAR 1:100E	242	7-14-94
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40 KAR 2:061E	242	7-14-94
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