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 March 1, 1995, at 10 a.m. in Room 149 of the Capitol Annex. See **tentative agenda** on pages 2019-2021 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 - March 6, 1995 at 10 a.m.
Room 149, Capitol Annex

(& E) - means that the emergency administrative regulation has been reviewed previously by the subcommittee

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Kentucky Loan Program

11 KAR 3:015. Borrower eligibility.

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11 KAR 4:050. Set off of authority claims.

DEPARTMENT OF STATE
Registry of Election Finance

Reports and Forms

32 KAR 1:110E. Clarification of total contributions.
32 KAR 1:120E. Schedule for public fund transfers.
32 KAR 1:130E. Adoption of public finance manual and forms.
32 KAR 1:140E. Cash contributions.

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101 KAR 4:010E. Health and other benefits. (Deferred from February)

REVENUE CABINET

Income Tax, General Administration

103 KAR 15:090. Computing the amortization deduction for intangible assets. (Not Amended After Hearing) (Deferred from January)

FINANCE AND ADMINISTRATION CABINET

Underwriter and Bond Counsel Selection Process

200 KAR 21:010 (& E). Procedure for prequalification of underwriters and bond counsel for state bond issues.
200 KAR 21:020 (& E). Evaluation factors for bond counsel and underwriters.
200 KAR 21:030 (& E). Calculating the preference for Kentucky bond counsel firms for state bond issues.
200 KAR 21:040 (& E). Selection of national co-managing underwriters.
200 KAR 21:050 (& E). Establishment of rates to reimburse underwriters for counsel.

Personnel Pilot Programs

200 KAR 22:010. Procedures for the development, review and approval of financial plans for savings attributable to personnel pilot programs.

GENERAL GOVERNMENT CABINET

Board of Podiatry

201 KAR 25:011. Approved schools; examination application; fees.

TOURISM CABINET
Department of Fish and Wildlife Resources

Game

301 KAR 2:049. Seasons for furbearers and small game on specific areas.
301 KAR 2:251. Hunting and trapping seasons and limits for furbearers and small game. (Repeals 301 KAR 2:010 and 301 KAR 2:110)

Hunting and Fishing

301 KAR 3:028. Applying for disability hunting and fishing licenses.

ECONOMIC DEVELOPMENT CABINET
Department of Agriculture

Livestock Sanitation

302 KAR 20:010. Definitions.
302 KAR 20:020. General requirements.
302 KAR 20:040. Entry into Kentucky.
302 KAR 20:055. Bureellosis vaccination, testing and branding requirements.
302 KAR 20:065. Sale and exhibition of Kentucky origin livestock in Kentucky.
302 KAR 20:070. Stockyards.
302 KAR 20:185. Equine infections anemia positive horses. (Repeals 302 KAR 20:190)
302 KAR 20:210. Pseudorabies surveillance.
302 KAR 20:220. Pseudorabies: eradication and control.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection

Air Quality - General Administrative Procedures

401 KAR 50:010. Definitions and abbreviations of terms in 401 KAR Chapters 50, 51, 53, 55, 57, 61, 63, and 65. (Public Hearing in January)

401 KAR 50:038 (& E). Air emissions fee. (Public Hearing in January)

Air Quality - New Source Requirements; Nonattainment Areas

401 KAR 51:001. Definitions and abbreviations of terms used in 401 KAR Chapter 51. (Public Hearing in January)

Air Quality - New Source Standards

401 KAR 59:001. Definitions and abbreviations of terms used in 401 KAR Chapter 59. (Public Hearing in January)

Air Quality - Existing Source Standards

401 KAR 61:001. Definitions and abbreviations of terms used in 401 KAR Chapter 61. (Public Hearing in January)

Air Quality - General Standards of Performance

401 KAR 63:001. Definitions and abbreviations of terms used in 401 KAR Chapter 63. (Public Hearing in January)

Air Quality - Mobile Source-related Emissions

401 KAR 65:001. Definitions and abbreviations of terms used in 401 KAR Chapter 65. (Public Heaing in January)

JUSTICE CABINET

Charitable Gaming

500 KAR 11:015 (& E). Permanent licensure.

500 KAR 11:025 (& E). Quarterly reports.

Department of Corrections

Office of the Secretary

501 KAR 6:020. Corrections policies and procedures.

501 KAR 6:110. Roederer Correctional Complex.

501 KAR 6:140. Bell County Forestry Camp.

TRANSPORTATION CABINET
Department of Vehicle Regulation

Motor Vehicle Tax

601 KAR 9:200 & E. Registration of titling of rebuilt motor vehicles. (Repeals 601 KAR 9:047)

EDUCATION, ARTS AND HUMANITIES CABINET
Department of Education
Office of District Support Services

Pupil Transportation

702 KAR 5:030&E. Superintendents' responsibilities.

702 KAR 5:040&E. District boards' responsibilities.

702 KAR 5:080&E. Bus drivers' qualifications; responsibilities.

Bureau of Learning Results Services

Assistance and Intervention Services

703 KAR 3:060&E. Procedures for determine rewards and sanctions.

WORKFORCE DEVELOPMENT CABINET
Department of Vocational Rehabilitation

Administration

781 KAR 1:010. Department of Vocational Rehabilitation appeal procedures.

Independent Living Rehabilitation

781 KAR 2:011. Repeal of Department of Vocational Rehabilitation independent living rehabilitation services administrative regulations. (Repeals 781 KAR 2:010 and 781 KAR 2:020)

Department for the Blind

Department for the Blind

782 KAR 1:040. Appeal procedures for applicants and clients.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance

Health Insurance Contracts

806 KAR 17:070. Filing procedures for health insurance rates.

Motor Vehicle Reparations (No-fault)

806 KAR 39:080. Reporting requirements of automobile insurers regarding payment of personal injury benefits.

Department of Housing, Buildings and Construction

Kentucky Building Code

815 KAR 7:100. The Kentucky Building Code. (Repeals 815 KAR 7:090)

Plumbing

815 KAR 20:120. Water supply and distribution.

815 KAR 20:130. House sewers and storm water piping; methods of installation.

CABINET FOR HUMAN RESOURCES

Department for Health Services

Emergency Medical Services and Ambulance Service Providers

902 KAR 14:030 & E. License procedures and fee schedule for ambulance service providers. (Public Hearing in January)

902 KAR 14:040 & E. Ground ambulance service providers. (Repeals 902 KAR 20:117) (Public Hearing in January)

902 KAR 14:050 & E. Air ambulance service providers. (Repeals 902 KAR 20:155) (Public Hearing in January)

Department for Social Insurance

Public Assistance

904 KAR 2:440. Discount Option Program.

Food Stamp Program

904 KAR 3:041. Food Stamp Employment and Training Program.

Department for Social Services

Children's Residential Services

905 KAR 7:240 & E. Kentucky Educational Collaborative for state agency children. (Amended After Hearing) (Deferred from October)

Department for Medicaid Services

Medicaid Services

907 KAR 1:009 (& E). Physicians' services.

907 KAR 1:010 (& E). Payments for physicians' services.

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

907 KAR 1:016E. Psychiatric hospital services.

907 KAR 1:671E. Conditions of medical provider participation; enrollment, documentation of services, disclosure, claims processing, withholding overpayments, appeals process, and sanctions. (Deferred from February)

Department for Mental Health and mental Retardation Services

Mental Health

908 KAR 2:090 & E. Decriminalization of mental illness.

KENTUCKY HEALTH POLICY BOARD

Administration

909 KAR 1:200E. Twenty-four (24) hour pilot insurance program.

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

Notice of Intent

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.

NOTICES OF INTENT TO PROMULGATE ADMINISTRATIVE REGULATIONS

EXECUTIVE BRANCH ETHICS COMMISSION

Date: February 9, 1995
Executive Branch Ethics Commission

(1) **9 KAR 1:015**, Adjudicatory proceedings.

(2) The Executive Branch Ethics Commission 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 March 30, 1995 at 9 a.m., at Room 386, Capitol Annex, 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 March 30, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Jill LeMaster, Executive Director, Executive Branch Ethics Commission, 273 Capitol Annex, 702 Capital Avenue, 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 Executive Branch Ethics 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 subject matter of administrative regulation is KRS 11A.110

(b) The administrative regulation that the Executive Branch Ethics Commission intends to promulgate, 9 KAR 1:015, will not amend an existing administrative regulation. It will describe the necessary information in an Initiation Order, the day a commission order is considered issued, and the type of material which is subject to discovery.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation implements KRS 11A.080 and 11A.100 by establishing specific requirements and methods which are not set forth in KRS Chapter 11A.

(d) The benefits expected from administrative regulation are: All participants in an administrative proceeding will be informed of the general manner in which the proceeding will be conducted, including the information contained in an Initiating Order the day an order is considered issued and the type of material which is subject to discovery.

Date: February 9, 1995
Executive Branch Ethics Commission

(1) **9 KAR 1:020**, Complaints.

(2) The Executive Branch Ethics Commission 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 March 30, 1995, at 10 a.m. at Room 386, Capital Annex, 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 March 30, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Jill LeMaster, Executive Director, Executive Branch Ethics Commission, 273 Capitol Annex, 702 Capital Avenue, 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 Executive Branch Ethics 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 subject matter of administrative regulation is KRS 11A.110.

(b) The administrative regulation that the Executive Branch Ethics Commission will amend 9 KAR 1:020, Complaints. It will establish the procedures for filing complaints with the commission and show the difference between a complaint received by a third party and a commission-initiated inquiry.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation implements KRS 11A.080 by establishing specific requirements and methods which are not set forth in KRS Chapter 11A.

(d) The benefits expected from administrative regulation are: Both complainants and alleged violators will be informed of the Commission's

process in receiving complaints and initiating inquiries.

Date: February 9, 1995
Executive Branch Ethics Commission
(1) **9 KAR 1:030**, Adjudicatory hearings.
(2) The Executive Branch Ethics Commission 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 March 30, 1995, at 11 a.m., at Room 386, Capitol Annex, 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 March 30, 1995, the public hearing will be cancelled.
(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Jill LeMaster, Executive Director, Executive Branch Ethics Commission, 273 Capitol Annex, 702 Capital Avenue, 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 Executive Branch Ethics 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 subject matter of administrative regulation is KRS 11A.110.
(b) The administrative regulation that the Executive Branch Ethics Commission intends to promulgate will amend 9 KAR 1:030, Adjudicatory hearings. It will provide the specific procedure for the conduct of a commission adjudicatory hearing.
(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation implements KRS 11A.080 and 11A.100 by establishing specific requirements and methods which are not set forth in KRS Chapter 11A.
(d) The benefits expected from administrative regulation are: Participants at a commission adjudicatory hearing will be informed of the conduct of the hearing, including who may hear the case and the order the commission will take testimony and other evidence.

Date: February 9, 1995
Executive Branch Ethics Commission
(1) **9 KAR 1:035**, Posthearing procedure.
(2) The Executive Branch Ethics Commission 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 March 30, 1995, at 12 noon, at Room 386, Capitol Annex, 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 March 30, 1995, the public hearing will be cancelled.
(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Jill LeMaster, Executive Director, Executive Branch Ethics Commission, 273 Capitol Annex, 702 Capital Avenue, 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 Executive Branch Ethics 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 subject matter of administrative regulation is KRS 11A.110.
(b) The administrative regulation that the Executive Branch Ethics Commission intends to promulgate will not amend an existing administrative regulation. It will establish the method by which a case is resolved by the commission once an administrative hearing has taken place.
(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation implements KRS 11A.100 by establishing specific requirements and methods which are not set forth in KRS Chapter 11A.
(d) The benefits expected from administrative regulation are: Participants in an administrative hearing will be informed when to expect resolution of the case and by what method depending on whether the commission or its hearing officer presided over the hearing.

FINANCE AND ADMINISTRATION CABINET

Date: February 14, 1995
Finance and Administration Cabinet
Office of the Secretary

(1) **200 KAR 22:020**. Guideline for comprehensive employment manuals required by pilot agencies under KRS 18A.430.

(2) The Finance and Administration Cabinet intends to promulgate the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for March 31, 1995, at 10 a.m. in Room 386, Capitol Annex Building, Frankfort, Kentucky 40601.

(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, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to March 31, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Gail Prewitt, Office of the Secretary, Finance and Administration Cabinet, Room 383, Capitol Annex Building, Frankfort, Kentucky 40601.

(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 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 Office of the Secretary at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of the above-cited administrative regulation is contained in KRS 13A.100(1) and 18A.430(1)(b) and (c).

(b) The proposed regulation will establish a guideline to be used by pilot agencies participating in the Pilot Personnel Program in their development of employment manuals prescribed by KRS 18A.430(1).

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 18A.430(1)(a) provides that pilot agencies participating in the pilot personnel program authorized by KRS 18A.400 to 18A.450 shall develop comprehensive employment manuals establishing conditions of employment for employees in each organizational unit of the pilot agencies. According to KRS 18A.430(1)(c), the head of the agency in which the pilot program is located shall be responsible for preparing the regulation and submitting it to the Secretary of the Finance and Administration Cabinet for promulgation. This regulation establishes a guideline to be used by the pilot agencies in the development of the employment manual prescribed by KRS 18A.430(1).

(d) The benefit expected from this proposed administrative regulation is as follows: Under KRS 18A(1)(c), employment manuals developed by the pilot programs are required to be promulgated as administrative regulations by the Secretary of the Finance and Administration Cabinet. By requiring a standardized guideline for development of the employment manuals by the pilot program, the time necessary for the pilot agencies to develop the manuals and for the Finance and Administration Cabinet to approve the manuals will be greatly reduced.

(e) This administrative regulation will be implemented by the Personnel Steering Committee by sending notice of the regulation to all pilot agencies which have received approval for pilot personnel programs.

KENTUCKY REAL ESTATE APPRAISERS BOARD

Date: February 10, 1995
Kentucky Real Estate Appraisers Board

(1) **201 KAR 30:050**; Examination, education, and experience requirement.

(2) The Kentucky Real Estate Appraisers Board 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 March 31, 1995, at 10 a.m., 3572 Iron Works Pike, Room 308, Lexington, Kentucky 40511.

(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 March 31, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: James P. Daniels, Executive Director, Kentucky Real Estate Appraisers Board, 3572 Iron Works Pike, Room 308, 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 form from James P. Daniels at the address above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to standards of practice is KRS 324A.035.

(b) The administrative regulation that the Kentucky Real Estate Appraisers Board intends to promulgate will amend 201 KAR 30:050. It will adopt the most current edition of the "Uniform Standards of Professional Appraisal Practice."

(c) The necessity and function of the proposed administrative regulation is as follows: This regulation is necessary to comply with Title XI

of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 USC 3331 through 3351), KRS Chapter 324A to establish policies and procedures, and to protect the public. The function of this administrative regulation is to establish the: (1) types of appraisers required in federally related transactions; (2) scope of the practice; and (3) general requirements for certification or licensure.

(d) The benefit expected from this administrative regulation is that the standards of practice for licensed and certified appraisers will be in accord with the most recent edition of the "Uniform Standards of Professional Appraisal Practice."

Date: February 10, 1995
Kentucky Real Estate Appraisers Board

(1) **201 KAR 30:120**; Temporary appraisal licenses and certificates.

(2) The Kentucky Real Estate Appraisers Board 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 March 31, 1995, at 10 a.m., 3572 Iron Works Pike, Room 308, Lexington, Kentucky 40511.

(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 March 31, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: James P. Daniels, Executive Director, Kentucky Real Estate Appraisers Board, 3572 Iron Works Pike, Room 308, 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 form from James P. Daniels at the address above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to standards of practice is KRS 324A.035.

(b) The administrative regulation that the Kentucky Real Estate Appraisers Board intends to promulgate will amend 201 KAR 30:050. It will adopt the most current edition of the "Uniform Standards of Professional Appraisal Practice."

(c) The necessity and function of the proposed administrative regulation is as follows: This regulation is necessary to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 USC 3331 through 3351), to set standards, and to protect the public.

(d) The benefit expected from this administrative regulation is that the standards of practice for licensed and certified appraisers will be in accord with the most recent edition of the "Uniform Standards of Professional Appraisal Practice."

Date: February 10, 1995
Kentucky Real Estate Appraisers Board

(1) **201 KAR 30:140**; Transitional licensed real property appraiser.

(2) The Kentucky Real Estate Appraisers Board 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 March 31, 1995, at 10 a.m., 3572 Iron Works Pike, Room 308, Lexington, Kentucky 40511.

(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 March 31, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: James P. Daniels, Executive Director, Kentucky Real Estate Appraisers Board, 3572 Iron Works Pike, Room 308, 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 form from James P. Daniels at the address above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to standards of practice is KRS 324A.035.

(b) The administrative regulation that the Kentucky Real Estate Appraisers Board intends to promulgate will amend 201 KAR 30:050. It will adopt the most current edition of the "Uniform Standards of Professional Appraisal Practice."

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation is necessary to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 USC 3331 through 3351), KRS Chapter 324A to establish policies and procedures, and to protect the public. The function of this administrative regulation is to establish a temporary class of transitional licensed real property appraiser.

(d) The benefit expected from this administrative regulation is that the standards of practice for licensed and certified appraisers will be in accord with the most recent edition of the "Uniform Standards of Professional Appraisal Practice."

TOURISM CABINET
Department of Travel Development

Date: February 10, 1995
Tourism Cabinet
Department of Travel Development

(1) **300 KAR 1:010**, relating to matching funds.

(2) The Kentucky Tourism Cabinet, Department of Travel Development, intends to promulgate an administrative regulation establishing the application procedures for the matching funds program in Kentucky. The mission of the program is to assist Kentucky's tourism industry in enhancing local, regional, and the Commonwealth's economics by promoting tourism opportunities. The program provides financial and marketing assistance to both regional and local nonprofit organizations to promote tourism opportunities to markets outside their immediate areas. Funds administered through this program are restricted to promotional projects only. At the public comment hearing, the Tourism Cabinet, Department of Travel Development, specifically requests public opinions relating to the application process.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for March 28, 1995, at 1 p.m. local prevailing time, in Room G-1 of the Capital Plaza Tower, Frankfort, Kentucky.

(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, and agreement to attend the public hearing, are not received from the required number of people at least twenty (20) days prior to March 28, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Sarah 0. Hernandez, Assistant General Counsel, 500 Mero Street, Capital Plaza Tower, Room 923, 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 Tourism Cabinet, Department of Travel Development, 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 matching funds is KRS 148.525.

(b) The Tourism Cabinet, Department of Travel Development, intends to promulgate a new administrative regulation relating to matching funds.

(c) The necessity and function of the proposed administrative regulation relating to matching funds is as follows: KRS 148.525(2) provides that the Department of Travel Development, Division of Marketing and Advertising Services, shall be responsible for the state matching fund tourism advertising program. KRS 148.525(3) provides that the Commissioner of the Department of Travel Development may promulgate administrative regulations. This administrative regulation is the means used by the Department of Travel Development to establish application and procedural guidelines for the receipt of matching funds.

(d) The benefits expected are increased efficiency in the application and procedural process for receipt of matching funds in order to improve financial and marketing assistance to both regional and local nonprofit organizations to promote tourism opportunities.

Department of Fish and Wildlife Resources

Date: February 15, 1995
Tourism Cabinet
Department of Fish and Wildlife Resources

(1) **301 KAR 6:050**. Safety requirements for personal watercraft.

(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 March 30, 1995, at 1 p.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 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 five 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 March 30, 1995, the public hearing will be cancelled.

(5) 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.

(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 at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation governing personal watercraft is KRS 235.280.

(b) The administrative regulation that the department intends to promulgate will not amend an existing administrative regulation. It will require persons operating personal watercraft to wear personal approved personal flotation devices, use engine cut-off lanyards, operate only between sunrise and sunset, not operate in a reckless manner, and operate at idle speed in "no ski" zones.

(c) The necessity and function of the proposed administrative regulation is to establish standards of safe operation for personal watercraft.

(d) The benefits expected from the proposed administrative regulation are increased personal safety and protection from property damage for all users of Kentucky's waterways.

(e) The administrative regulation will be implemented as follows: Information concerning the provisions of this administrative regulation will be published and promoted through brochures, media releases and personal appearances; and enforced by water patrol officers and conservation officers of the department.

DEPARTMENT OF AGRICULTURE

Date: February 8, 1995
Department of Agriculture

(1) The regulation to be amended is **302 KAR 15:010**, Administration; state aid to local fairs.

(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 March 28, 1995, 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 March 28, 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 15:010, Administration; state aid to local fairs is KRS 247.220.

(b) The administrative regulation that the Department of Agriculture intends to promulgate will amend 302 KAR 15:010. Due to an increase in funding for the county fair program by the General Assembly, the administrative regulations governing this program needed to be changed to reflect the distribution of the additional funds.

(c) The Necessity and Function of the proposed administrative regulation is as follows: Provides rules and regulations by which the state aid to local fairs program must be administered. It explains to the Department of Agriculture, Division of Shows and Fairs, and to local fairs their responsibilities in the program.

(d) The benefits expected from administrative regulation are: Local fairs will be eligible for additional funding.

KENTUCKY ECONOMIC DEVELOPMENT FINANCE AUTHORITY

Date: February 15, 1995
Kentucky Economic Development Finance Authority

(1) The subject matter of this administrative regulation, **307 KAR 1:030**, is the application process and project selection criteria utilized by the Kentucky Economic Development Finance Authority pursuant to its Kentucky Rural Economic Development Act Program established pursuant to KRS 154.22-010 to 154.22-080.

(2) The Kentucky Economic Development Finance Authority 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 March 30, 1995, at 10 a.m., Capital Plaza Tower, 24th 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 March 30, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: 24th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, Attention: Commissioner - Financial Incentives.

(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 Economic Development Finance Authority 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 application process and project selection criteria

for the Kentucky Rural Economic Development Act Program is KRS 154.22-040(2).

(b) The administrative regulation that the Kentucky Economic Development Finance Authority intends to promulgate will not amend an existing administrative regulation. It will set forth the eligibility standards for companies to participate in the Kentucky Rural Economic Development Act Program of the Kentucky Economic Development Finance Authority and provide guidance on the application procedure for the program.

(c) The necessity and function of the proposed administrative regulation are as follows: To establish the application process and project selection criteria for the Kentucky Rural Economic Development Act Program established pursuant to KRS 154.22-010 through 154.22-080.

(d) The benefits expected from the administrative regulation are: Companies will have access to additional guidance on the application process and the selection criteria for participation in the Kentucky Rural Economic Development Act Program.

(e) The administrative regulation will be implemented as follows: The Board of Directors of the Kentucky Economic Development Finance Authority will consider the criteria outlined in the administrative regulation in evaluating whether a company and its economic development project should be approved for the Kentucky Rural Economic Development Act Program.

Date: February 15, 1995
Kentucky Economic Development Finance Authority

(1) The subject matter of this administrative regulation, **307 KAR 2:010**, is the application process, hearing procedure and project selection criteria utilized by the Kentucky Economic Development Finance Authority pursuant to its Kentucky Jobs Development Act Program established pursuant to KRS 154.24-010 through 154.24-150.

(2) The Kentucky Economic Development Finance Authority 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 March 30, 1995, at 10 a.m., Capital Plaza Tower, 24th 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 March 30, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: 24th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, Attention: Commissioner - Financial Incentives.

(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 Economic Development Finance Authority 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 application process, hearing procedure and project selection criteria for the Kentucky Jobs Development Act Program is KRS 154.24-040(7).

(b) The administrative regulation that the Kentucky Economic Development Finance Authority intends to promulgate will amend 307 KAR 2:010 by conforming the regulation to the statutory amendments from the 1994 regular session of the General Assembly of the Commonwealth of Kentucky, including the following: The name of the administrative body will be changed from "Kentucky Jobs Development Authority" to "Kentucky Economic Development Finance Authority" throughout the regulation. Section 3(1)(g) provides that the program application shall contain notice that an administrative fee of one-tenth (.1) of one (1) percent of the estimated approved costs for the entire period, in addition to the $500 application fee, is payable upon execution of the service and technology agreement. That section shall be amended also to provide for the payment of a fee for deposit into the Kentucky Research and Development Infrastructure Fund. Section 3(1)(k) provides that companies wishing to participate in the program shall file an application which shall contain the increase in the number of full-time and part-time jobs at the project location after an eighteen (18) month period. That section shall be amended to change the time period by which to estimate the increase in jobs from an eighteen (18) month period to a one (1) year period. Section 5 provides that the prior consent of the authority is required for any service benefit or in-kind contribution proposed to be offered by the legislative body of the local jurisdiction. That section will be deleted because that requirement is now set forth in KRS 154.24-150(2). Additionally, Section 7(1), which incorporates by reference "Application for the Kentucky Jobs Development Authority Tax Credit Incentive Program" (March 1993), will be amended to incorporate by reference the most recent program application form.

(c) The necessity and function of the proposed administrative regulation are as follows: The proposed amendments are necessary to make the administrative regulation consistent with KRS 154.24-010 through 154.24-150, as amended by the 1994 regular session of the General Assembly of the Commonwealth of Kentucky, and to incorporate by reference the most recent program application form.

(d) The benefits expected from the administrative regulation are: The proposed amendments will make the administrative regulation consistent with KRS 154.24-010 through 154.24-150 and will incorporate by reference the most recent program application form.

(e) The administrative regulation will be implemented as follows: The Board of Directors of the Kentucky Economic Development Finance Authority will review program applications in evaluating whether a company and its economic development project should be approved for the Kentucky Jobs Development Act Program established pursuant to KRS 154.24-010 through 154.24-150.

Date: February 15, 1995
Kentucky Economic Development Finance Authority

(1) The subject matter of this administrative regulation, **307 KAR 3:010**, is the application process, hearing procedure and project selection criteria utilized by the Kentucky Economic Development Finance Authority pursuant to its Kentucky Industrial Revitalization Act Program established pursuant to KRS 154.26-010 through 154.26-100.

(2) The Kentucky Economic Development Finance Authority 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 March 30, 1995, at 10 a.m., Capital Plaza Tower, 24th 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 March 30, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: 24th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, Attention: Commissioner - Financial Incentives.

(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 Economic Development Finance Authority 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 application process, hearing procedure and project selection criteria for the Kentucky Industrial Revitalization Act Program is KRS 154.26-030(5).

(b) The administrative regulation that the Kentucky Economic Development Finance Authority intends to promulgate will amend 307 KAR 3:010 by conforming the regulation to the statutory amendments from the 1994 regular session of the General Assembly of the Commonwealth of Kentucky, including changing the name of the administrative body from "Kentucky Industrial Revitalization Authority" to "Kentucky Economic Development Finance Authority" throughout the regulation. Section 3(2)(i) provides that the program application shall contain notice that an application fee of $500 must be submitted with the application. That section shall be amended also to provide for the payment of a fee for deposit into the Kentucky Research and Development Infrastructure Fund. Additionally, Section 6(1), which incorporates by reference "Application for the Kentucky Industrial Revitalization Authority Tax Credit Incentive Program" (March 1993), will be amended to incorporate by reference the most recent program application form.

(c) The necessity and function of the proposed administrative regulation are as follows: The proposed amendments are necessary to make the administrative regulation consistent with KRS 154.26-010 through 154.26-100, as amended by the 1994 regular session of the General Assembly of the Commonwealth of Kentucky, and to incorporate by reference the most recent program application form.

(d) The benefits expected from the administrative regulation are: The proposed amendments will make the administrative regulation consistent with KRS 154.26-010 through 154.26-100 and will incorporate by reference the most recent program application form.

(e) The administrative regulation will be implemented as follows: The Board of Directors of the Kentucky Economic Development Finance Authority will review program applications in evaluating whether a company and its economic revitalization project should be approved for the Kentucky Industrial Revitalization Act Program established pursuant to KRS 154.26-010 through 154.26-100.

Date: February 15, 1995
Kentucky Economic Development Finance Authority

(1) The subject matter of this administrative regulation, **307 KAR 4:010**, is the application process and project selection criteria utilized by the Kentucky Economic Development Finance Authority pursuant to its Kentucky Industrial Development Act Program established pursuant to KRS 154.28-010 through 154.28-100.

(2) The Kentucky Economic Development Finance Authority 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 March 30, 1995, at 10 a.m., Capital Plaza Tower, 24th 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 March 30, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: 24th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, Attention: Commissioner - Financial Incentives.

(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 Economic Development Finance Authority 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 application process and project selection criteria for the Kentucky Industrial Development Act Program is KRS 154.28-030(5).

(b) The administrative regulation that the Kentucky Economic Development Finance Authority intends to promulgate will not amend an existing administrative regulation. It will set forth the eligibility standards for companies to participate in the Kentucky Industrial Development Act Program of the Kentucky Economic Development Finance Authority and provide guidance on the application procedure for the program.

(c) The necessity and function of the proposed administrative regulation is as follows: To establish the application process and project selection criteria for the Kentucky Industrial Development Act Program established pursuant to KRS 154.28-010 through 154.28-100.

(d) The benefits expected from the administrative regulation are: Companies will have access to additional guidance on the application procedure and the selection criteria for participation in the Kentucky Industrial Development Act Program.

(e) The administrative regulation will be implemented as follows: The Board of Directors of the Kentucky Economic Development Finance Authority will consider the criteria outlined in the administrative regulation in evaluating whether a company and its economic development project should be approved for the Kentucky Industrial Development Act Program.

JUSTICE CABINET
Department of Corrections

Date: February 14, 1995
Justice Cabinet
Department of Corrections

(1) Regulation number and title: **501 KAR 6:020**, Department of Corrections: Execution; Special Management Inmates

(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 March 31, 1995, 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 March 31, 1995, 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 and 431.220.

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

1. Execution (9.5) shall be added to reflect the current procedure for executions.
2. Special Management Inmates (10.2) shall be amended to reflect the procedure for placing inmates in temporary holding cells.

(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: February 14, 1995
Justice Cabinet
Department of Corrections

(1) Regulation number and title: **501 KAR 6:130,** Western Kentucky Correctional Complex: Public information and media communication and inmate clothing.

(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 March 31, 1995, 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 March 31, 1995, 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 6:130, as follows:

1. WKCC Public Information and Media Communication (01-02-01): This policy is being established to meet requirements of a new American Correctional Association (ACA) Standard and to provide specific guidelines for institutional staff in managing matters related to media requests and visits to the institution. Specific policy purpose contents are summarized in Section 1 "Policy".

2. WKCC Inmate Clothing Policy (12-01-01): Minor changes in policy to conform with the third edition American Correctional Association Standards as well as a change to reflect shorts may be worn.

(c) The necessity and function of the proposed administrative regulation is: To update operating procedures at Western Kentucky 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.

Date: February 14, 1995
Justice Cabinet
Department of Corrections

(1) Regulation number and title: **501 KAR 6:140**, Bell County Forestry Camp: Materials Receiving and Control, Imprest Cash Fund, Prisoners Fund, Fiscal Management: Organization, Inmate Accounts, Purchase Orders, Processing of Invoices, BCFC Materials Receiving Procedure, Property Inventory, General Guidelines for BCFC Employees, Service Regulations, Time and Attendance, Accumulation and Use of Accrued Leave, Proper Dress for Uniformed Personnel, Personnel Records, Personnel Vacancies: Procedures for Selection, Retention, Promotion and Lateral Transfer of Merit System Employees, Work Planning: Employee Evaluations and Evaluation Control, Confidentiality of Information, Roles and Services of Consultants, Contract Personnel, and Volunteers, Personnel Manning Review, Employees Handbook, Replacement of Damaged or Destroyed Personnel Property, Corrections Cabinet Staff Members Suspected of Being Under the Influence at BCFC, BCFC Institutional Emergency Plan, Fire Prevention, Fire Procedures, Fire Extinguishers and Their Use, Escape Procedures, Action in the Event of Hostage Situation, Action in the Event of a Riot or Disturbance, Hunger Strike, Action in the Event of Civil Disorders by Civilians, Guidelines for the Control of Flammable, Toxic, and Caustic Substances, OSHA Hazard Communications Program, BCFC Emergency Response Team Establishment of Security Posts and Post Orders at BCFC, Security Activity Logs, Institutional Security Inspections, Entry and Exit Onto Institutional Grounds, Search Policy/Disposition of Contraband, Disposition of Contraband Found Outside Institution Perimeter, Key Control, Drug Abuse Testing, Breathalyzer Testing, Operation of Licensed Vehicle by Inmates, BCFC Restricted Area, Count Procedure, Inmate Death, Tool Control, Weapons and Related Security Device Control, Transportation of Inmates, Use of Force, Informants, Procedure for Operation in Inclement Weather, Use of State Vehicles and Staff Owned Vehicles, Procedures for Prohibiting Inmate Authority over Other Inmates, Special Management Inmates, Sanitation: Living Conditions, Standards and Clothing Issue, Bed Areas Assignment/Condition Standards, Issuance of Clean Laundry and Receiving of Dirty Laundry, Personal Hygiene Items: Issuance of Placement Schedule, Barber Shop Services and Equipment Control, Institutional Inspections, Fire Safety and Use of Noncombustible Receptacles, Insect and Vermin Control, Fiscal Management, Accounting Procedures, Fiscal Management: Agency Funds, Fiscal Management: Insurance, Fiscal Management: Budget, Fiscal Management: Audit, Storage and Disposition of Inmate Monies Received on Weekends, Holidays, and Between 4:00 PM and 8:00 AM Weekdays, Procedures for Control of Excessive Sick Leave Use, Procedures for New Employees Reporting for Duty, Affirmative Action - E.E.O., Staff Visitor Meals, Employee Grievance Policy and Procedure, Shift/Post Assignment and Transfers, Workers' Compensation, Duties and Responsibilities of the Institutional Captain, Duties and Responsibilities of the Shift Supervisor, Duties and Responsibilities of the Fire/Safety Officer, Collection, Preservation, and Identification of Physical Evidence, Regulation of Inmate Movements, Guidelines for Contractors, Outside Hospital Security, Outside Details, Count Documentation, Security and Records Office Documentation for Placement and Movement of Inmates, Recreational Area Security, Reception Area Security, Use of Restraints.

(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 March 31, 1995, 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 March 31, 1995, 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 6:140, as follows:

1. Materials Receiving and Control (02-06-02) shall be added to reflect the operating procedure at BCFC.

2. Imprest Cash Fund (02-07-01) shall be added to reflect the operating procedure at BCFC.
3. Prisoners Fund (02-08-01) shall be added to reflect the operating procedure at BCFC.
4. Fiscal Management: Organization (02-01-01) shall be amended to reflect the Inmate Canteen operations at BCFC.
5. Inmate Accounts (02-02-01) shall be amended to reflect the current operating guidelines for the Wardens Fund at BCFC.
6. Purchase Orders (02-03-01) shall be amended to reflect the current purchasing guidelines for BCFC.
7. Processing of Invoices (02-04-01) shall be amended to reflect the current fiscal management of the BCFC.
8. BCFC Materials Receiving Procedure (02-05-01) shall be amended to reflect the administration of the Budget at BCFC.
9. Property Inventory (02-06-01) shall be amended to reflect the operating guidelines for all property purchased at BCFC.
10. General Guidelines for BCFC Employees (03-01-01) shall be amended to reflect the Code of Conduct at BCFC.
11. Service Regulations, Time and Attendance, Accumulation and Use of Accrued Leave (03-02-01) shall be amended to reflect the procedure for criminal history checks and employment of ex-offenders at BCFC.
12. Proper Dress for Uniformed Personnel (03-03-01) shall be amended to reflect the procedure for employee physical examinations at BCFC.
13. Personnel Records (03-04-01) shall be amended to reflect the current operations at BCFC in regards to personnel files.
14. Personnel Vacancies: Procedures for selection, retention, promotion and lateral transfer of Merit System Employees (03-05-01) shall be amended to reflect the current procedures for selection, retention and promotion of employees at BCFC.
15. Work Planning: Employee Evaluations and Evaluation Control (03-06-01) shall be amended to reflect the current use of performance evaluations at BCFC.
16. Confidentiality of Information, Roles and Services of Consultants, Contract Personnel, and Volunteers (03-08-01) shall be amended to reflect current guidelines concerning confidential information at BCFC.
17. Personnel Manning Review (03-09-01) shall be amended to reflect the Kentucky Employees Assistance Program at BCFC.
18. Employee's Handbook (02-10-01) shall be amended to reflect the current handbook at BCFC.
19. Replacement of Damaged or Destroyed Personnel Property (03-11-01) shall be amended to reflect current practices at BCFC.
20. Department of Corrections Staff Members Suspected of Being Under the Influence at BCFC (03-12-01) shall be amended to reflect Corrections policy concerning a drug free work place at BCFC.
21. BCFC Institutional Emergency Plan (08-01-01) shall be amended to reflect the operating procedures at BCFC.
22. Fire Prevention (08-02-01) shall be amended to reflect current procedures for fire prevention and to comply with ACA standards.
23. Fire Procedures (08-03-01) shall be amended to reflect current procedures at BCFC.
24. Fire Extinguishers and Their Use (08-03-02) shall be amended to reflect the proper use of fire extinguishers at BCFC.
25. Escape Procedures (08-04-01) shall be amended to reflect current procedures in the event of escape at BCFC.
26. Action in the Event of Hostage Situation (08-05-01) shall be amended to reflect current procedures at BCFC.
27. Action in the Event of a Riot or Disturbance (08-06-01) shall be amended to reflect current procedures at BCFC.
28. Hunger Strike (08-07-01) shall be amended to reflect current procedures at BCFC.
29. Action in the Event of Civil Disorders by Civilians (08-08-01) shall be amended to reflect current procedures at BCFC.
30. Guidelines for the Control and Use of Flammable, Toxic, and Caustic Substances (08-09-01) shall be amended to reflect compliance with ACA standards at BCFC.
31. OSHA Hazard Communications Program (08-09-02) shall be amended to reflect ACA standards, OSHA regulations and appropriate regulations at BCFC.
32. BCFC Emergency Response Team (08-10-01) shall be amended to reflect a change from six members to ten members.
33. Establishment of Security Posts and Post Orders at BCFC (09-01-01) shall be amended to reflect the current security posts and Post Orders at BCFC.
34. Security Activity Logs (09-02-01) shall be amended to reflect current security logs, their purpose and locations at BCFC.
35. Institutional Security Inspections (09-03-01) shall be amended to reflect security inspections and ensure compliance with ACA standards at BCFC.
36. Entry and Exit Onto Institutional Grounds (09-05-01) shall be amended to reflect changes in the physical plant and compliance with ACA standards at BCFC.
37. Search Policy/Disposition of Contraband (09-06-01) shall be amended to reflect Corrections policy on searches and ensure the proper handling of contraband at BCFC.
38. Disposition of Contraband Found Outside Institution Perimeter (09-06-03) shall be amended to reflect current procedures at BCFC.
39. Key Control (09-07-01) shall be amended to reflect operating guidelines and compliance with ACA standards at BCFC.
40. Drug Abuse Testing (09-08-01) shall be amended to comply with Corrections policy and ACA standards at BCFC.
41. Breathalyzer Testing (09-08-02) shall be amended to comply with Corrections policy and ACA standards at BCFC.
42. Operation of Licensed Vehicle by Inmates (09-09-01) shall be amended to reflect current operating procedures at BCFC.
43. BCFC Restricted Area (09-14-01) shall be amended to reflect current restricted areas and to comply with ACA standards at BCFC.
44. Count Procedure (09-15-01) shall be amended to reflect current procedures for inmate counts at BCFC.
45. Inmate Death (09-16-01) shall be amended to comply with Corrections policy and ACA standards at BCFC.
46. Tool Control (09-19-01) shall be amended to reflect LRC language and changes in issuing tool kits to inmates.
47. Weapons and Related Security Device Control (09-20-01) shall be amended to reflect current procedures and ensure compliance with Corrections policy and ACA standards at BCFC.
48. Transportation of Inmates (09-21-01) shall be amended to reflect current security concerns at BCFC.
49. Use of Force (09-22-01) shall be amended to reflect compliance with Corrections policy and ACA standards at BCFC.
50. Informants (09-24-01) shall be amended to reflect compliance with Corrections policy at BCFC.
51. Procedure for Operation in Inclement Weather (09-25-01) shall be amended to reflect current operations and compliance with ACA standards at BCFC.
52. Use of State Vehicles and Staff Owned Vehicles (09-26-01) shall be amended to reflect current operations at BCFC.
53. Procedures for Prohibiting Inmate Authority Over Other Inmates (09-27-01) shall be amended to ensure compliance with ACA standards.
54. Special Management Inmates (10-01-01) shall be amended to reflect a short term holding area in place of administrative segregation

at BCFC.

55. Sanitation, Living Conditions Standards and Clothing Issues (12-01-01) shall be amended to reflect current operations in sanitation at BCFC.

56. Bed Areas Assignment/Condition Standards (12-01-02) shall be amended to reflect bed assignments at BCFC.

57. Issuance of Clean Laundry and Receiving of Dirty Laundry (12-02-01) shall be amended to reflect laundry services and ensure ACA compliance at BCFC.

58. Personal Hygiene Items: Issuance of Placement Schedule (12-03-01) shall be amended to reflect current procedures and comply with ACA standards at BCFC.

59. Barber Shop Services and Equipment Control (12-03-02) shall be amended to reflect control and security of barber tools at BCFC.

60. Institutional Inspections (12-04-01) shall be amended to reflect appropriate inspections in compliance with ACA standards and Corrections policy at BCFC.

61. Fire Safety and Use of Noncombustible Receptacles (12-05-01) shall be amended to reflect compliance with local, state and federal regulations as well as ACA compliance at BCFC.

62. Insect and Vermin Control (12-06-01) shall be amended to reflect current procedure at BCFC.

63. Fiscal Management: Accounting Procedures (02-01-02) shall be deleted due to information in this policy being covered in BCFC policy 02-04-01.

64. Fiscal Management: Agency Funds (02-01-03) shall be deleted due to information in this policy being covered in BCFC policies 02-01-01, 02-02-01 and 02-07-01.

65. Fiscal Management: Insurance (02-01-04) shall be deleted due to information in this policy being covered in BCFC policy 02-04-01.

66. Fiscal Management: Budget (02-01-05) shall be deleted due to information in this policy being covered in BCFC policy 02-05-01.

67. Fiscal Management: Audit (02-01-06) shall be deleted due to information in this policy being covered in BCFC policy 02-04-01.

68. Inmate Control of Personal Funds (02-02-02) shall be deleted due to information in this policy being covered in BCFC policy 02-08-01.

69. Storage and Disposition of Inmate Monies Received on Weekends, Holidays, and Between 4 p.m. and 8 a.m. Weekdays (02-02-03) shall be deleted due to information in this policy being covered in BCFC policy 02-08-01.

70. Procedures for Control of Excessive Sick Leave Use (03-02-02) shall be deleted due to information in this policy being covered in 101 KAR 2:100.

71. Procedures for New Employees Reporting for Duty (03-05-02) shall be deleted due to the information in this policy being covered in the Employee Handbook.

72. Affirmative Action - E.E.O. (03-07-01) shall be deleted due to the information in this policy being covered in CPP 3.4 and BCFC policy 03-05-01.

73. Staff and Visitor Meals (03-13-01) shall be deleted due to the information in this policy being covered in BCFC policy 11-04-01.

74. Employee Grievance Policy and Procedure (03-14-01) shall be deleted due to information in this policy being covered in CPP 3.4.

75. Shift Post Assignment and Transfers (03-15-01) shall be deleted due to the information in this policy being covered in BCFC Post Orders.

76. Workers' Compensation (03-16-01) shall be deleted due to the information in this policy being covered in CPP 3.18 and BCFC 02-04-01.

77. Duties and Responsibilities of the Institutional Captain (09-04-01) shall be deleted due to the information in this policy being covered in BCFC Post Orders.

78. Duties and Responsibilities of the Shift Supervisor (09-04-02) shall be deleted due to the information in this policy being covered in BCFC Post Orders.

79. Duties and Responsibilities of the Fire and Safety Officer (09-04-03) shall be deleted due to the information in this policy being covered in BCFC policy 08-02-01.

80. Collection, Preservation, and Identification of Physical Evidence (09-06-02) shall be deleted due to the information in this policy being covered in BCFC policy 09-06-01.

81. Regulation of Inmate Movements (09-10-01) shall be deleted due to the information in this policy being covered in BCFC policy 09-25-01.

82. Guidelines for Contractors (09-11-01) shall be deleted due to the information in this policy being covered in BCFC policy 09-05-01.

83. Outside Hospital Security (09-12-01) shall be deleted due to the information in this policy being covered in BCFC Post Orders.

84. Outside Details (09-13-01) shall be deleted due to the information in this policy being covered in BCFC Post Orders.

85. Count Documentation (09-15-02) shall be deleted due to the information in this policy being covered in BCFC policy 09-15-01.

86. Security and Records Office Documentation for Placement and Movement of Inmates (09-15-03) shall be deleted due to the information in this policy being covered in BCFC policy 09-15-01.

87. Recreational Area Security (09-17-01) shall be deleted due to the information in this policy being covered in BCFC Post Orders.

88. Reception Area Security (09-18-01) shall be deleted due to information in this policy being covered in BCFC policy 12-01-01.

89. Use of Restraints (09-23-01) shall be deleted due to the information in this policy being covered in CPP 9.1.

(c) The necessity and function of the proposed administrative regulation is: To update operating procedures at Bell County Forestry Camp 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: February 15, 1995
Transportation Cabinet

(1) **600 KAR 1:101**. Procurement of professional engineering and related services.

(2) The Kentucky Transportation Cabinet intends to promulgate (amend an existing) administrative regulation dealing with the procedures the Transportation Cabinet must follow in the procurement of professional engineering and related services. The emphasis in the change of the

administrative regulation will be the establishment of recordkeeping and accounting standards to be used by the engineering firms in dealing with the Transportation Cabinet. The Transportation Cabinet will evaluate certain items in the negotiation of a contract, e.g. whether a cost will be a direct cost, or an indirect cost (overhead cost), and how specific costs such as computer time and printing may be charged. The principles to be followed by the Transportation Cabinet in auditing the engineering firms will also be considered.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for March 30, 1995 at 8 a.m. local prevailing time, at 501 High Street, 1st Floor Training Room A & B, 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 March 30, 1995, 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 is as follows:

(a) The statutory authority for the promulgation of an administrative regulation relating to the procurement of professional engineering and related services is KRS 45A.800 through 45A.835; 23 USC; 23 CFR 172; and 49 CFR 18.

(b) The administrative regulation that the Transportation Cabinet intends to promulgate is an amendment of an existing administrative regulation.

(c) The necessity and function of the proposed administrative regulation relating to the procurement of professional engineering and related services is: This administrative regulation specifies the procedures to be followed by the Transportation Cabinet when contracting for professional engineering or related services. It implements the provisions of KRS 45A.800 to 45A.835. In addition, because of interest expressed by the engineering community, the Transportation Cabinet is attempting to include more information relating to acceptable methods of accounting on the part of engineering firms and standardized methods of auditing on the part of the Transportation Cabinet.

(d) The benefits expected are: Better understanding in the engineering community of the financial recordkeeping expectations of the Kentucky Transportation Cabinet, as well as uniformity in the manner engineering firm audits are performed by the Transportation Cabinet.

Date: February 15, 1995
Transportation Cabinet

(1) **600 KAR 4:010** relating to certification of the disadvantage, minority, and women business enterprises.

(2) The Kentucky Transportation Cabinet 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 March 29, 1995 at 9:30 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 March 29, 1995, 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 the certification of disadvantaged, minority, and women business enterprises is KRS 174.080 and 49 CFR Part 23.

(b) The administrative regulation that the Transportation Cabinet intends to promulgate will amend 600 KAR 4:010, certification of disadvantaged, minority, and women business enterprises.

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

(d) The benefits expected from the administrative regulation are renewed compliance with the federal mandate. At its last amendment of this administrative regulation, the Transportation Cabinet inadvertently promulgated a part of this administrative regulation to be not in compliance with the federal mandate. The Federal Highway Administration has notified the Kentucky Transportation Cabinet that changes must be made

immediately to this administrative regulation in order to retain eligibility for federal highway funding.

Date: February 15, 1995
Transportation Cabinet

(1) **600 KAR 4:020** relating to the disadvantaged, minority, and business enterprise program.

(2) The Kentucky Transportation Cabinet 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 March 29, 1995 at 9:30 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 March 29, 1995, 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 disadvantaged, minority, and women business enterprise program is KRS 174.080 and 49 CFR Part 23.

(b) The administrative regulation that the Transportation Cabinet intends to promulgate will amend 600 KAR 4:020, the disadvantaged, minority, and women business enterprise program.

(c) The necessity and function of the proposed administrative regulation is as follows: Title 49 of the Code of Federal Regulations Part 23 requires that most recipients of funds from the United States Department of Transportation (USDOT) implement a program supporting the fullest possible participation of firms owned and controlled by minorities, women, and socially and economically disadvantaged individuals in USDOT programs. The Kentucky Transportation Cabinet as a recipient of USDOT funds is required by the federal regulation to have a program that requires the participation of disadvantaged, minority, and women business enterprises in contracts financed in hole or in part by federal funds. This administrative regulation established the procedures to be followed by and requirements of contractors and subcontracts dealing with the Transportation Cabinet.

(d) The benefits expected from the administrative regulation are renewed compliance with the federal mandate. At its last amendment of this administrative regulation the Transportation Cabinet inadvertently promulgated a part of this administrative regulation not in compliance with the federal mandate. The Federal Highway Administration has notified the Kentucky Transportation Cabinet that changes must be made immediately to this administrative regulation in order to retain eligibility for federal highway funding.

EDUCATION, ARTS, AND HUMANITIES CABINET
Kentucky Board of Education

Date: February 14, 1995
Kentucky Board of Education

(1) **701 KAR 5:120**, Administrative regulation waiver process.

(2) The Kentucky Board of Education 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 March 30, 1995, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, 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 March 30, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to Mr. Kevin Noland, Associate Commissioner, Department of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

(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 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 Education at the address listed above.

(7) Information relating to the proposed amendment to an administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to regulation waiver process is KRS 156.160 and 156.070.

(b) The administrative regulation that the Kentucky Board of Education intends to promulgate will provide a process to be followed for successful schools and school districts to request waivers from Kentucky Board of Education regulations, as well as providing a list of the regulations subject to waiver.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 156.160(2) provides that at the request of a local board of education or a school council, a local school district superintendent shall request that the Kentucky Board of Education waive any regulation promulgated by that body. To be granted a waiver from regulations, the school district or school must exceed its threshold. The statute further provides that regulations relating to health and safety, civil rights, any regulation required by federal law, and regulations relating to measurement of performance outcomes and determinations of successful school districts or schools shall not be subject to waiver. A regulation is needed on this topic to establish the process to be followed to request a waiver, and also to list the regulations subject to waiver that do not fall under the exceptions cited in the statute.

(d) The benefits expected from the administrative regulation are: This should enable schools and school districts which have already demonstrated that they are successful at improving student learning to be subject to less regulation. This should give the successful schools and school districts more flexibility in the conduct of their schools and school districts.

(e) The administrative regulation will be implemented as follows: This administrative regulation will be implemented by receiving requests for waivers and submitting them to the Kentucky Board of Education to grant the waivers as to one or more regulations on the list approved for waiver, as requested by the successful school or school district.

Date: February 14, 1995
Kentucky Board of Education

(1) **702 KAR 1:140**, Student records; hearing procedures.

(2) The Kentucky Board of Education 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 March 30, 1995, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, 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 March 30, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to Mr. Kevin Noland, Associate Commissioner, Department of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

(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 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 Education at the address listed above.

(7) Information relating to the proposed amendment to an administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to student records hearing procedures is KRS 160.730 and 156.070.

(b) The administrative regulation that the Kentucky Board of Education intends to promulgate will comply with the legislative mandate to promulgate a regulation to establish hearing procedures that may be used to challenge the content of a student record when no agreement can be reached.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 160.730 provides for parents or eligible students to challenge the content of a student record to ensure that the record or report is not inaccurate, misleading, or otherwise in violation of privacy or other rights of the student. KRS 160.370 also mandates by administrative regulation hearing procedures that may be utilized to challenge the content of a student record when no agreement can be reached. The proposed administrative regulation will establish those hearing procedures.

(d) The benefits expected from the administrative regulation are: As mandated by statute, this administrative regulation will provide a process to increase the likelihood that student records are accurate.

(e) The administrative regulation will be implemented as follows: This administrative regulation will be implemented local school districts upon request of a student's parent or guardian who cannot reach agreement with the school district as to the appropriate content of a student record, and wishes to pursue the matter through a hearing process.

State Board for Elementary and Secondary Education

Date: February 13, 1995
State Board for Elementary and Secondary Education

(1) **702 KAR 7:031**, Repeal of 702 KAR 7:030, Census. This administrative regulation is necessary to repeal 702 KAR 7:030, Census.

(2) The State Board for Elementary and Secondary Education 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 March 30, 1995 at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, 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 March 30, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to Mr. Kevin Noland, Associate Commissioner, Department of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

(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 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 Education at the address listed above.
(7) Information relating to the proposed amendment to an administrative regulation.
(a) The statutory authority for the promulgation of an administrative regulation relating to the census is KRS 156.160.
(b) The administrative regulation that the Department of Education intends to repeal is an existing administrative regulation.
(c) The necessity and function of the existing administrative regulation is to assure uniformity in maintaining the school census.
(d) The benefits expected from the administrative regulation repeal is to reduce repetition of statutory mandates.

Date: February 10, 1995
State Board for Elementary and Secondary Education
(1) **702 KAR 7:041**, Repeal of 702 KAR 7:040, Experimental schools. This administrative regulation is necessary to repeal 702 KAR 7:040, Experimental schools.
(2) The State Board for Elementary and Secondary Education 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 March 30, 1995 at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, 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 March 30, 1995, the public hearing will be cancelled.
(5)(a) Persons wishing to request a public hearing should mail their written request to Mr. Kevin Noland, Associate Commissioner, Department of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.
(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 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 Education at the address listed above.
(7) Information relating to the proposed amendment to an administrative regulation.
(a) The statutory authority for the repeal of an administrative regulation relating to experimental schools is KRS 156.070.
(b) The administrative regulation that the Department of Education intends to repeal is an existing administrative regulation, 702 KAR 7:040.
(c) The necessity and function of the existing administrative regulation was to provide for the approval of experimental schools.
(d) The benefits expected from the repealer administrative regulation is to conform to KRS 158.060 which now allows flexibility at the local school district level in providing the equivalent of a six (6) hour instructional day.

LABOR CABINET
Department of Workplace Standards
Division of Employment Standards and Mediation

Date: February 15, 1995
Labor Cabinet
Department of Workplace Standards
Division of Employment Standards and Mediation
(1) Regulation number and title: **803 KAR 1:115**, Prevailing wage written overtime agreement requirements.
(2) The Kentucky Labor Cabinet, Division of Employment Standards and Mediation 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 10 a.m., local time, on Wednesday, March 29, 1995, in the Bay 3 Conference Room at 1047 U.S. Highway 127 South, Suite #3, Frankfort, Kentucky 40601.
(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 March 29, 1995, 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 Stephen E. Waltrip, Counsel, Labor Cabinet, Office of General Counsel, 1047 U.S. 127 South, Suite #4, 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 Labor Cabinet's Office of 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 337.520(1).

(b) The division intends to promulgate a new regulation numbered and titled as 803 KAR 1:115 - Prevailing wage written overtime agreement requirements. This regulation relates to KRS 337.530 and 337.540, and sets forth the procedure to be followed when written agreements are executed between employees and employers as contemplated by KRS 337.540(1). Effective July 15, 1994 was the amended version of KRS 337.540, which permits an employer and employee to enter into a written agreement to work on a public project in excess of eight (8) hours, but not more than ten (10) hours, in a calendar day, (limited by provisions of KRS 337.540). The proposed regulation will explain in further detail how a prior, written agreement is to be executed and applied, and applicability of collective bargaining agreements to KRS Chapter 540 as regards consecutive projects.

(c) The necessity and function of the proposed administrative regulation is as follows: Pursuant to KRS 337.520, the Kentucky Labor Cabinet, Division of Employment Standards and Mediation is considering promulgating this regulation to clarify potential questions as to what shall constitute a "written agreement" under the General Assembly's recent revisions to KRS 337.540.

(d) The benefits expected from this administrative regulation are: Reduction of inconsistent interpretations of KRS 337.520(1), providing uniform guidelines for businesses, employees and labor organizations, and location of records to reduce investigative interference.

(e) The administrative regulation will be implemented as follows: The Kentucky Labor Cabinet, Department of Workplace Standards, Division of Employment Standards and Mediation, anticipates implementing this regulation into the procedure for enforcement of the prevailing wage statutes in KRS Chapter 337. As a part of the division's response to a complaint alleging violation of any applicable statutory provision, a field investigator will initiate an investigation to ascertain whether a written agreement exists, as defined by this regulation.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance

Date: February 14, 1995
Public Protection and Regulation Cabinet
Department of Insurance

(1) Regulation number and title: **806 KAR 9:220**, Agent continuing education.

(2) Public Protection and 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 March 30, 1995 at 10 a.m., at the Department of Insurance, 215 West Main 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 March 30, 1995, 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, to the attention of Carla H. Montgomery.

(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 relating to agent continuing education is KRS 304.9-295.

(b) The administrative regulation that the cabinet intends to promulgate will amend 806 KAR 9:220 as follows: Section 4(2) will specify that the provider shall mail the certificate of completion to the department. Section 4(3) states that an agent is ultimately responsible for his continuing education being filed with the department. Section 7(1) will be amended to state that an agent's license shall be cancelled if the department does not receive proof of continuing education. Section 7(2) will be amended to explain what is required for the reinstatement of a prior license or issuance of a new license when a license has been cancelled pursuant to Section 7(1).

(c) The necessity and function of the proposed administrative regulation is: The department desires to clarify an agent's responsibility in not only obtaining continuing education but in proving completion of continuing education courses to the department. Many agents have their licenses cancelled because the department never receives the certificates of completion for their continuing education. The amendment clarifies to insurance agents that their license shall be cancelled if the proof of continuing education is not received. The amendment in Section 7(2) is necessary to prevent agents who have had their licenses cancelled pursuant to Section 7(1) from applying for a new license in order to avoid the continuing education requirements.

(d) The benefits expected from administrative regulation are: Insurance agents will be better informed of their individual responsibility for reporting their continuing education to the department. The department will have clearer guidelines for receiving proof of continuing education and for reinstatement of agents' licenses.

(e) The administrative regulation will be implemented as follows: The provider of continuing education shall file proof of continuing education with the department within 30 days of the continuing education course. The agent is responsible to insure that this proof is filed with the department. The department shall cancel any agent license if it has not received proof of the completed continuing education. An agent shall follow the instructions in Section 7(2) to have his license reinstated.

Date: February 14, 1995
Public Protection and Regulation Cabinet
Department of Insurance

(1) The subject matter of the proposed administrative regulation, **806 KAR 9:230**, is licensing requirements for administrators including proof of financial responsibility and good reputation.

(2) The Public Protection and Regulation Cabinet, Department of 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 March 30, 1995, at 10 a.m., at the Department of Insurance, 215 West Main 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 March 30, 1995, the public hearing will be cancelled.

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

(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 relating to licensing of administrators is KRS 304.2-110 and 304.9-052.

(b) The administrative regulation that the department intends to promulgate will not amend an existing administrative regulation. It will establish the licensing requirements for administrators.

(c) The necessity and function of the proposed administrative regulation is as follows: Pursuant to KRS 304.9-052, an administrator must demonstrate to the commissioner his financial responsibility and his competency, trustworthiness, reliability and good reputation. Currently there are no provisions to demonstrate these matters to the commissioner. This administrative regulation will require administrators to post a bond or insurance policy to demonstrate their financial responsibility. This administrative regulation will also require proof of competency, trustworthiness, reliability and good reputation. The commissioner will have more knowledge about the administrators when issuing licenses to administrators. It will also further protect consumers whose insurance claims and payments are handled by administrators from fraud or negligence.

(d) The benefits expected from the administrative regulation are: The commissioner may have greater knowledge of the administrator's financial responsibility and background before granting licenses to these administrators. Consumers, whose insurance claims and payments are handled by an administrator, are protected by the bond or insurance policy filed by the administrator.

(e) The administrative regulation will be implemented as follows: The proposed administrative regulation will establish licensing requirements for administrators. The administrators shall provide specific proof of competency, trustworthiness, reliability and good reputation. Administrators must also post a bond or insurance policy to demonstrate financial responsibility and protect their clients. Once all of the information has been provided to the commissioner, the commissioner may issue an administrator's license. Then the administrator must demonstrate his financial responsibility each year.

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

Date: February 7, 1995
Public Protection and Regulation Cabinet
Department of Housing, Buildings and Construction

(1) Regulation Number and Title: **815 KAR 20:070**, Plumbing fixtures.

(2) The Board 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 10 a.m., local time, on Thursday, March 30, 1995 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 March 30, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to: 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 318.130.

(b) The department intends to amend 815 KAR 20:070, Plumbing fixtures by amending Section 11 to ensure that water heaters can be replaced without excessive cost to homeowners and to minimize the damage caused by leaking water heaters.

(c) The Necessity and Function of the proposed administrative regulation is as follows: This administrative regulation relates to the kind, type and quality of plumbing fixtures that shall be used in the construction of plumbing systems and identifies the manufacturer's specification number of the material accepted in those installations.

(d) The benefits expected from this administrative regulation are: To avoid replacement/repair cost problems.

(e) This administrative regulation will be implemented by plan review and inspection by the Kentucky Division of Plumbing inspectors.

CABINET FOR HUMAN RESOURCES
Department for Health Services

Date: January 13, 1995
Cabinet for Human Resources
Department for Health Services

(1) **902 KAR 14:060** - 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 Department for Health Services intents 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 March 31, 1995, at 9 a.m. in the Health Services Auditorium, Health Services Building, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

(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 March 31, 1995, 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 211.952, 216B.042, and 216B.105.

(b) The administrative regulation that the Department for Health Services 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 (NEHT) services, 902 KAR 20:120, was found deficient by the Administrative Regulation Review Subcommittee at its March 7, 1994, meeting. 902 KAR 20:120 was found to exceed statutory authority of KRS 211.950 by separating ambulances and ambulance providers into two (2) separate categories, emergency and nonemergency, and further exceeded the statute by prohibiting NEHT vehicles from having lights and sirens. 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 NEHT 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. The responsibility for regulating NEHT services was transferred from the Office of Inspector General, Division of Licensing and Regulation, to the Department for Health Services pursuant to KRS 211.952 as passed during the 1994 regular session of the General Assembly:
2. NEHT services are now included under the licensing umbrella of ambulance service providers and are licensed under the licensing procedures and fee schedule for ambulance service providers as found in 902 KAR 14:030E;
3. Only the section prohibiting the use of emergency lights or sirens by vehicles that provide NEHT services was found deficient;
4. The section prohibiting NEHT vehicles from having emergency lights or sirens is deleted; and
5. 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 Emergency Medical Services Branch, Department for Health Services, Cabinet for Human Resources, in accordance with KRS 211.952, 216B.042 and 216B.105.

Office of Inspector General

DATE: February 15, 1995
Cabinet for Human Resources
Office of Inspector General

(1) **902 KAR 20:270**, Mobile health services.

(2) The Office of Inspector General 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 March 31, 1995, 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 March 31, 1995, the public hearing will be canceled.

(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 (V\TDD).

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to mobile health services is KRS Chapter 216B.

(b) The administrative regulation that the Office of Inspector General intends to promulgate will amend 902 KAR 20:270, Section 4(2)(c) to replace "handicapped" with appropriate terminology. It will also delete Section 5(2)(d)3, which required a written agreement between In Home I.V. Therapy Services and Home Health Agencies.

(c) The necessity and function of the proposed administrative regulation is as follows: The proposed amendments of Section 4(2)(c) will modify the terminology that refers to persons with a disability in a manner that could be construed as insensitive, demeaning, or otherwise unacceptable. Section 5(2)(d)(3) will be deleted due to the Franklin Circuit Court Judgment entered in the case of Kentucky Home Therapeutics, Inc. v. CHR, 93-CI-01524, which found it to be unconstitutional.

(d) The benefits expected from this proposed administrative regulation are that the cabinet will be in compliance with the principles of the Americans with Disabilities Act of 1990.

(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 Health Services
Division of Maternal and Child Health
Pediatric Services/Dental Program

Date: February 15, 1995
Cabinet for Human Resources
Department for Health Services
Division of Maternal and Child Health
Pediatric Services/Dental Program

(1) Enforcement of Water Fluoridation Program, administrative number: **902 KAR 115:020**.

(2) The Cabinet for Human Resources, Department for Health 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 March 31, 1995 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 public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to March 31, 1995, 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 by writing the Administrative Regulation Coordinator, Department for Health Services, Comissioner's Office, 275 East Main Street, Frankfort, Kentucky 40621, or calling (502) 564-3970 between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the enforcement of Water Fluoridation Program is KRS 211.190(11).

(b) The Necessity and Function of the proposed administrative regulation is as follows: The administrative regulation that the Cabinet for Human Resources, Department for Health Services, Division of Maternal and Child Health, Dental Program, intends to promulgate will establish the procedures for the enforcement of water fluoridation program. It specifies procedures for 1) notice of violation for failure to provide supplemental water fluoridation; 2) hearing procedures for community water plant operations regarding the cabinet's decision to impose a fine for noncompliance.

Department for Social Insurance
Division of Management and Development

Date: February 15, 1995
Cabinet for Human Resources
Department for Social Insurance
Division of Management and Development

(1) **904 KAR 2:015**, Supplemental programs for the aged, blind and disabled.

(2) Cabinet for Human Resources, 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 March 31, 1995, 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 March 31, 1995, 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, Third Floor West, CHR Building, 275 East Main, 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 State Supplementation Program is KRS 205.245. Since 1977, the Commonwealth of Kentucky has had an agreement with the Department of Health and Human Services to pass through the cost of living SSI benefit increases to state supplementation recipients.

(b) The administrative regulation that the Department for Social Insurance intends to promulgate will amend 904 KAR 2:015. The amendment will revise the standard of need for all levels of care for the state supplementation program due to the pass through of the 1995 cost of living adjustment. In addition, provisions regarding advanced level training workshops are added for personal care homes who are participating in the Mentally Ill or Mentally Retarded (MI or MR) Supplement Program.

(c) The Necessity and Function of the proposed administrative regulation is as follows: This administrative regulation is necessary to implement the mandated increases in the standard of need of the state supplementation program due to the pass through of the supplemental security income (SSI) 1995 cost of living adjustment.

(d) The benefits expected from administrative regulation are: This administrative regulation will increase the standard of need for all levels of care for the recipients of the state supplementation program. Staff of personal care homes participating in the MI or MR Supplement Program who attend the advanced level training workshops will be included in the current maximum of five (5) staff per year for the twenty-five (25) dollar reimbursement. Advanced level training is expected to enhance the skills of personal care home staff, thus improving the quality of services to personal care home residents.

Date: February 15, 1995
Cabinet for Human Resources
Department for Social Insurance

(1) **904 KAR 2:017**. Job opportunities and basic skills (JOBS) child care and supportive services.

(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 March 31, 1995, 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 March 31, 1995, 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 Job opportunities and basic skills (JOBS) child care and supportive services is KRS 194.050 and 45 CFR 255.1.

(b) The administrative regulation that the Department for Social Insurance intends to promulgate will amend 904 KAR 2:017, Job opportunities and basic skills (JOBS) child care and supportive services.

(c) The Necessity and Function of the proposed administrative regulation is as follows: The federal regulations at 45 CFR 255.1 require that child care maximum payment rates for the JOBS Program be revised at least biennially. The last time the rates were revised was in 1992. As a result of the rates being revised, the definitions that apply to the type of care provided had to also be revised. A clarification is also being made that prevents monthly part-time child care from exceeding monthly part-time maximums. Finally, we are changing the method by which transportation payments shall be provided to JOBS participants by allowing arrangements to be made by the state AFDC agency or a contractor.

(d) The benefits expected from the administrative regulation amendment are: Child care payments that represent what current charges are from the providers on a statewide basis as a result of a market rate survey conducted by the Department for Social Services. The clarification regarding part-time child care payments will help to clarify when a child is considered being cared for full-time from part-time. The change to the method by which transportation shall be provided will allow better access to transportation for JOBS participants.

Date: February 15, 1995
Cabinet for Human Resources
Department for Social Insurance
Division of Management and Development

(1) **904 KAR 2:035,** Right to apply and reapply.

(2) Cabinet for Human Resources, 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 March 31, 1995 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 March 31, 1995 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, 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 Aid to Families with Dependent Children (AFDC) Program, KRS 13A.120, 194.050, 205.200(2), 116.048.

(b) The administrative regulation that the Department for Social Insurance intends to promulgate will amend 904 KAR 2:035, Right to apply and reapply. The specified regulation is amended to: (1) incorporate the voter registration provisions of 42 USC 1973gg-10 and KRS 116.048; (2) reference the provision of interpreter services for the deaf and hard of hearing, as specified in 900 KAR 1:070, including interpreter services for non-English speaking individuals; (3) include a reference to the food stamp administrative regulation at 904 KAR 3:030, Application process, where the integrated AFDC, food stamp and medical assistance application form, know as the Kentucky Automated Management and Eligibility

System - Income Maintenance (KAMES-IM) form, is incorporated by reference; and (4) clarify the current policy and procedures for the AFDC application process, with no change in current policy.

(c) The Necessity and Function of the proposed administrative regulation is as follows: The proposed amendments to this administrative regulation are necessary to:

1. Comply with the provisions of:
a. 42 USC 1973gg-10;
b. KRS 116.048;
2. To incorporate the provisions of 900 KAR 1:070;
3. To include a reference to the administrative regulation where the KAMES-IM form is incorporated by reference, in accordance with KRS Chapter 13A.

(d) The benefits expected from administrative regulation are: The amendments to this administrative regulation will: (1) allow eligible participants to register to vote, as mandated by the National Voter Registration Act; (2) afford the deaf, hard of hearing, and non-English speaking individuals the right to interpreter services; and (3) to incorporate the KAMES-IM form.

Date: February 15, 1995
Cabinet for Human Resources
Department for Social Insurance
Division of Management and Development

(1) **904 KAR 2:055,** Hearings and appeals.

(2) Cabinet for Human Resources, 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 March 31, 1995 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 March 31, 1995, 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, CHR Building, Third Floor 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 (V/TDD).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to hearings and appeals is KRS 205.231.

(b) The administrative regulation that the Department for Social Insurance intends to promulgate will amend an existing administrative regulation. All references to provisions established for the Medicaid program will be removed and will be contained in administrative regulations the Department for Medicaid Services intends to promulgate. In addition, clarification will be provided for existing policies regarding timely request for a hearing and postponement of a hearing.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation sets forth procedures for hearings and appeals.

(d) The benefits expected from administrative regulation are: This administrative regulation will change the time limitation for a hearing request to be considered timely from 30 days to 40 days of the date of the advance notice of adverse action. The 40 day time frame is allowed in situations when 10 day advance notice is required on the case action to comply with federal regulations. The 30 day time frame for the claimant to file for a hearing for case actions requiring adequate notice not requiring the 10 day advance notice, is unchanged. Provisions are added for existing policy regarding the postponement of a hearing. All information regarding the Medicaid Program will be removed from this administrative regulation and a system of hearings and appeals for the Medicaid Program will be provided in administrative regulations form the Department for Medicaid Services.

Date: February 15, 1995
Cabinet for Human Resources
Department for Social Insurance
Division of Management and Development

(1) **904 KAR 3:030**, Application process.

(2) Cabinet for Human Resources, 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 March 31, 1995 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 March 31, 1995 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, 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 Food Stamp Program is KRS 194.050 and 13A.120.

(b) The administrative regulation that the Department for Social Insurance intends to promulgate will amend 904 KAR 3:030, Application process. The specified regulation is amended to: (1) incorporate the voter registration provisions of 42 USC 1973gg-10 and KRS 116.048, including the appropriate forms by reference; (2) reference the provision of interpreter services for the deaf and hard of hearing, as specified in 900 KAR 1:070, including interpreter services for non-English speaking individuals; and (3) delete the obsolete Kentucky Automated Management and Eligibility - Food Stamp application and inserting the Kentucky Automated Management and Eligibility System - Income Maintenance (KAMES-IM) form in its place, by reference.

(c) The Necessity and Function of the proposed administrative regulation is as follows: The proposed amendments to this administrative regulation are necessary to:

1. Comply with the provisions of:

a. 42 USC 1973gg-10;

b. KRS 116.048; and

2. To incorporate the provisions of 900 KAR 1:070;

3. Incorporate the KAMES-IM form by reference, in accordance with KRS Chapter 13A.

(d)The benefits expected from administrative regulation are: The amendments to this administrative regulation will: (1) allow eligible participants to register to vote, in compliance with the National Voter Registration Act; (2) afford the deaf, hard of hearing, and non-English speaking individuals the right to interpreter services; and (3) to incorporate the KAMES-IM form.

Department for Social Services
Division of Family Services

Date: February 15, 1995
Cabinet for Human Resources
Department for Social Services
Division of Family Services

(1) **905 KAR 2:140,** Child day care programs.

(2) The Department for Social Services 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 March 31, 1995 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 March 31, 1995, 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.

(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 Services, Cabinet for Human Resources, 6th Floor West, 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 child day care programs is KRS 194.050, 199.892, 199.899 and 45 CFR 255.1.

(b) The administrative regulation that the Department for Social Services intends to promulgate will amend 905 KAR 2:140, Child day care

programs.

(c) The Necessity and Function of the proposed administrative regulation is as follows: The federal regulations at 45 CFR 255.1 require that child care maximum payment rates for TCC and At-Risk Child Care Programs be revised at lease biennially. Additionally, KRS 199.899 requires the cabinet to conduct a market rate survey at least biennially to determine the rates paid by the cabinet for child care services receiving public funds. The last time the rates were revised was in 1992. As a result of the rate survey the definitions that apply to the type of care provided had to be revised.

(d) The benefits expected from the administrative regulation amendment are: Child care maximum payment rates that represent the 75% percentile of current charges from providers on a statewide basis as a result of a survey conducted by the University of Kentucky for the department.

Department for Medicaid Services

Date: February 15, 1995
Cabinet for Human Resources
Department for Medicaid Services

(1) **907 KAR 1:025**, Payments for nursing facility services and intermediate care facility services.

(2) Cabinet for Human Resources, Department for Medicaid 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 March 31, 1995 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 March 31, 1995, 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 Medicaid Services, Division of Program Development and Budget, CHR Building, Third Floor 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 (V/TDD).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to Medicaid nursing facility services and intermediate care facility for the mentally retarded services are KRS 194.050, 42 CFR 430, 431, 432, 433, 435, 440, 441, 442, 447, 456; 42 USC 1396 a, b, c, d, g, i, l, n, o, p, r, r-2, r-3, r-5, and s.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will amend 907 KAR 1:025, Payments for nursing facility and intermediate care facility for mentally retarded services, to provide for an increase in the valuation of capital assets. This change shall be applicable for facility rates made for periods beginning July 1, 1995 and thereafter. No rate adjustment shall be applicable for services provided prior to July 1, 1995, or for periods preceding the finalization of the transfer of ownership.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation sets forth the method for reimbursement by the Kentucky Medicaid Program for nursing facility services and intermediate care facility for the mentally retarded services.

(d) The benefits expected from administrative regulation are: The long-term effect of providing for an increase in the valuation of capital assets for nursing facilities and intermediate care facilities for the mentally retarded will be to insure future accessibility for Medicaid recipients to nursing facility and ICF-MR beds by recognizing reasonable capital asset costs.

Date: February 15, 1995
Cabinet for Human Resources
Department for Medicaid Services

(1) **907 KAR 1:030**, Home health agency services.

(2) Cabinet for Human Resources, Department for Medicaid 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 March 31, 1995 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 March 31, 1995, 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 Medicaid Services, Division of Program Development and Budget, CHR Building, Third Floor 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 (V/TDD).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to Medicaid home health agency services are KRS 194.050 and 205.520.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will amend 907 KAR 1:030 to revise the incorporated by reference Home Health Services Manual. The manual is being revised to update Appendix XVII Case Management Protocol - Home Infusion Therapy.

(c) The Necessity and Function of the proposed administrative regulation is as follows: This administrative regulation sets forth the provisions relating to home health care services for which the Medicaid Program shall make payment.

(d) The benefits expected from administrative regulation are: To incorporate by reference a revised Home Health Services Manual in accordance with KRS Chapter 13A so agency staff and participating Medicaid providers can be furnished the most up-to-date provider manual.

Department for Mental Health/Mental Retardation Services

Date: February 15, 1995
Cabinet for Human Resources
Department for Mental Health/Mental Retardation Services

(1) **908 KAR 2:040**. Hospital district assignment.

(2) The Department for Mental Health/Mental Retardation Services 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 March 31, 1995, 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 March 31, 1995, 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 hospital district assignments is KRS Chapter 202A and 210.300.

(b) The administrative regulation that the Department for Mental Health and Mental Retardation Services intends to promulgate will amend 908 KAR 2:040. It will revise the regulation to comply with language requirements of the Americans with Disabilities Act and KRS Chapter 13A.

(c) The Necessity and Function of the proposed administrative regulation is as follows: To designate hospital districts for the purpose of determining to which of the state institutions persons with mental illness admitted from each county shall initially be sent.

(d) The benefits expected from the administrative regulation are: To ensure that language dealing with individuals with disabilities has been modified to reflect appropriate terminology as required by the Americans with Disabilities Act.

Date: February 15, 1995
Cabinet for Human Resources
Department for Mental Health/Mental Retardation Services

(1) **908 KAR 3:010**. Patient's rights.

(2) The Department for Mental Health/Mental Retardation Services 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 March 31, 1995, 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 March 31, 1995, 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 patient's rights is KRS Chapter 202A and 202B.

(b) The administrative regulation that the Department for Mental Health and Mental Retardation Services intends to promulgate will amend 908 KAR 3:010. It will revise the regulation to comply with language requirements of the Americans with Disabilities Act and KRS Chapter 13A.

(c) The Necessity and Function of the proposed administrative regulation is as follows: To describe the rights of persons with mental illness and mental retardation and to establish rules for the use of seclusion, restraint, and treatment under emergency situations, in the treatment of these persons.

(d) The benefits expected from the administrative regulation are: To ensure that language dealing with individuals with disabilities has been modified to reflect appropriate terminology as required by the Americans with Disabilities Act.

Date: February 15, 1995
Cabinet for Human Resources
Department for Mental Health/Mental Retardation Services

(1) **908 KAR 3:020**. Care and treatment of inmates of penal institutions.

(2) The Department for Mental Health/Mental Retardation Services 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 March 31, 1995, 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 March 31, 1995, 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 care and treatment of inmates of penal institutions is KRS 202A.191 and 202B.060.

(b) The administrative regulation that the Department for Mental Health and Mental Retardation Services intends to promulgate will amend 908 KAR 3:020. It will revise the regulation to comply with language requirements of the Americans with Disabilities Act and KRS Chapter 13A.

(c) The Necessity and Function of the proposed administrative regulation is as follows: To prescribe the procedure to be employed in the hospitalization, care, and treatment of an inmate of a penal institution who has been transferred to a hospital, forensic psychiatric facility, or residential treatment center.

(d) The benefits expected from the administrative regulation are: To ensure that language dealing with individuals with disabilities has been modified to reflect appropriate terminology as required by the Americans with Disabilities Act.

Date: February 15, 1995
Cabinet for Human Resources
Department for Mental Health/Mental Retardation Services

(1) **908 KAR 3:030**. Convalescent patient status.

(2) The Department for Mental Health/Mental Retardation Services 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 March 31, 1995, 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 March 31, 1995, 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 convalescent patient status is KRS 202A.191 and 202B.060.

(b) The administrative regulation that the Department for Mental Health and Mental Retardation Services intends to promulgate will amend 908 KAR 3:030. It will revise the regulation to comply with language requirements of the Americans with Disabilities Act and KRS Chapter 13A.

(c) The Necessity and Function of the proposed administrative regulation is as follows: To establish standards to be employed in determining whether a person should be released on convalescent status to a less restrictive mode of treatment.

(d) The benefits expected from the administrative regulation are: To ensure that language dealing with individuals with disabilities has been modified to reflect appropriate terminology as required by the Americans with Disabilities Act.

Date: February 15, 1995
Cabinet for Human Resources
Department for Mental Health/Mental Retardation Services

(1) **908 KAR 3:040**. Transfer of patients to other facilities.

(2) The Department for Mental Health/Mental Retardation Services 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 March 31, 1995, 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 March 31, 1995, 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 transfer of patients to other facilities is KRS 202A.191 and 202B.060.

(b) The administrative regulation that the Department for Mental Health and Mental Retardation Services intends to promulgate will amend 908 KAR 3:040. It will revise the regulation to comply with language requirements of the Americans with Disabilities Act and KRS Chapter 13A.

(c) The Necessity and Function of the proposed administrative regulation is as follows: To prescribe the standards to be used in determining whether a person with mental illness or mental retardation should be transferred to another hospital, psychiatric facility, or residential treatment center.

(d) The benefits expected from the administrative regulation are: To ensure that language dealing with individuals with disabilities has been modified to reflect appropriate terminology as required by the Americans with Disabilities Act.

EMERGENCY ADMINISTRATIVE REGULATIONS NOW IN EFFECT

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

STATEMENT OF EMERGENCY
200 KAR 22:020E

200 KAR 22:020E should be enacted as an emergency administrative regulation to implement the provisions of KRS 18A.430(1) which require that pilot agencies participating in the Pilot Personnel Program shall develop and promulgate by administrative regulation comprehensive employment manuals establishing conditions of employment for employees in each organization unit of the pilot agencies. Time is of the essence because under KRS 18A.430(2)(b) pilot programs are of limited duration and will expire no later than July 15, 1998. Moreover, the Personnel Steering Committee is required by KRS 18A.425(2) to submit a comprehensive report to the Governor at least 60 days prior to the 1996 General Assembly. Therefore, this administrative regulation should be approved on an emergency basis so that the pilot programs will have a guideline for developing the comprehensive employment manuals required by statute. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

BRERETON C. JONES, Governor
CRIT LUALLEN, Secretary

FINANCE AND ADMINISTRATION CABINET
Office of the Secretary

200 KAR 22:020E. Guideline for comprehensive employment manuals required by pilot agencies under KRS 18A.430.

RELATES TO: KRS 18A.430
STATUTORY AUTHORITY: KRS 13A.100(1), 18A.430(1)(b), (c)
EFFECTIVE: February 14, 1995
NECESSITY AND FUNCTION: KRS 18A.430(1)(a) provides that pilot agencies participating in the Pilot Personnel Program authorized by KRS 18A.400 to 18A.450 shall develop comprehensive employment manuals establishing conditions of employment for employees in each organizational unit of the pilot agencies. KRS 18A.430(1)(b) requires that the employment manuals be promulgated by administrative regulation. According to KRS 18A.430(1)(c), the head of the agency in which the pilot program is located shall be responsible for preparing the regulation and submitting it to the Secretary of the Finance and Administration Cabinet for promulgation. This administrative regulation establishes a guideline to be used by the pilot agencies in the development of the employment manual prescribed by KRS 18A.430(1).

Section 1. Guideline for Development of Employment Manual. (1) In developing the comprehensive employment manual prescribed by KRS 18A.430(1), a pilot agency participating in the Pilot Personnel Program shall use the "Guideline for Comprehensive Employment Manual Required by Pilot Agencies under KRS 18A.430" ("Guideline") prepared by the Finance and Administration Cabinet and the Department of Personnel. The "Guideline" shall be used as a model and may be modified as required by the organizational structure of the agency participating in the Pilot Personnel Program or the particular program for which the comprehensive employment manual is being developed.

(2) If an agency in which a pilot program is located submits a proposed administrative regulation to the Finance and Administration Cabinet for promulgation under KRS 18A.430(1)(c), the proposed administrative regulation shall include the following statement which shall be signed by the head of the agency: "This draft has been prepared by (insert name of administrative body) in accordance with the applicable provisions of KRS Chapters 13A and 18A and is submitted for review and approval to the Secretary of the Finance and Administration Cabinet pursuant to the provisions of KRS 18A.430(1)(c)."

Section 2. Incorporation by Reference. (1) The "Guideline for Comprehensive Employment Manuals Required by Pilot Agencies under KRS 18A.430" (Revised January 1995) is incorporated by reference.

(2) The "Guideline" may be inspected, copied, or obtained at the Finance and Administration Cabinet, Office of Legal and Legislative Services, Room 374, Capitol Annex, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CRIT LUALLEN, Secretary
APPROVED BY AGENCY: February 10, 1995
FILED WITH LRC: February 14, 1995 at 3 p.m.
Contact Person: Gail Prewitt, Executive Assistant, Office of the Secretary, Finance and Administration Cabinet, Room 383, Capitol Annex Building, Frankfort, Kentucky 40601, (502) 564-4240.

REGULATORY IMPACT ANALYSIS

Contact Person: Gail Prewitt, Executive Assistant
(1) Type and number of entities affected: This regulation will affect all agencies which submit proposals for personnel pilot programs under the provisions of KRS 18A.400 to 18A.450.
(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 direct or indirect costs or savings on the cost of living and employment in the geographical area in which the administrative regulation will be implemented are anticipated. Because this is an emergency regulation, no public comments have yet been received and no public hearing has yet taken place regarding this proposed 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. No direct or indirect costs or savings on the cost of doing business in the geographical area in which the administrative regulation will be implemented are anticipated. Because this is an emergency regulation, no public comments have yet been received and no public hearing has yet taken place regarding this proposed regulation.
(c) Compliance, reporting and paperwork requirements of those affected, including factors increasing or decreasing costs (note any effects upon competition) for the:
1. First year following implementation: Pursuant to KRS 18A.430(1)(a), pilot programs are already required to develop comprehensive employment manual establishing conditions of employment for employees in each organizational unit. This regulation should reduce the program's compliance and paperwork requirements by providing a guideline to be used by the agencies in developing the employment manuals.
2. Second and subsequent years: Same as for first year.
(3) Effects on the promulgating administrative body:
(b) Direct and indirect costs or savings:

1. First year: Under KRS 18A.430(1)(c), employment manuals developed by the pilot programs are required to be promulgated as administrative regulations by the Secretary of the Finance and Administration Cabinet. By requiring a standardized guideline for development of the employment manuals by the pilot program, the time necessary for the secretary to review and promulgate the employment manuals as administrative regulations will be reduced.

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

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Under KRS 18A.430(1)(c), employment manuals developed by the pilot programs are required to be promulgated as administrative regulations by the Secretary of the Finance and Administration Cabinet. By requiring a standardized guideline for development of the employment manuals by the pilot program, the time necessary for the secretary to review and promulgate the employment manuals as administrative regulations will be reduced.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Pilot programs will be required to absorb the costs of developing employment manuals in their operating budgets. This regulation will reduce the cost of development by providing a guideline to be used by the agencies.

(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: Because this is an emergency regulation, no public comments have yet been received and no public hearing has yet taken place regarding this proposed regulation. However, no economic impact is expected.

(b) Kentucky: Because this is an emergency regulation, no public comments have yet been received and no public hearing has yet taken place regarding this proposed regulation. However, no economic impact is expected.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were assessed.

(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 on public health and environmental welfare are expected in the geographical area in which the regulation will be implemented or in Kentucky.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effect on the environment and public health would result if the regulation was not implemented.

(c) If detrimental effect would result, explain detrimental effect: Does not apply.

(9) Identify any statute, rule, administrative regulation or government policy which may be in conflict, overlapping, or duplication: To the best of the knowledge of the Office of the Secretary, there are no statutes, rules, administrative regulations or government policies which are in conflict, overlap, or duplicate the proposed administrative regulation.

(a) Necessity of proposed regulation if in conflict: Does not apply.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Does not apply.

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not applied. This is a procedural regulation which applies to all agencies equally.

STATEMENT OF EMERGENCY
702 KAR 5:030E

This emergency regulation, as approved by the State Board for Elementary and Secondary Education, is necessary to bring the school districts in the Commonwealth of Kentucky into compliance with the Federal Motor Carrier Safety Regulations, Title 49 CFR, Sections 382.201 through 382.215 and Section 391. This emergency administrative regulation shall be replaced by an ordinary administrative regulation and must be implemented by January 1, 1995. The ordinary administrative regulation will be filed concurrently with the Legislative Research Commission.

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

EDUCATION, ARTS, AND HUMANITIES CABINET
Department of Education
Office of District Support Services

702 KAR 5:030E. Superintendents' responsibilities.

RELATES TO: KRS 156.160, 189.540
STATUTORY AUTHORITY: KRS 156.070, 156.160, 157.320
EFFECTIVE: January 18, 1995
NECESSITY AND FUNCTION: KRS 156.160 and 189.540 require the State Board for Elementary and Secondary Education to promulgate administrative regulations relating to the safety of public school children, the transportation of ~~[such]~~ children to and from school, and the operation of school buses. This administrative regulation provides the district superintendent with standards ~~[the regulations]~~ necessary to assist him in administering the district's pupil transportation programs and to provide the maximum consistency throughout the state.

Section 1. Each school district superintendent shall be responsible for the general supervision of the district's pupil transportation program. The superintendent may designate another employee or other employees of the board to assist in carrying out this responsibility. ~~[For the purpose of these regulations, the word "superintendent" shall mean the superintendent or his designate.]~~

Section 2. The superintendent shall require that a safety inspection be made on each school bus owned and operated by the board or contracted to the board at least once each month that the district's schools are in session. This inspection shall be made by a state approved inspector. If, upon inspection, a school bus is found to be in unsafe operating condition, the superintendent shall withhold the bus from operation until the required repairs are made. The superintendent shall be responsible for keeping the records of the bus safety inspections on file, and shall be responsible for certifying to the Division of Pupil Transportation at least once each month that each school bus used during that month has received the proper safety inspection.

Section 3. The superintendent shall be responsible for preparing the school bus route maps, school bus inventories, and other reports required by the Division of Pupil Transportation for the purpose of making the pupil transportation cost calculation for the Fund to Support Education Excellence in Kentucky.

Section 4. The superintendent shall be responsible for making reports on a monthly basis to the Division of Pupil Transportation on all school bus accidents that happened to the district's buses during the month.

Section 5. The superintendent shall be responsible for providing

the necessary and required school bus driver training before a school bus driver shall enter into the duties of transporting pupils to and from school or events related to such schools. This training shall at least include the school bus driver course prescribed by the State Board for Elementary and Secondary Education, in accordance with 702 KAR 5:080, Sections 8 and 9 and shall be conducted by a state approved instructor. Evidence that the driver has received this training shall be submitted to the Division of Pupil Transportation and a copy shall be kept on file in the office of the superintendent.

Section 6. The superintendent shall be responsible for providing the required in-service school bus driver training which each school bus driver shall complete annually for approval renewal, in accordance with 702 KAR 5:080, Section 9. The in-service training shall include at least eight (8) hours of required instruction conducted by an approved instructor. Evidence that each driver has received this training shall be submitted to the Division of Pupil Transportation and a copy shall be kept on file in the office of the superintendent.

Section 7. District school bus inspectors shall complete an annual four (4) hour update conducted by a state approved school bus inspector and instructor.

Section 8. The training required to be designated as a state approved inspector is provided in the "Pupil Transportation Management Manual", as revised January 1992, which is incorporated by reference and which is available Monday through Friday, 8 a.m. to 4:30 p.m., from the Division of Pupil Transportation, Department of Education, 15th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

Section 9. Effective January 1, 1995, each superintendent shall implement a controlled substance and alcohol use and testing program in accordance with KDE - 1530, September, 1994, which is adopted and incorporated by reference. This document may be obtained from the Division of Pupil Transportation, Department of Education, 15th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky, 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the State Board for Elementary and Secondary Education, as required by KRS 156.070(4).

Thomas C. Boysen
Commissioner of Education

JOSEPH W. KELLY, Chairman
APPROVED BY AGENCY: December 15, 1994
FILED WITH LRC: January 18, 1995 at 10 a.m.

STATEMENT OF EMERGENCY
702 KAR 5:040E

This emergency regulation, as approved by the State Board for Elementary and Secondary Education, is necessary to bring the school districts in the Commonwealth of Kentucky into compliance with the Federal Motor Carrier Safety Regulations, Title 49 CFR, Sections 382.201 through 382.215 and Section 391. This emergency administrative regulation shall be replaced by an ordinary administrative regulation and must be implemented by January 1, 1995. The ordinary administrative regulation will be filed concurrently with the Legislative Research Commission.

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

EDUCATION, ARTS, AND HUMANITIES CABINET
Department of Education
Office of District Support Services

702 KAR 5:040E. District board's responsibilities.

RELATES TO: KRS [~~156.031,~~] 156.160, 189.540
STATUTORY AUTHORITY: KRS 156.070, 156.160
EFFECTIVE: January 18, 1995
NECESSITY AND FUNCTION: KRS 156.160 [~~156.031 requires that regulations relating to statutes amended by the 1990 Kentucky Education Reform Act be reviewed, amended if necessary, and resubmitted to the Legislative Research Commission prior to December 30, 1990; and KRS 156.010~~] and 189.540 require the State Board for Elementary and Secondary Education to promulgate administrative regulations relating to the safety of public school children, the transportation of [~~such~~] children to and from school, and the operation of school buses. This administrative regulation provides standards for [~~assists~~] district boards of education [~~in meeting their necessary obligations~~] in the operation of the district's school buses.

Section 1. The district board shall be responsible for the safe operation of the district's pupil transportation system.

Section 2. The board shall provide the driver of each board-owned school bus and special type vehicle with a written contract each school year in which the terms of employment are clearly defined.

Section 3. The board shall provide the owner of any school bus or special type vehicle that is contracted to the board for the transportation of the district's pupils to and from school with a written contract each school year in which the responsibilities of the contractor are clearly defined.

Section 4. The board shall require the owner of any school bus or special type vehicle contracted to the board to provide a performance bond each school year in the amount that the board deems necessary.

Section 5. The board shall make provision for the mechanical maintenance of the district's school buses and shall maintain these buses in safe operating condition.

Section 6. In route planning and purchasing or contracting for school buses, the board shall work toward providing the pupil transportation vehicles necessary to keep the number of pupils required to be transported by any one (1) vehicle at one (1) time within reasonable proximity of the seating capability of the vehicle, and within the limits established by Sections 13 through 16 of 702 KAR 5:080.

Section 7. The board shall be responsible for the removal of all the district identification from all places where it appears on a board-owned school bus before title to the school bus is transferred to another party. All contracts issued by the board to a school bus contractor shall contain a clause requiring the school bus contractor to remove all district identification lettering from the school bus when it is no longer under contract to the board.

Section 8. Before the board transfers title to a school bus to another party other than a Kentucky school district, the board shall be responsible for making the stop signal arm and the red flashing warning lights inoperable by disconnection or removal.

Section 9. The board shall be responsible for the development of a plan whereby all pupils that ride the school buses shall receive instruction in school bus pupil safety each school year. The board shall provide for all students at least four (4) emergency evacuation drills on a school bus each year. Two (2) evacuations shall be conducted each semester with the first evacuation each semester being conducted within the first week following the beginning of the semester. All evacuations shall be conducted with guidelines approved by the Kentucky Department of Education, Division of Pupil Transportation. Documentation of emergency evacuation performance shall be kept on file in the local superintendent's office. Emergency evacuation drills shall be supplemented by educational films, safety demonstrations or related information as developed by the Kentucky Department of Education.

Section 10. Any radio, tape, or communication system that the board shall permit to be installed on the school bus shall be under the control of the bus driver. The board shall not permit a radio, tape, or communication system to be operated on the school bus that is not under the direct control of the bus driver.

Section 11. The board shall designate the physician or physicians that shall perform the physical examination required for all school bus drivers. The board shall keep a current physical examination record or physical fitness certificate on file in the board secretary's office for each school bus driver.

Section 12. Effective January 1, 1995, each district board shall implement a controlled substance and alcohol use and testing program in accordance with KDE - 1530, September, 1994, which is adopted and incorporated by reference. This document may be obtained from the Division of Pupil Transportation, Department of Education, 15th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the State Board for Elementary and Secondary Education, as required by KRS 156.070(4).

Thomas C. Boysen
Commissioner of Education

JOSEPH W. KELLY, Chairman
APPROVED BY AGENCY: December 15, 1994
FILED WITH LRC: January 18, 1995 at 10 a.m.

STATEMENT OF EMERGENCY
702 KAR 5:080E

This emergency regulation, as approved by the State Board for Elementary and Secondary Education, is necessary to bring the school districts in the Commonwealth of Kentucky into compliance with the Federal Motor Carrier Safety Regulations, Title 49 CFR, Sections 382.201 through 382.215 and Section 391. This emergency administrative regulation shall be replaced by an ordinary administrative regulation and must be implemented by January 1, 1995. The ordinary administrative regulation will be filed concurrently with the Legislative Research Commission.

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

EDUCATION, ARTS, AND HUMANITIES CABINET
Department of Education
Office of District Support Services

702 KAR 5:080E. Bus drivers' qualifications; responsibilities.

RELATES TO: KRS 156.160, 189.540
STATUTORY AUTHORITY: KRS 156.160, 189.540
EFFECTIVE: January 18, 1995
NECESSITY AND FUNCTION: KRS 156.160 requires the State Board for Elementary and Secondary Education to adopt administrative regulations relating to the transportation of children to and from school and to medical inspections and other matters deemed relevant to the protection of the physical welfare and safety of public school children; and KRS 189.540 requires the state board to adopt administrative regulations to govern the design and operation of school buses. This administrative regulation implements those duties relative to the qualifications and responsibilities of the school bus driver.

Section 1. (1) A local board of education shall require annual medical examination of each school bus driver and drivers of special vehicles used to transport school children to and from school and events related to the] schools.

(2) The medical examination shall include tests for:

(a) Hearing and vision disorders;

(b) Emotional instability; and

(c) Serious medical conditions including:

1. Diabetes;

2. Epilepsy;

3. Heart disease; and

4. Other chronic or communicable diseases if indicated in the opinion of the examining physician.

(3) The examination shall include tests for tuberculosis upon initial employment and positive reactors shall be required to have further evaluations.

(4) A medical examination of a school bus driver shall be reported on a form prescribed by the State Department of Education and submitted to the local superintendent.

(5) The forms required by subsection (4) of this section, TC 94-35, July 1990, and Supplement to TC 94-35, are incorporated by reference and may be obtained from the Division of Pupil Transportation, Department of Education, 15th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

Section 2. (1)(a) A criminal records and driving history check shall be performed by a local district on new school bus drivers both:

1. Prior to initial employment; or

2. After a break in service (excluding summers).

(b) Employment shall be contingent upon the requirements of paragraph (a) of this subsection.

(c) A school bus driver shall immediately report to the local superintendent or his designee a:

1. Revocation of his driver's license;

2. Conviction for DUI; or

3. Conviction for reckless driving.

(2)(a) Controlled substance and alcohol use and testing in accordance with KDE - 1530, September, 1994, shall be a condition of employment for:

1. School bus drivers;

2. Substitute drivers, coaches, teachers, and volunteers who drive school buses;

3. School bus mechanics; and

4. Other safety-sensitive jobs requiring a CDL license.

(b) The controlled substance and alcohol use and testing program shall include the following tests:

1. Preemployment testing;
2. Postaccident testing;
3. Random testing; and
4. Reasonable suspicion testing.

(c) Prospective employees who test positive for controlled substances, or register 0.02 or above, on the evidential breath test (EBT), shall not be considered for employment to drive a school bus or the performance of safety-sensitive services related to pupil transportation.

(d) A school bus driver, substitute driver, school bus mechanic or anyone performing safety-sensitive pupil transportation duties having a confirmed positive test for controlled substances shall be relieved of those duties immediately.

(e) A school bus driver, substitute driver, school bus mechanic or anyone performing safety-sensitive pupil transportation duties who tests above 0.02 percent on the confirmation alcohol test immediately before, during, or immediately following the performance of these duties shall be relieved of these duties immediately. ~~[Drug tests shall be conducted in accordance with the Kentucky Department of Education, Division of Pupil Transportation drug testing procedures, KDE-1530, and shall be a condition of initial employment for Kentucky:~~

~~1. School bus drivers;~~

~~2. School bus mechanics; and~~

~~3. Other local school district personnel who drive a school bus.~~

~~(b) The requirements of paragraph (a) of this subsection shall also be required of a school bus driver or school bus mechanic who is involved in a vehicle accident resulting in bodily injury or property damage over $1,000, except an accident in which the district's vehicle is struck while legally parked.]~~

(f) [~~(c)~~] The drug testing procedures found in KDE-1530, September, 1994 [~~July 1992~~], are incorporated herein by reference, a copy of which may be inspected, copied or obtained from the Division of Pupil Transportation, Department of Education, 15th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, from 8 a.m. to 4:30 p.m.

~~[(3)(a) Employees required by subsection (2)(b) of this section to undergo a drug test shall take the drug alcohol test at the clinic selected by the district immediately following his return to the bus compound, if that return is during normal working hours.~~

~~(b) If the employee returns to the bus compound after normal working hours or is unable to return to the bus compound following the accident, the employee shall take the drug alcohol test at the clinic assigned to that district the morning of the next day.~~

~~(c) In the event the employee is confined to a hospital for treatment of injuries arising out of the accident and is unable to report to the clinic assigned to that district the morning of the next day, the employee shall take the drug alcohol test at the treating hospital.~~

~~(4)(a) If an employee is taking prescription medication(s) under the care of a physician, the bottle, vial or container issued by the pharmacist shall be brought in to the clinic administering the drug alcohol test at the time of the test or within twenty four (24) hours of the test.~~

~~(b) The employee and medication(s) shall be reviewed individually and an evaluation shall be made by the clinic and the superintendent of the local school district, or his designee, regarding medication(s) with potential negative effects on safety performance.~~

~~(c) Upon completion of an evaluation, the employee may be referred by the district to the prescribing physician for the purpose of determining the possibility of:~~

~~1. Changing to an alternative prescription without potential negative effects on safety performance;~~

~~2. Being placed on medical leave; or~~

~~3. Being directed to follow other appropriate action as deemed necessary by the superintendent of the local school districts.~~

~~(5) An employee's failure to comply with the district's request to have the drug alcohol test administered in accordance with this policy shall result in immediate termination.~~

~~(6) If the required drug test results in a confirmed positive test after a vehicle accident, the employee may request a blood plasma or blood serum test to contest the positive urine test.]~~

(g) [~~(7)~~] A person shall not be employed as a school bus driver if convicted of driving a motor vehicle under the influence of alcohol or any illegal drug within the last five (5) years. A person shall not drive a school bus unless he or she is physically or mentally able to operate a school bus safely and satisfactorily. If there is limitation of motion in joints, neck, back, arms, legs, or other bodily parts, due to injury or disease and that would limit the driver's ability to safely perform the task of safely driving a school bus, the driver shall be rejected. A driver taking medication either by prescription or without prescription, shall not be permitted to drive if that medication would affect, in any way, the driver's ability to safely drive a school bus.

Section 3. (1) A person shall not drive a school bus unless he or she has:

(a) Visual acuity of at least 20/40 (Snellan) in each eye either without glasses or by correction with glasses;

(b) Form field vision of not less than a total of 140 degrees; and

(c) The ability to recognize the colors of traffic signals and devices showing standard red, green, and amber.

(2) Drivers requiring correction by glasses shall wear properly prescribed glasses at all times while driving.

Section 4. A person shall not drive a school bus whose hearing is less than 7/15 in the better ear, or hearing loss is greater than forty (40) decibels if audiogram is used, for conversational tones, with or without a hearing aid. Drivers requiring a hearing aid shall wear properly operating aids at all times while driving.

Section 5. The board, at its discretion, may require a school bus driver to pass a routine physical examination or a special type physical examination more often than annually. The school bus driver shall have a current physical fitness certificate on file in the district superintendent's office.

Section 6. Effective April 1, 1992, school bus drivers shall be twenty-one (21) years of age or older.

Section 7. (1) The school bus driver shall have a current driver's license that is valid in Kentucky. Beginning April 1, 1992, Kentucky school bus drivers shall possess a commercial driver's license, with the passenger endorsement for a school bus, which is valid in Kentucky.

(2)(a) Prior to acceptance into the driver training program, a driver applicant shall be required to demonstrate driving skills judged by a certified driver training instructor to meet acceptable performance standards as outlined in the Division of Pupil Transportation curriculum.

(b) The driver applicant's score sheet shall become a part of the driver's record.

(c) A driver shall demonstrate the following skill levels:

1. Vehicle knowledge;

2. Driver ability to perform steering, shifting, maneuvering, braking, use of mirrors, and negotiate each of the following:

a. Ninety (90) degree left hand turns;
b. Ninety (90) degree right hand turns;
c. Straight ahead;
d. Irregular surface maneuverability at speeds;
e. Backing ability using mirrors only; and
f. Demonstration of spatial awareness.

Section 8. (1) Minimum training requirements to become a Kentucky school bus driver shall consist of the training course developed by the Kentucky Department of Education. The training

course shall consist of the following instructional units and minimum instructional times:

(a) Laws and regulations - one (1) hour;
(b) Driving fundamentals - one (1) hour;
(c) Care and maintenance - one (1) hour;
(d) Critical situations - one (1) hour;
(e) Accidents and emergency procedures - one (1) hour;
(f) Pupil management - one (1) hour;
(g) First aid - one (1) hour;
(h) Special education transportation - five-tenths (.5) hour;
(i) Extracurricular trips - five-tenths (.5) hour; and
(j) Vehicle operations - three (3) hours.
(k) Vehicle control at speed - one (1) hour; and
(l) Bus route identification, driver review and instruction - two (2) hours.

(2) Upon successful completion of the core curriculum the school bus driver applicant shall complete within thirty (30) days the following:

(a) Driver review I, evaluation and instruction - two (2) hours within the first five (5) days of driving; and

(b) Driver review II, evaluation and instruction - two (2) hours not less than twenty (20) days nor more than thirty (30) days of driving.

Section 9. (1) Certified drivers shall complete annually an eight (8) hour in-service update relevant to the curriculum prior to the beginning of the school year.

(2) Discontinuance of driver employment and subsequent reemployment shall require drivers to become requalified by a training update within a twelve (12) month period following his or her certification termination date.

(3) A driver who does not complete the training update and recertification as required by subsection (2) of this section shall be required to complete the beginning training program.

Section 10. Substitute school bus drivers shall meet the same requirements as regular school bus drivers.

Section 11. In case of an emergency that would make it necessary for the driver to leave the bus while pupils are on board, the driver shall stop the motor, shift the bus to low gear, set the parking brake, remove the ignition key, and place one (1) of the older responsible pupils in charge during the driver's absence.

Section 12. The driver shall operate the school bus at all times in a manner that provides the maximum amount of safety and comfort for the pupils under the circumstances.

Section 13. The driver shall supervise the seating of the pupils on the bus. The driver shall make certain the seating capability of the bus has been fully utilized before any pupil is permitted to stand in the bus aisle.

Section 14. The driver shall not, at any time, permit pupils to stand in the stepwell or landing area or where the pupil would likely fall out of the bus if the rear emergency door was opened, or where the driver's view directly in front of the bus or to either side of the front of the bus would be obscured.

Section 15. The driver shall report to the superintendent any overcrowded conditions on the bus.

Section 16. The driver shall transport only those pupils officially assigned to a particular bus trip unless an unassigned pupil presents the driver with a written permit to ride the bus trip that has been signed by the school principal or his designate. The driver shall not permit an assigned pupil to leave the bus at a stop other than where the pupil regularly leaves the bus unless presented with a written permission signed by the principal or his designate.

Section 17. The driver shall not transport adult employees of the board or any person not employed by the board unless he receives written permission from the district superintendent.

Section 18. The driver shall not knowingly permit any firearms or weapons, either operative or ceremonial, to be transported on the bus. The driver shall not knowingly permit any fireworks or any other explosive materials of any type to be transported.

Section 19. The driver shall not permit any live animals, fowls, or reptiles to be transported on the bus. The driver shall not permit any preserved specimen to be transported that would likely frighten any pupil or cause a commotion on the bus.

Section 20. The driver shall not permit the transportation of any object that would likely block the bus aisle or exits in case of a collision.

Section 21. The driver shall not permit a pupil to operate the entrance door handle or any other bus control except in case of an emergency.

Section 22. The driver shall activate the flashing amber signal lights a sufficient distance from a bus stop to warn motorists of the intended stop. Once the bus comes to a complete stop, the driver shall activate the stop arm and red flashing signal lights.

Section 23. For safety reasons, the driver shall not permit fueling of the bus while pupils are on board the bus.

Section 24. (1) If a pupil's conduct on the bus makes it unsafe for the bus to continue on its route, it shall be the duty of the driver to:

(a) Make a determination as to the potential danger to other students on the bus; and

(b) Take action against the student either by:

1. Requesting that the student stop engaging in the prohibited conduct;

2. Ordering the student to leave the bus;

3. Ejecting the pupil from the bus or sending for assistance if the student fails to comply with the driver's order or request.

(2) Ejecting a pupil from the bus shall be done only in the most extreme circumstances.

(3) If a student has been ejected from a bus as the result of conduct specified in subsection (1) of this section, the driver shall notify the following parties of the action taken as soon as possible:

(a) The principal of the school where the pupil attends; or

(b) ~~[The district superintendent; and~~

~~(c)~~] The student's parent or legal guardian.

Section 25. (1) The school bus driver shall stop the bus at all places where the roadway crosses a railroad track or tracks at the grade level.

(a) The stop shall be made not less than fifteen (15) feet nor more than fifty (50) feet from the nearest track.

(b) After making the stop, the driver shall open the service door and driver side window and carefully look in each direction and listen for approaching trains before proceeding.

(c) When the driver has ascertained that it is safe for the bus to cross the railroad tracks, he shall close the bus entrance door, shift the bus gears into the range that will provide adequate power and proceed immediately to cross the railroad tracks.

(2)(a) In cases of severe weather or restricted visibility, the driver shall request assistance from the oldest pupils on the bus in determining whether or not it is safe for the bus to cross the railroad tracks.

(b) Under these circumstances, the stop signal arm and flashing warning lights shall be used only if these pupils get off the bus before it is driven across the tracks and board the bus after it has crossed the tracks.

Section 26 The driver shall have the authority to assign a pupil to a specific seat on the school bus.

Section 27. The driver shall make a pretrip inspection of the bus safety and operating equipment each time that the bus is taken out for the transportation of pupils.

Section 28. The school bus driver shall not operate the school bus at a speed in excess of the posted speed limit on any section of highways over which the bus travels. The bus shall not be operated upon any highway at speeds in excess of fifty-five (55) miles per hour. The driver shall not drive the school bus on any roadway at any time at a speed where the conditions of the roadway, weather conditions, or other extenuating circumstances would likely make it unsafe.

Section 29. The driver shall wear the driver's seat belt at all times that the bus is operated.

Section 30. The stop signal arm and flashing warning lights shall be used only at stops where pupils are boarding or leaving the bus.

Section 31. The driver shall not use tobacco products while operating the school bus, nor permit pupils to use tobacco products when on the school bus.

Section 32. The driver shall signal pupils who must cross a roadway to board or leave the bus when the driver has determined that any visible approaching traffic creating a substantive risk of harm has come to a complete stop and is not attempting to start up or pass the bus.

Section 33. A driver shall not operate a school bus while under the influence of alcoholic beverages or any illegal drug or other drug as provided in Section 2 of this administrative regulation. Drivers found under the influence of alcohol or any illegal drugs while on duty or with remaining driving responsibilities that same day shall be dismissed from employment.

Section 34. The driver of a school bus shall be on the bus at all times students are loading or unloading.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the State Board for Elementary and Secondary Education, as required by KRS 156.070(4).

Thomas C. Boysen
Commissioner of Education

JOSEPH W. KELLY, Chairman
APPROVED BY AGENCY: December 15, 1994
FILED WITH LRC: January 18, 1995 at 10 a.m.

STATEMENT OF EMERGENCY
703 KAR 3:060E

This emergency administrative regulation, as approved by the State Board for Elementary and Secondary Education, is necessary to determine the exact amount of rewards that will go to each successful school in March, 1995. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation will be filed concurrently with the Legislative Research Commission.

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

EDUCATION, ARTS, AND HUMANITIES CABINET
Department of Education
Bureau of Learning Results Services

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

RELATES TO: KRS 158.645, 158.6451, 158.6453, 158.6455
STATUTORY AUTHORITY: KRS 156.070, 158.6455
EFFECTIVE: January 18, 1995
NECESSITY AND FUNCTION: KRS 158.6455 gives the State Board for Elementary and Secondary Education the authority to promulgate administrative regulations to establish a system of determining successful schools and a system of rewards and sanctions for certified staff in schools and for certified staff who are not assigned to a particular A1 school in a local school district but who are certified staff assigned to the district central office or an A2-A6 school. Successful schools shall be defined in terms of student achievement of the goals set forth in KRS 158.6455, and these goals were adopted by the State Board for Elementary and Secondary Education on December 19, 1991, pursuant to KRS 158.6451. Finally, successful schools shall be defined with reference to the statewide assessment program set forth in KRS 158.6453.

Section 1. Definitions. (1) "School" means an A1 school as defined in 703 KAR 4:080. [~~the administrative unit of grades for which a school-based council may be established by 1996 pursuant to KRS 160.345.~~]

(2) "School district" means the administrative unit of schools under the jurisdiction of a board of education pursuant to KRS 160.160.

(3) "Accountability index" means the statistic which is the combination [~~average~~] of the cognitive and noncognitive indices for a school or school district pursuant to 703 KAR 4:010.

(4) "Baseline" means the accountability index score which describes the school or school district's percentage of successful students at the beginning of each biennium.

(5) "Threshold" means the accountability index score which describes the amount of growth required for a school or school district for the biennium.

(6) "Year two (2) accountability index" means the accountability index a school or school district obtains in the second year of the biennium.

(7) "Maximum reward amount" means the percentage of salary set by the State Board for Elementary and Secondary Education. [~~General Assembly pursuant to KRS 158.6455.~~] "Maximum reward amount" also may be called "Reward level 51 amount."

(8) "Minimum reward amount" is half of "maximum reward amount." "Minimum reward amount" also may be called "Reward level 1 amount."

(9) "Declines by five (5) percent or more" means obtains an average accountability index for the biennium of five (5) or more points below its baseline [~~for~~] that is established at the beginning of the biennium, is based on performance during the previous biennium, and obtains a year two (2) accountability index below its threshold goal for the biennium.

(10) "Declines by less than five (5) percent" means obtains an average accountability index for the biennium of less than five (5) points below its baseline for that biennium and obtains a year two (2) accountability index below the threshold goal for the biennium.

(11) "Maintains the previous percentage of successful students" means obtains an average accountability index for the biennium not less than its baseline nor equal to or greater than its threshold for that biennium and obtains a year two (2) accountability index below its threshold goal for the biennium, and obtains a year two (2) accountability index below the threshold goal for the biennium.

Section 2. When a school does not have an accountability grade (grades four (4), eight (8) or twelve (12)), that school shall be combined with the school having an accountability grade its students would subsequently attend.

Section 3. When a school has more than one (1) accountability grade, the school's accountability index shall be the weighted average of the accountability indices for each accountability grade in the school.

Section 4. A school district's accountability index shall be the weighted average of its schools' accountability indices.

Section 5. Certified staff in a school or school district shall earn the minimum reward amount when the school or school district's average accountability index for the biennium exceeds its threshold by one (1) point and when at least ten (10) percent of its novices, on average across the cognitive areas, move to apprentice or higher.

Section 6. Certified staff in a school or school district shall earn the maximum reward amount when the school or school district's average accountability index for the biennium exceeds its threshold by one (1) point plus the difference between the threshold and the baseline and when at least ten (10) percent of its novices, on average across the cognitive areas, move to apprentice or higher.

Section 7. Fifty-one (51) reward levels are established as follows:

Reward Level	Example	Reward Criteria	Amount
One	38	One point above threshold	50% of maximum
Two	38.14	One point above threshold plus 2% of differences between threshold and baseline	51% of maximum
Three	38.28	One point above threshold plus 4% of the difference between threshold and baseline	52% of maximum
Four	38.42	One point above threshold plus 6% of the difference between threshold and baseline	53% of maximum
↓	↓	↓	↓
Fifty-one	45	One point above threshold plus 100% of the difference between threshold and baseline goal	100% of maximum

Section 8. Sanctions shall be applied to schools and school districts pursuant to KRS 158.6455(3)-(7) and the definitions provided in Section 1(9), (10), and (11) of this administrative regulation.

Section 9. Reward Amounts. The maximum reward amount shall be ten (10) percent of the average (mean) salary of the certified personnel in the five (5) highest paying public school districts in Kentucky. This average shall be weighted by the number of certified personnel in each of these five (5) districts. The total amount of rewards to be distributed to schools and school districts earning rewards shall not exceed 1.75% of the total amount of total funds paid to certificated personnel within Kentucky's public schools. If the reward levels described in this section will result in the allocation of funds that exceed this amount, the reward for each school or school district shall be reduced proportionately.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the State Board for Elementary and Secondary Education, as required by KRS 156.070(4).

Thomas C. Boysen
Commissioner of Education

JOSEPH W. KELLY, Chairman
APPROVED BY AGENCY: December 15, 1994
FILED WITH LRC: January 18, 1995 at 10 a.m.

STATEMENT OF EMERGENCY
902 KAR 14:060E

This emergency administration regulation replaces 902 KAR 20:120 which was found deficient and expired on adjournment of the 1994 regular session of the General Assembly. This 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. The need to promulgate this administrative regulation as an emergency is that 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. The emergency administrative regulation shall be replaced by an ordinary administrative regulation. The notice of intent to promulgate an administrative regulation will be filed with the Regulation's Compiler for the January 13, 1995, filing.

BRERETON C. JONES, Governor
MASTEN CHILDERS II, Secretary

CABINET FOR HUMAN RESOURCES
Department for Health Services
Division of Health Systems Development

902 KAR 14:060E. Nonemergency health care transportation services.

RELATES TO: KRS 211.950 to 211.958, 216B.010 to 216B.130, 216B.990
STATUTORY AUTHORITY: KRS 211.952, 216B.042, 216B.105
EFFECTIVE: January 18, 1995
NECESSITY AND FUNCTION: The administrative regulation establishing standards for nonemergency health transportation (NEHT) services, 902 KAR 20:120, was found deficient by the Administrative Regulation Review Subcommittee at its March 7, 1994, meeting. The administrative regulation was found to exceed the statutory authority of KRS 211.950 by separating ambulances and ambulance providers into two (2) categories, emergency and nonemergency, and that 902 KAR 20:120 further exceeded the statutory authority of KRS 211.950 by prohibiting NEHT vehicles from

having lights and sirens. 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 NEHT 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) The responsibility for regulating NEHT services was transferred from the Office of Inspector General, Division of Licensing and Regulation to the Department for Health Services pursuant to KRS 211.952 as passed during the 1994 regular session of the General Assembly; (2) NEHT services are now included under the licensing umbrella of ambulance service providers and are licensed under the license procedures and fee schedule for ambulance service providers as found in 902 KAR 14:030; (3) Only the section prohibiting the use of emergency lights or sirens by vehicles that provide NEHT services was found deficient; (4) The section prohibiting the use of emergency lights or sirens by vehicles that provide NEHT services was deleted; and (5) It is required by the legislative mandate of KRS 216B.042.

Section 1. Definitions. (1) "Emergency medical technician (EMT)" means a person who is currently certified pursuant to 902 KAR 13:010 through 13:090.

(2) "EMT first responder" means a person who is currently certified pursuant to 902 KAR 13:110.

(3) "Licensing agency" means the Cabinet for Human Resources, Department for Health Services.

(4) "Nonemergency health care transportation (NEHT) service" means a nonemergency ambulance provider as defined in 902 KAR 14:030.

Section 2. NEHT Licensing Requirements. (1) The following licensing requirements shall apply to NEHT service providers:

(a) A person or private or public organization shall:

1. Not provide;

2. Advertise; or

3. Profess to be engaged in NEHT services that originate in Kentucky without having first obtained a certificate of need pursuant to KRS 216B.061 and a license pursuant to 902 KAR 14:030.

(b) A NEHT service provider shall comply with the applicable licensing provisions of 902 KAR 14:030.

(c) The license shall be displayed in a prominent place at the service base station. The following information shall be included on the license:

1. Identity and location of the base station;

2. Number and location of substations, if any, to be operated by the licensee;

3. Designation of the geographic service area to be served by the licensee;

4. Designation that the service is authorized to provide nonemergency health care transportation; and

5. Designation of the number of NEHT ambulances to be operated by the service.

(2) A NEHT service shall not:

(a) Provide emergency medical services as defined in KRS 211.950(3) unless they are also licensed as a basic life support or advanced life support service provider in accordance with 902 KAR 14:040; or

(b) Transport a person who requires medical treatment, other than the administration of oxygen, during transport.

(3) Applications for initial licensing or renewal of a license shall specify the number of vehicles to be operated and, as a minimum, provide, for each vehicle to be licensed, the vehicle identification number, license tag number, make, and model year.

(4) The licensee shall:

(a) Notify the licensing agency of any change in the number, type, or use of vehicles to be operated; and

(b) Meet the following requirements:

1. A NEHT ambulance shall not be operated until after the licensing agency has been notified and has verified, through a physical inspection, that a certificate of need has been obtained for the vehicle and the vehicle meets the requirements of this administrative regulation.

2. The licensing agency shall be notified, on the next licensing agency business day, following disposition of any prior approved NEHT vehicle operated by the NEHT service (i.e., discontinued from service, change in use by the same ownership, or sale to another identified licensed ambulance service provider).

(5) The licensing agency procedures shall not preclude the NEHT service from utilizing a replacement vehicle on a temporary basis if a previously approved vehicle is out of service for maintenance. The following requirements shall apply:

(a) The licensing agency shall be notified (or on the next business day) by phone of the service's need to operate a temporary unit. Within five (5) days, the NEHT service provider shall send the licensing agency:

1. Written notice of the make, model, license number, and vehicle identification number; and

2. Written assurance that the temporary unit will be staffed and equipped in accordance with requirements of this administrative regulation;

(b) If the NEHT service plans to utilize the replacement for more than thirty (30) days, the NEHT service shall notify the licensing agency of the anticipated length of time the replacement will be in use; and

(c) The licensing agency shall be notified if the replaced unit is back in service.

(6) The licensing agency shall maintain identifying records on all NEHT vehicles according to established procedures.

Section 3. NEHT Management Requirements. A NEHT service provider shall:

(1) Establish lines of authority to include the designation of an:

(a) Administrator responsible for assuring compliance with this administrative regulation during the daily operation of the service; and

(b) A designee who shall serve if necessary in the absence of the administrator.

(c) Maintain records and reports at the NEHT service base station in accordance with the requirements specified in KRS 216B.410.

(2) A NEHT service provider shall have and maintain current written policies and procedures concerning:

(a) Transport limitations; and

(b) Patient destination.

Section 4. NEHT Operating Requirements. (1) An ambulance used in the provision of NEHT services shall be designed to provide adequately for the transportation of individuals including:

(a) The heating system shall maintain a temperature of not less than sixty-five (65) degrees Fahrenheit in the driver and patient compartments in winter weather conditions;

(b) The air conditioning system shall maintain a temperature of not more than eighty-five (85) degrees Fahrenheit in the driver and patient compartments in summer weather conditions; and

(c) The name of the NEHT service provider shall appear on the exterior surface of the vehicle.

(2) A preventive maintenance program for each NEHT vehicle and its equipment shall be developed and implemented to keep them in optimum working order to protect the health and safety of the patient and ambulance personnel.

(3) Documentation shall be maintained by the NEHT service provider to support evidence of periodic inspections or calibrations required for maintenance and operation of the ambulance and its equipment.

(4) Vehicles shall be kept in optimum working order. The interior of the ambulance and equipment shall be kept clean.

(5) Vehicles utilized in the provision of NEHT services shall be constructed to allow verbal communication with the individual during transit.

(6) Vehicles designed to transport individuals on stretchers or in wheelchairs shall be equipped with mechanisms to secure the individual and the stretcher or wheelchair while in transit.

(7) Vehicles used in the provision of NEHT services by services licensed under this administrative regulation shall not have identifying markings to imply they provide emergency service nor display the "star of life" symbol; and

(8) Vehicles used in the provision of NEHT services by services licensed under this administrative regulation shall not display the word ambulance on the outside of a vehicle unless each display of the word ambulance is preceded by the word nonemergency in the same size and in a similar style lettering.

Section 5. Equipment and Supplies. Ambulances used in the provision of NEHT services shall have at least the following essential equipment:

(1) One (1) five (5) lb. dry chemical fire extinguisher;

(2) One (1) first aid kit; and

(3) Oxygen equipment (portable) including:

(a) One (1) "D" size oxygen cylinder;

(b) One (1) pressure gauge and flow rate regulator;

(c) Adaptor and tubing; and

(d) Transparent masks (adult and child). Nasal cannulas may be substituted.

Section 6. NEHT Personnel. (1) A NEHT ambulance shall be staffed by at least one (1) attendant per service run. The attendant may also be the driver of the vehicle.

(2) The attendant shall accompany the patient at all times during transport.

(3) There shall be no more patients, personnel, and other persons than can be safely secured by means of seat safety belts or similar devices in the NEHT ambulance during transportation.

(4) All personnel shall be capable of performing their job duties, and shall not cause the patient or other personnel any undue jeopardy.

(5) As a minimum, the driver on each NEHT ambulance run shall:

(a) Be at least eighteen (18) years of age, with current motor vehicle operator's license;

(b) Have at least two (2) years of licensed driver/operator experience; and

(c) Complete a defensive driving training program that is developed by the ambulance service or in conjunction with another agency or organization.

(6) The training program shall, as a minimum, consist of four (4) hours review of driving a vehicle under a variety of conditions.

(7) Documentation shall be available to support training in at least the following areas:

(a) Forward and back-up driving maneuvers in a controlled situation, such as in an obstacle course designed specifically for this purpose; and

(b) Review of defensive driving techniques and procedures by hands-on experience or exposure by visual aids, such as video tapes, slides, or planned demonstrations.

(8) The patient attendant on each NEHT service run shall be certified or licensed for one (1) of the following levels:

(a) EMT first responder certification;

(b) EMT certification;

(c) Paramedic certification; or

(d) Licensure as a nurse or physician.

RICE C. LEACH, M.D., Commissioner
MASTEN CHILDERS II, Secretary
APPROVED BY AGENCY: January 13, 1995
FILED WITH LRC: January 18, 1995 at 3 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact: Robert P. Calhoun 564-8963

(1)Type and number of entities affected: Ten licensed nonemergency health transportation services.

(2) Direct and indirect costs or savings 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 comment received: Since this is an emergency administrative regulation no public hearing has been held, however, there should be no effect on cost of living and 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 comment received: Since this is an emergency administrative regulation no public hearing has been held, however, no effect on the cost of doing business is 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.

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No direct or indirect costs should be associated with this program beyond printing this new regulation.

1. First year: $500 for printing regulation.

2.Continuing costs or savings: No additional costs or savings, since reprinting of regulations is provided for in the continuing budget.

3. Additional factors increasing or decreasing costs: No additional factors.

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

(4) Assessment of anticipated effect on state and local revenues: No effect.

(5) Source if 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: Since this is an emergency administrative regulation no public hearing has been held, but no economic impact is expected.

(b) Kentucky: Refer to item 6(a).

(7) Assessment of alternative methods: reasons why alternatives were rejected: This emergency administrative regulation will replace 902 KAR 20:120 which expired on adjournment of the 1994 regular session of the General Assembly. No alternatives were considered.

(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 are minimum health care standards intended to protect the public.

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

(c) If detrimental effect would result, explain detrimental effect: Nonemergency health care transportation services would be unregulated.

(9) Identify any statute, administrative regulation or governmental 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: (Explain why tiering was or was not used) No. This is a licensure program and as such applies to all licensed services.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This regulation will not affect a local government or part or division of that local government unless it operates a nonemergency health transportation ambulance service.

3. State the aspect or service of local government to which this administrative regulation relates. Any nonemergency health transportation ambulance service operated by the local government.

4. How does this administrative regulation affect the local government or any service it provides? This regulation does not affect a local government in any additional manner. It merely moves the licensing and regulatory functions for nonemergency health transportation services from the Office of the Inspector General to the Department of Health Services.

STATEMENT OF EMERGENCY
904 KAR 2:015E

The administrative regulation 904 KAR 2:015E, Supplemental programs for the aged, blind and disabled, changes the standards for all levels of care for the State Supplementation Program due to the 1995 cost of living increase. This administrative regulation is needed to comply with the agreement the Commonwealth of Kentucky has with the Department of Health and Human Services to pass along any cost of living increases in SSI benefits to state supplementation recipients. In order to implement the mandated 1995 cost of living increases for eligibility determinations made on or after January 1, 1995, it is necessary to promulgate this emergency administrative regulation. The administrative regulation is also being promulgated as an ordinary administrative regulation for public comments.

BRERETON C. JONES, Governor
MASTEN CHILDERS II, Secretary

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development

904 KAR 2:015E. Supplemental programs for the aged, blind and disabled.

RELATES TO: KRS 205.245, 20 CFR 416.2095, 416.2096

STATUTORY AUTHORITY: KRS 194.050, 205.245, 42 USC 1382e-g

EFFECTIVE: January 18, 1995

NECESSITY AND FUNCTION: The Cabinet for Human Resources is authorized to administer a state funded program of supplementation to all December, 1973, recipients of aid to the aged, blind and disabled, referred to as AABD, disadvantaged by the implementation of the Supplemental Security Income Program (SSI). KRS 205.245 provides for the mandatory supplementation program and also for supplementation to other needy aged, blind and disabled persons. The cabinet shall operate a supplement program for certified personal care homes (PCH) which accept state supplementation recipients and have a thirty-five (35) percent mentally ill or mentally retarded (MI or MR) population in all of the PCH's occupied licensed personal care beds. Personal care services are described in 902 KAR 20:036. This administrative regulation sets forth the provisions of the supplementation program.

Section 1. Mandatory State Supplementation. (1) Mandatory state supplementation payments shall be equal to the difference between:

(a) The AABD payment for the month of December, 1973, plus any other income available to the recipient as of that month; and

(b) The total of the SSI payment and other income for the current month.

(2) Recipients include former aged, blind or disabled recipients ineligible for SSI due to income but whose special needs entitled them to an AABD payment as of December, 1973.

(3) Mandatory payments shall continue until:

(a) The needs of the recipient as recognized in December, 1973, have decreased; or

(b) Income has increased to the December level.

(4) The mandatory payment is increased only:

(a) When income as recognized in December, 1973, decreases;

(b) The SSI payment is reduced but the recipient's circumstances are unchanged; or

(c) The standard of need utilized by the department in determining optional supplementation payments for a class of recipients is increased.

(5) In cases of a husband and wife living together, income changes after September, 1974, will result in an increased mandatory payment only if total income of the couple is less than December, 1973, total income.

Section 2. Optional State Supplementation. (1) Optional state supplementation is available to a person who:

(a) Except as specified in Sections 4, 5, and 6 of this administrative regulation, meets technical requirements and resource limitations of the aged, blind or disabled medically needy program as contained in 907 KAR 1:011 and 907 KAR 1:004; and

(b) Requires special living arrangements; and

(c) Has insufficient income to meet their need for care.

(2) Special living arrangements include:

(a) Residence in a personal care home which:

1. Meets the requirements and provides services as specified in 902 KAR 20:036; and

2. Is licensed under KRS 216B.010 to 216B.131; or

(b) Residence in a family care home which:

1. Meets the requirements and provides services as specified in 902 KAR 20:041; and

2. Is licensed under KRS 216B.010 to 216B.131; or

(c) Situations in which a caretaker must be hired to provide care other than room and board.

(3) Each person applying for or receiving state supplementation shall be required to:

(a) Furnish a Social Security number; or

(b) If a Social Security number has not been issued, apply for a Social Security number.

(4) If potential eligibility exists for SSI, application for SSI shall be mandatory.

Section 3. Eligibility for Caretaker Services. (1) Services by a caretaker shall be made to enable the ill or infirm individual to:

(a) Remain safely and adequately:

1. At home;

2. In another family setting; or

3. In a room and board situation; and

(b) Prevent institutionalization.

(2) Services by a caretaker shall be made at regular intervals by:

(a) A live-in attendant; or

(b) One (1) or more persons hired to come to the home.

(3) A supplemental payment shall not be made to or on behalf of an otherwise eligible individual if:

(a) The client is taken daily or periodically to the home of the caretaker; or

(b) The caretaker service is provided by the following persons living with the applicant:

1. The spouse;

2. Parent of an adult disabled child or a minor child; or

3. Adult child of an aged or disabled parent.

(4) Eligibility for caretaker supplementation shall be verified by agency contact with the caretaker to establish:

(a) How often the service is provided;

(b) The service prevents institutionalization; and

(c) Payment is made for the service.

Section 4. Resource Consideration. (1) Except as stated in subsection (2) of this section, countable resources shall be determined according to policies for the medically needy as contained in 907 KAR 1:004.

(2) The individual or couple is not eligible if countable resources exceed the limit of:

(a) $2000 for individual; or

(b) $3000 for couple.

Section 5. Income Considerations. (1) Except as noted in subsections (2) through (9) of this section, income and earned income deductions are considered according to policies for the medically needy in 907 KAR 1:004.

(2) The optional supplementation payment is determined by adding:

(a) Total net income of the applicant or recipient, or applicant or recipient and spouse; and

(b) Payments made to a third party in behalf of an applicant or recipient; and

(c) Subtracting the total of paragraphs (a) and (b) of this subsection from the standard of need in Section 6 of this administrative regulation.

(3) Income of the ineligible spouse is:

(a) Adjusted by deducting sixty-five (65) dollars and one-half (1/2) of the remainder from the monthly earnings; and

(b) Conserved in the amount of one-half (1/2) of the SSI standard for an individual for:

1. Himself; and

2. Each minor dependent child.

(4) Income of the eligible individual is not conserved for the needs of the ineligible spouse or minor dependent children.

(5) Income of the child shall be considered when conserving for the needs of the minor dependent child so the amount conserved does not exceed the allowable amount.

(6) The earnings of the eligible individual and spouse shall be combined prior to the application of the earnings disregard of sixty-five (65) dollars and one-half (1/2) of the remainder.

(7) If one (1) member of a couple is institutionalized and the SSI spouse maintains a home, income in the amount of the SSI standard for one (1) shall be conserved for the spouse.

(8) A husband and wife residing in the same personal care or family care home may be considered to be living with each other if treating the husband and wife as living apart would prevent either of them from receiving state supplementation.

(9) The SSI twenty (20) dollars general exclusion is not an allowable deduction from income.

Section 6. Standard of Need. (1) The standard shall be based on living arrangement as follows:

(a) For an eligibility determination for a resident of a personal care home made on or after January 1, 1995, $792 [~~1994, $780~~];

(b) For an eligibility determination for a resident of a family care home made on or after January 1, 1995, $597 [~~1994, $585~~];

(c) Caretaker.

1. For an eligibility determination for a single individual, or an eligible individual with an ineligible spouse who is not aged, blind, or disabled made on or after January 1, 1995, $491 [~~1994, $479~~];

2. For an eligibility determination for an eligible couple, both aged, blind, or disabled and one (1) requiring care made on or after January 1, 1995, $715 [~~1994, $697~~];

3. For an eligibility determination for an eligible couple, both aged, blind or disabled and both requiring care made on or after January 1, 1995, $759 [~~1994, $741~~].

(2) In couple cases, when both are eligible, the couple's income is combined prior to comparison with the standard of need. One-half (1/2) of the deficit is payable to each.

(3) The personal care or family care home shall accept as full payment for cost of care the amount of the standard, based on the living arrangement, minus a forty (40) dollars personal needs allowance which shall be retained by the client.

Section 7. Temporary Stay in a Medical Institution. (1) A recipient of optional or mandatory state supplementation shall have continuation of state supplementation benefits without interruption for any of the first three (3) full months of medical confinement if:

(a) Admitted to:

1. A hospital;

2. A psychiatric hospital;

3. A nursing facility; and

(b) The recipient's physician shall certify that he expects the recipient to be medically confined for ninety (90) full consecutive days or less; and

(c) The state supplementation recipient receives SSI.

(2) If discharged in the month following the last month of continued benefits, the temporary absence continues through the date of discharge.

Section 8. Citizenship requirements. An applicant or recipient shall be:

(1) A citizen of the United States; or

(2) An alien legally admitted to this country for permanent residence; or

(3) An alien who is residing in this country under color of law.

Section 9. Residence Requirements. (1) The applicant or recipient shall be a resident of Kentucky.

(2) Supplemental payments may be made to Kentucky residents residing outside the state if:

(a) The individual has been placed in the other state by this state.

(b) Except with regard to the requirement shown in Section 7 of this administrative regulation, the other requirements for eligibility contained in this administrative regulation shall be applicable.

(c) For out-of-state placements, the licensure shall be in accordance with a similar licensure act of the other state.

(d) If there is no similar licensure act in the other state, the payment may be made only if this state determines that, except for being in another state, the facility meets standards for licensure under the provisions of KRS 216B.010 to 216B.131.

(e) To be eligible for a supplemental payment while placed out-of-state:

1. The individual shall require the level of care provided in the out-of-state placement;

2. There shall be no suitable placement available in Kentucky; and

3. The placement shall be preauthorized by staff of the Department for Social Insurance.

(3) Except as specified in subsection (9) of this section, an applicant placed in Kentucky by another state shall not be considered a resident of Kentucky.

(4) The state of residence shall be Kentucky for an applicant or recipient of state supplementation if the individual:

(a) Is age twenty-one (21) and over;

(b) Is residing in the state; and

1. Intends to remain permanently or for an indefinite period; or

2. Entered the state with a job commitment or to seek employment.

(5) The applicant or recipient residing in a personal care home is considered incapable of indicating intent to become a Kentucky resident if the individual:

(a) Has an I.Q. of forty-nine (49) or less or has a mental age of seven (7) or less, based on tests acceptable to the department; or

(b) Is judged legally incompetent; or

(c) Is found incapable of indicating intent based on medical or other documentation acceptable to the state.

(6) For an applicant or recipient residing in a family care home or requiring caretaker services, the state of residence shall be Kentucky if the individual is:

(a) Under age twenty-one (21);

(b) Eligible for a supplemental payment based on blindness or disability; and

(c) Residing in the state; or

(d) An individual age twenty-one (21) or over and incapable of indicating intent, is simply residing in the state.

(7) For an applicant or recipient residing in a personal care home who is under age twenty-one (21) or who is age twenty-one (21) or older and became incapable of indicating intent before age twenty-one (21), the state of residence shall be Kentucky if Kentucky is the state of residence of the individual's:

(a) Parents; or

(b) If one has been appointed, his legal guardian; or

(c) Parent applying for the supplemental payment on behalf of the individual if:

1. The other parent lives in another state; and

2. There is no appointed legal guardian.

(8) For an applicant or recipient residing in a personal care home who became incapable of indicating intent at or after age twenty-one (21), the state of residence shall be Kentucky if:

(a) He was living in Kentucky when he became incapable of indicating intent; or

(b) If this cannot be determined, the state of residence shall be Kentucky unless he was living in another state when he was first determined to be incapable of indicating intent.

(9) For an individual subject to a determination of residency according to subsections (7) and (8) of this section, the state of residence shall be Kentucky if Kentucky and the state that would otherwise be the individual's state of residency have entered into an interstate residency agreement providing for reciprocal residency status.

(10) An individual receiving a mandatory state supplemental payment from Kentucky shall be considered a resident of Kentucky if he continues to reside in Kentucky.

(11) An individual receiving a mandatory or optional supplemental payment from another state shall not be considered a resident of Kentucky.

(12) A former Kentucky resident who becomes incapable of indicating intent while residing out of this state, may reestablish Kentucky residency if:

(a) He returns to Kentucky; and

(b) He has a guardian, parent or spouse residing in Kentucky.

Section 10. Mentally Ill or Mentally Retarded Supplement. Certified PCH may qualify for quarterly supplement payments of fifty (50) cents per diem for each state supplementation recipient in their care as of the first calendar day of each qualifying month. The PCH shall meet the following criteria to qualify for a supplementation payment:

(1) The PCH shall be licensed in accordance with KRS 216B.010 to 216B.131; and

(2) The PCH shall care for residents who have:

(a) A primary or secondary diagnosis of mental retardation including mild or moderate, or other ranges of retardation whose needs can be met in a personal care home; or

(b) A primary or secondary diagnosis of mental illness excluding such diagnoses as organic brain syndrome, senility, chronic brain syndrome, Alzheimer's; or

(c) A medical history that includes a previous hospitalization in a psychiatric facility, regardless of present diagnosis.

(3) The PCH shall care for a thirty-five (35) MI or MR percent population in all of its occupied licensed PCH beds.

(4) The PCH shall not be eligible for payments during the time it has a conditional rating by the Office of Inspector General. Rating requirements are specified in KRS 216.550 and 900 KAR 2:030.

(5) The PCH shall have a licensed nurse or an individual who has received and successfully completed certified medication technician (CMT) training on duty for at least four (4) hours during the first or second shift each day. The PCH may not decrease staffing hours of the licensed nurse or individual who has successfully completed CMT training in effect prior to July 1990, as a result of this minimum requirement.

(6) The PCH shall file an application with the Department for Social Insurance (DSI) by the tenth working day of the first month of the calendar quarter to be eligible for payment in that quarter.

(a) Quarters shall begin in January, April, July and October.

(b) Once certified, unless eligibility is discontinued, a new application shall not be required.

(c) The PCH shall provide DSI with its tax identification number and address as part of the application process.

(7) The PCH shall provide DSI with a monthly report.

(a) The report shall list:

1. All residents of the PCH who were residents on the first day of the month; and

2. The residents' Social Security numbers.

(b) In order to maintain confidentiality, the PCH shall annotate the monthly report as follows:

1. A star shall indicate a resident has a MI or MR diagnosis.

2. A check mark shall indicate a resident receives state supplementation.

3. A star and a check mark shall indicate the resident is both MI or MR and a recipient of state supplementation.

(c) The monthly report shall be used for:

1. Certification;

2. Payment; and

3. Audit purposes.

(d) The monthly report shall be postmarked to DSI by the fifth working day of the month.

(8) The PCH shall notify DSI if its MI or MR percentage goes below thirty-five (35) percent for all personal care residents. Facilities may be randomly audited to verify percentages and payment accuracy.

Section 11. Training. (1) The PCH licensed nurse or individual who has successfully completed CMT training shall attend MI or MR basic training workshop provided through the Department for Mental Health and Mental Retardation Services. Other staff may attend the basic training workshop [~~be trained~~] in order to assure the facility always has at least one (1) certified staff employed for certification purposes.

(2) MI or MR basic training shall be provided through a one (1) day workshop. The following topics shall be covered:

(a) Importance of proper medication administration.

(b) Side affects and adverse medication reactions with special attention to psychotropics.

(c) Signs and symptoms of an acute onset of a psychiatric episode.

(d) Characteristics of each major diagnosis, for example, paranoia, schizophrenia, bi-polar disorder, or mental retardation.

(e) Guidance in the area of supervision versus patient rights for the MI or MR population.

(f) Instruction in providing necessary activities to meet the needs of mentally ill or mentally retarded residents.

(3) Initial basic training shall include the licensed nurse or the individual who has successfully completed CMT training and may include the owner or operator. These individuals shall be trained in the quarter during which the application is filed.

(4) To assure that a [~~certified~~] staff member who has received basic training is always employed at the facility, a maximum of five (5) may be trained during a year.

(a) If staff turnover results in the loss of the licensed nurse or individual who has successfully completed CMT training and five (5) staff have been trained, the PCH shall request in writing to DSI an exemption of the five (5) staff rule.

(b) The PCH shall have on staff a licensed nurse or individual who has successfully completed CMT training who:

1. Has received the MI or MR basic training; or

2. Is enrolled in the next scheduled MI or MR basic training workshop at the closest location.

(5) The Department for Mental Health and Mental Retardation Services may provide advanced level training for PCH's.

(a) Advanced level training shall be provided through one (1) day workshops.

(b) Each advanced level workshop shall consist of two (2) three (3) hour sessions per day.

(c) Each three (3) hour session shall cover a topic appropriate for staff who work with mentally ill or mentally retarded residents.

(d) Attendance of advanced level training workshops shall be optional for MI or MR supplement participants.

(6) [~~(5)~~] The Department for Mental Health and Mental Retardation Services will provide within five (5) working days:

(a) A certificate to direct care staff who complete the workshop; and

(b) A listing to DSI of staff who completed the training workshop.

(7) [~~(6)~~] DSI shall pay twenty-five (25) dollars for each staff member receiving basic or advanced level training up to the maximum of five (5) staff per year to a PCH who has applied for the MI or MR program.

Section 12. MI or MR Certification. (1) The Office of the Inspector General, Division of Licensing and Regulation, shall visit the PCH to certify eligibility to participate in the MI or MR supplement:

(a) The PCH's initial MI or MR certification may be separate from the annual survey;

(b) The initial MI or MR certification shall be in effect until the next licensure survey that can be greater than or less than twelve (12) months;

(c) PCH's annual MI or MR recertification may be completed during the annual licensure survey;

(d) DSI shall notify the Division of Licensing and Regulation that the facility is ready to be certified.

(2) The Division of Licensing and Regulation shall review records, observe and interview residents and staff during the certification process. The Division of Licensing and Regulation shall review records to assure the following criteria is met:

(a) Certification is on file at the PCH to verify staff attended basic training provided by the Department for Mental Health and Mental Retardation Services.

(b) The PCH's certified staff have trained all other direct care staff through in-service training or orientation regarding the information obtained at the MI or MR basic training workshop. The PCH shall maintain documentation of attendance at the in-service training for all direct care staff.

(c) Activities are being regularly provided and meet the needs of the residents. When residents do not attend group activities, activities shall also be designed to meet the needs of individual residents, for example, reading or other activity that may be provided on an individual basis. Individualized care plans are not required to meet this criteria.

(d) Medication administration meets licensure requirements and licensed nurse or individual who has successfully completed CMT training demonstrates a knowledge of psychotropic drug side affects.

(3) The Division of Licensing and Regulation shall review the PCH copy of the training certification prior to performing their record review during the MI or MR certification process.

(4) If thirty-five (35) percent MI or MR population is met on the day of the visit, the PCH shall be deemed to have an ongoing qualifying percentage effective with month of request for certification. The PCH is responsible for notifying DSI, within ten (10) working days, if the MI or MR population goes below thirty-five (35) percent of all occupied personal care beds in the facility.

(5) The Office of the Inspector General, Division of Licensing and Regulation, shall provide a form to DSI monthly identifying certified PCH eligible for MI or MR supplement. This information shall be provided by the fifth working day of each month for the prior month.

(6) The Office of Inspector General, Division of Licensing and Regulation, shall inform DSI monthly of PCH which receive a conditional rating. This information shall be provided by the fifth working day of each month for the prior month.

Section 13. Hearings and Appeals. Applicants or recipients of benefits under programs described herein who are dissatisfied with any action or inaction on the part of the cabinet shall have the right to a hearing under 904 KAR 2:055.

JOHN L. CLAYTON, Commissioner
MASTEN CHILDERS, II, Secretary
APPROVED BY AGENCY: December 27, 1994
FILED WITH LRC: January 18, 1995 at 3 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Marty Mason, Director

(1) Type and number of entities affected:

(a) There are 6,150 recipients of state supplementation benefits who will be affected by the increase in the state supplementation standards due to the mandated cost of living adjustment.

(b) There are currently 51 participants of the MI or MR supplement program. The participating personal care homes will not be adversely affected by adding the advanced level training workshops since the training is optional. Staff of personal care homes participating in the MI or MR supplement program who attend the advanced level training workshops will be included in the current maximum of 5 staff per year for the $25 reimbursement.

(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 comment received: To be determined after publication of the notice of intent.

(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: To be determined after publication of the notice of intent.

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

(a) For increases in the state supplementation standards:

1. First year following implementation:

(a) The standards for state supplementation recipients increase by $12 for recipients in personal care homes and family care homes.

(b) The standards for state supplementation for recipients of caretaker services increase by:

Single individual or individual with spouse - $12

Couple (one or both requiring care) - $18

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

(b) For training reimbursements for MI or MR supplement participants:

1. First year following implementation: $25 per staff up to 5 staff per fiscal year per personal care home participating in MI or MR supplement program who attend the advanced level or basic training workshops.

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: $300,000 already anticipated in the state budget.

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

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(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: To be determined after publication of the notice of intent.

(b) Kentucky: To be determined after publication of the notice of intent.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered since state supplementation pass through provisions are set forth through an agreement with the Department of Health and Human Services.

(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 harmful effect on environment and public health would result if not implemented: None

(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: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments: Since 1977 the Commonwealth of Kentucky has had an agreement with the Department of Health and Human Services to pass through cost of living SSI benefit increases to state supplementation recipients.

(11) TIERING: Is tiering applied? No. Tiering was not used since application of policy is applied in a like manner for all individuals as set forth through an agreement with the Department of Health and Human Services.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 20 CFR 416.2095 and 20 CFR 416.2096

2. State compliance standards. This amended administrative regulation included the 1995 cost of living increases to place Kentucky in compliance with federal SSI guideline.

3. Minimum or uniform standards contained in the federal mandate. Maintain state supplementation payment and pass-along cost of living increases.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. No

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. None

STATEMENT OF EMERGENCY
904 KAR 2:017E

This emergency administrative regulation revises the definitions that apply to the new child care maximum payment rates. This emergency administrative regulation implements the federal regulations at 45 CFR 255.1 that requires states to submit child care maximum payment rates no less than biennially. This emergency administrative regulation clarifies that monthly part-time child care payments shall not exceed the monthly maximum part-time payments as specified in the maximum rates. This emergency administrative regulation changes the method by which transportation payments shall be provided to JOBS participants to allow arrangements to be made by the state AFDC agency or a contractor. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The notice of intent for the ordinary administrative regulation was filed with the Regulations Compiler for the December 1994 filing.

BRERETON C. JONES, Governor
MASTEN CHILDERS II, Secretary

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development

904 KAR 2:017E. Job opportunities and basic skills (JOBS) child care and supportive services.

RELATES TO: KRS 205.200(2), 205.211, 45 CFR 250.0, 250.1, 250.11, 250.12, 250.48, 255.0, 255.2, 255.3, 255.4, 255.5, 255.6

STATUTORY AUTHORITY: KRS 194.050, 205.200(2)

EFFECTIVE: January 18, 1995

NECESSITY AND FUNCTION: The Cabinet for Human Resources is required to administer the public assistance programs. KRS 205.200(2) requires that the conditions of eligibility to receive AFDC money grants be prescribed by administrative regulations in conformity with 42 USC 602 and federal regulations. This administrative regulation sets forth the requirements for receiving job opportunities and basic skills (JOBS) child care and supportive services.

Section 1. Definitions. (1) "Approved JOBS activities" means participation in component, precomponent, component preparation, preemployment, transitional extension or self-initiated JOBS activities which have been determined by the Department for Social Insurance to be consistent with employment goals.

(2) "Center-based child care" means full- or part-time:

(a) Type I nonresidential licensed care, day or night, provided for seven (7) or more unrelated children; or

(b) Residential care, day or night, provided for thirteen (13) or more unrelated children.

(3) "Certified child care" means child care which is provided in a private home, day or night, for six (6) or fewer unrelated children and the provider is registered with the Cabinet for Human Resources, Department for Social Services. Standards for certification are contained in 905 KAR 2:100.

(4) "Combination programs" means any educational program which includes as its basis literacy, ABE or GED. This program shall also include life skills, skills training or job readiness training.

(5) "Component" means services and activities such as education,

job skills training, job readiness, job development and placement, job search, on-the-job training, alternative work experience program, other work experience program or community work experience program activities available under the Job Opportunities and Basic Skills (JOBS) Program. Each individual component is described in 904 KAR 2:370.

(6) "Component preparation" means the period in which assessment, testing, development of the employability plan and referrals for removal of barriers takes place.

(7) "Family child care" means:

(a) Child care homes which are mandatorily certified to provide care for four (4) to six (6) unrelated children or voluntarily certified to care for three (3) or fewer unrelated children who are subject to health and safety requirements of 905 KAR 2:100; or

(b) Unregulated care provided for no more than three (3) unrelated children. [~~care provided for no more than three (3) unrelated children. These homes are unregulated and exclude group home child care providers that may be voluntary certified.~~]

(8) "Full-time employment" means employment of thirty (30) hours per week or 130 hours per month or more.

(9) "Group home child care" means Type II residential licensed care, day or night, provided for seven (7) to twelve (12) unrelated children. [~~child care homes which are mandatorily certified to provide care for four (4) to six (6) unrelated children or voluntarily certified to care for three (3) or fewer unrelated children. Mandatory and voluntary certified providers are subject to the health and safety requirements of 905 KAR 2:100.~~]

(10) "In-home child care" means care provided to a child in his or her own home.

(11) "Licensed child care providers" means day care facilities which provide care for seven (7) or more unrelated children, which are licensed by the Division of Licensing and Regulation, Office of the Inspector General, as provided in 905 KAR 2:090.

(12) "Part-time employment" means employment of less than thirty (30) hours per week or 130 hours per month or not employed throughout the entire month.

(13) "Precomponent" means a waiting period between the dates of component assignment and component commencement.

(14) "Preemployment" means a waiting period between the dates of hiring and employment commencement.

(15) "Recoupment" means recovery of overpayments of child care.

(16) "Self-initiated" means approved participation in which education or training activities are initiated by the client and determined to meet agency criteria. Specific criteria is contained in 904 KAR 2:370.

(17) "Transitional extension" means a period of up to ninety (90) days subsequent to the discontinuance of the AFDC case in which supportive service payments may continue if:

(a) The case is not discontinued due to fraudulent activity; and

(b) The case is not discontinued due to failure to comply with procedural requirements; and

(c) The JOBS participant elects to continue the approved component activity in which she is engaged at the time of discontinuance.

(18) "Unregulated child care providers" means private providers, such as friends or relatives, who are not required to be certified or licensed.

Section 2. Payment Entitlement. (1) With the exception of payments described in Sections 8 and 12 of this administrative regulation those individuals participating in the JOBS Program shall be entitled to payment of:

(a) Child care;

(b) Transportation; and

(c) Other supportive services costs necessary for participation in an approved JOBS activity, as described in Section 12 of this administrative regulation.

(2) JOBS activities are described in 904 KAR 2:370.

Section 3. Child Care Eligibility in JOBS Components. (1) Child care shall be paid for a child meeting the following criteria:

(a) The child is under thirteen (13); or

(b) A dependent child who is physically or mentally incapable of caring for himself, as verified by the written determination of:

1. A physician; or

2. A licensed or certified psychologist; or

(c) A needy dependent child under court supervision; or

(d) Would be a dependent child except for the receipt of benefits under supplemental security income (SSI) under 42 USC 1382 or foster care under 42 USC 672.

(2) Child care shall be provided in the following situations:

(a) Precomponent;

(b) Component preparation;

(c) Component participation;

(d) Preemployment; or

(e) On-the-job training (OJT) participants discontinued from AFDC, until the end of the component placement.

Section 4. Child Care Eligibility in Self-initiated Activities. (1) Child care shall be provided in the same situations as in JOBS components with the following exceptions:

(a) Discontinued OJT participants;

(b) Component preparation; and

(c) Precomponent, for persons waiting to enter self-initiated activities for the first time.

(2) Child care shall be provided only for approved self-initiated activities.

Section 5. Child Care Limitations. (1) Child care payments shall:

(a) Be made directly to the provider, in an amount equal to the actual cost, up to a payment maximum based on local market rates for components which do not provide earned income.

(b) Be allowed as a deduction as outlined in administrative regulation 904 KAR 2:016 for any component yielding earned income.

(2) Payments shall not be made to a provider if the provider is:

(a) The parent or stepparent;

(b) The legal guardian;

(c) A member of the AFDC assistance unit which includes the child needing care;

(d) Not meeting applicable standards of state and local law; or

(e) Not allowing parental access.

(3) Local market rates shall be determined by:

(a) The type of provider;

(b) The age of the child;

(c) The special needs of the child. Special needs shall be verified by:

1. Entitlement to disability benefits; or

2. Written statement from a physician or professional from a service agency such as Comprehensive Care, or the Department for Social Services;

(d) The amount of time care is needed; and

(e) The geographical boundaries of the fifteen (15) area development districts.

(4) Full-time (FT) and part-time (PT) attendance shall be determined by the provider.

(5) FT and PT daily maximum payment levels and PT monthly maximum payment levels shall be established for the following groups of dependent children:

(a) "Special needs" includes children in no certain age group;

(b) "Infants" includes children under age one (1);

(c) "Toddlers" includes children from age one (1) up to age three (3);

(d) "Preschool" includes children from age three (3) up to age six

(6);

(e) "School age" includes children age six (6) and over.

(6) For needs incurred on or after January 1, 1995 [~~April 1, 1992~~], child care maximum payments shall be made as follows:

WESTERN REGION
URBAN COUNTIES
COUNTY NAMES: MCCRACKEN
PURCHASE AREA DEVELOPMENT DISTRICT #1

	Special Needs		PT	Infants		PT	Toddlers		PT	Pre-School		PT	School-Age		PT
	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max
Center-based	$12	16	260	13	16	282	12	16	260	12	14	260	12	9	260
Group Home	$13	13	282	12	12	260	11	11	238	11	10	238	11	10	238
Family/In-Home	$10	16	217	11	16	238	11	16	238	11	16	238	11	16	238

WESTERN REGION
RURAL COUNTIES
COUNTY NAMES: BALLARD, CALLOWAY, CARLISLE, FULTON, GRAVES, HICKMAN, MARSHALL
PURCHASE AREA DEVELOPMENT DISTRICT #1

	Special Needs		PT	Infants		PT	Toddlers		PT	Pre-School		PT	School-Age		PT
	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max
Center-based	$12	16	260	13	16	282	13	16	282	13	14	282	12	9	260
Group Home	$13	13	282	13	13	282	13	13	282	13	13	282	13	13	282
Family/In-Home	$15	16	325	11	16	238	11	16	238	13	16	282	12	16	260

WESTERN REGION
URBAN COUNTIES
COUNTY NAMES: CHRISTIAN
PENNYRILE AREA DEVELOPMENT DISTRICT #2

	Special Needs		PT	Infants		PT	Toddlers		PT	Pre-School		PT	School-Age		PT
	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max
Center-based	$12	16	260	13	16	282	12	16	260	12	14	260	11	8	238
Group Home	$13	13	282	12	12	260	11	11	238	10	10	217	10	10	217
Family/In-Home	$10	16	217	11	16	238	11	16	238	11	16	238	11	16	238

WESTERN REGION
RURAL COUNTIES
COUNTY NAMES: CALDWELL, CRITTENDEN, HOPKINS, LIVINGSTON, LYON, MUHLENBURG, TODD, TRIGG
PENNYRILE AREA DEVELOPMENT DISTRICT #2

	Special Needs		PT	Infants		PT	Toddlers		PT	Pre-School		PT	School-Age		PT
	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max
Center-based	$12	16	260	13	16	282	13	16	282	13	14	282	12	8	260
Group Home	$13	13	282	13	13	282	11	13	238	13	13	282	13	13	282
Family/In-Home	$15	16	325	11	16	238	11	16	238	13	16	282	12	16	260

WESTERN REGION
URBAN COUNTIES
COUNTY NAMES: DAVIESS, HENDERSON
GREEN RIVER AREA DEVELOPMENT DISTRICT #3

	Special Needs		PT	Infants		PT	Toddlers		PT	Pre-School		PT	School-Age		PT
	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max
Center-based	$13	16	282	13	16	282	13	16	282	13	14	282	13	10	282
Group Home	$13	13	282	12	12	260	12	11	260	12	10	260	12	10	260
Family/In-Home	$11	16	238	11	16	238	11	16	238	11	16	238	11	16	238

WESTERN REGION
RURAL COUNTIES
COUNTY NAMES: HANCOCK, MCLEAN, OHIO, UNION, WEBSTER
GREEN RIVER AREA DEVELOPMENT DISTRICT #3

	Special Needs		PT	Infants		PT	Toddlers		PT	Pre-School		PT	School-Age		PT
	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max
Center-based	$13	16	282	13	16	282	13	16	282	13	14	282	13	10	282
Group Home	$13	13	282	13	13	282	13	13	282	13	13	282	13	13	282
Family/In-Home	$15	16	325	11	16	238	11	16	238	13	16	282	12	16	260

WESTERN REGION
RURAL COUNTIES
COUNTY NAMES: ALLEN, BARREN, BUTLER, EDMONSON, HART, LOGAN, METCALFE, MONROE, SIMPSON, WARREN
BARREN RIVER AREA DEVELOPMENT DISTRICT #4

	Special Needs		PT	Infants		PT	Toddlers		PT	Pre-School		PT	School-Age		PT
	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max
Center-based	$13	16	282	13	16	282	13	16	282	13	14	282	12	8	260
Group Home	$13	13	282	13	13	282	13	13	282	13	13	282	13	13	282
Family/In-Home	$15	16	325	11	16	238	11	16	238	13	16	282	12	16	260

WESTERN REGION
RURAL COUNTIES
COUNTY NAMES: BRECKINRIDGE, GRAYSON, HARDIN, LARUE, MARION, MEADE, NELSON, WASHINGTON
LINCOLN TRAIL AREA DEVELOPMENT DISTRICT #5

	Special Needs		PT	Infants		PT	Toddlers		PT	Pre-School		PT	School-Age		PT
	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max
Center-based	$12	16	260	13	16	282	13	16	282	13	14	282	12	8	260
Group Home	$13	13	282	13	13	282	13	13	282	13	13	282	13	13	282
Family/In-Home	$15	16	325	11	16	238	11	16	238	13	16	282	12	16	260

CENTRAL REGION
URBAN COUNTIES
COUNTY NAMES: BULLITT, JEFFERSON, OLDHAM, SHELBY
KENTUCKIANA REGIONAL PLANNING AND DEVELOPMENT AGENCY AREA DEVELOPMENT DISTRICT #6

	Special Needs		PT	Infants		PT	Toddlers		PT	Pre-School		PT	School-Age		PT
	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max
Center-based	$15	15	325	15	12	325	15	14	325	14	15	303	12	16	260
Group Home	$14	14	303	14	11	303	14	11	303	13	10	282	11	8	238
Family/In-Home	$15	13	325	13	12	282	13	12	282	12	12	260	10	12	217

CENTRAL REGION
RURAL COUNTIES
COUNTY NAMES: HENRY, SPENCER, TRIMBLE
KENTUCKIANA REGIONAL PLANNING AND DEVELOPMENT AGENCY AREA DEVELOPMENT DISTRICT #6

	Special Needs		PT	Infants		PT	Toddlers		PT	Pre-School		PT	School-Age		PT
	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max
Center-based	$15	15	325	16	12	347	16	14	347	15	15	325	14	16	303
Group Home	$14	14	303	15	15	325	15	15	325	15	10	325	13	8	282
Family/In-Home	$15	13	325	15	12	325	15	12	325	15	12	325	15	12	325

CENTRAL REGION
URBAN COUNTIES
COUNTY NAMES: BOONE, CAMPBELL, KENTON
NORTHERN KENTUCKY AREA DEVELOPMENT DISTRICT #7

	Special Needs		PT	Infants		PT	Toddlers		PT	Pre-School		PT	School-Age		PT
	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max
Center-based	$16	16	347	16	13	347	14	14	303	14	15	303	13	16	282
Group Home	$15	15	325	15	12	325	13	11	282	13	10	282	12	9	260
Family/In-Home	$15	14	325	14	12	303	12	12	260	12	12	260	11	12	238

CENTRAL REGION
RURAL COUNTIES
COUNTY NAMES: CARROLL, GALLATIN, GRANT, OWEN, PENDLETON
NORTHERN KENTUCKY AREA DEVELOPMENT DISTRICT #7

	Special Needs		PT	Infants		PT	Toddlers		PT	Pre-School		PT	School-Age		PT
	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max
Center-based	$16	16	347	16	13	347	16	14	347	15	15	325	14	16	303
Group Home	$15	15	325	15	15	325	15	15	325	15	10	325	13	9	282
Family/In-Home	$15	14	325	15	12	325	15	12	325	15	12	325	15	12	325

EASTERN REGION
RURAL COUNTIES
COUNTY NAMES: BRACKEN, FLEMING, LEWIS, MASON, ROBERTSON
BUFFALO TRACE AREA DEVELOPMENT DISTRICT #8

	Special Needs		PT	Infants		PT	Toddlers		PT	Pre-School		PT	School-Age		PT
	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max
Center-based	$13	16	282	13	12	282	13	12	282	13	12	282	13	14	282
Group Home	$12	11	260	12	12	260	12	10	260	12	10	260	12	10	260
Family/In-Home	$10	10	217	11	9	238	11	6	238	15	10	325	12	10	260

EASTERN REGION
RURAL COUNTIES
COUNTY NAMES: BATH, MENIFEE, MONTGOMERY, MORGAN, ROWAN
GATEWAY AREA DEVELOPMENT DISTRICT #9

	Special Needs		PT	Infants		PT	Toddlers		PT	Pre-School		PT	School-Age		PT
	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max
Center-based	$13	16	282	13	12	282	13	12	282	13	12	282	13	14	282
Group Home	$12	10	260	12	12	260	12	10	260	12	10	260	12	10	260
Family/In-Home	$10	9	217	11	9	238	11	6	238	15	10	325	12	10	260

EASTERN REGION
URBAN COUNTIES
COUNTY NAMES: BOYD, CARTER, GREENUP
FIVCO AREA DEVELOPMENT DISTRICT #10

	Special Needs		PT	Infants		PT	Toddlers		PT	Pre-School		PT	School-Age		PT
	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max
Center-based	$14	16	303	14	12	303	13	12	282	13	12	282	13	14	282
Group Home	$13	13	282	13	12	282	12	10	260	12	10	260	12	10	260
Family/In-Home	$12	12	260	12	9	260	11	8	238	11	10	238	11	10	238

EASTERN REGION
RURAL COUNTIES
COUNTY NAMES: ELLIOTT, LAWRENCE
FIVCO AREA DEVELOPMENT DISTRICT #10

	Special Needs		PT	Infants		PT	Toddlers		PT	Pre-School		PT	School-Age		PT
	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max
Center-based	$14	16	303	14	12	303	13	12	282	13	12	282	13	14	282
Group Home	$13	13	282	13	12	282	12	10	260	12	10	260	12	10	260
Family/In-Home	$12	12	260	12	9	260	11	8	238	15	10	325	12	10	260

EASTERN REGION
RURAL COUNTIES
COUNTY NAMES: FLOYD, JOHNSON, MAGOFFIN, MARTIN, PIKE
BIG SANDY AREA DEVELOPMENT DISTRICT #11

	Special Needs		PT	Infants		PT	Toddlers		PT	Pre-School		PT	School-Age		PT
	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max
Center-based	$13	16	282	13	12	282	13	12	282	13	12	282	13	14	282
Group Home	$12	11	260	12	12	260	12	10	260	12	10	260	12	10	260
Family/In-home	$10	10	217	11	9	238	11	7	238	15	10	325	12	10	260

EASTERN REGION
RURAL COUNTIES
COUNTY NAMES: BREATHITT, KNOTT, LEE, LESLIE, LETCHER, OWSLEY, PERRY, WOLFE
KENTUCKY RIVER AREA DEVELOPMENT DISTRICT #12

	Special Needs		PT	Infants		PT	Toddlers		PT	Pre-School		PT	School-Age		PT
	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max
Center-based	$13	16	282	13	12	282	13	12	282	13	12	282	13	14	282
Group Home	$12	12	260	12	12	260	12	10	260	12	10	260	12	10	260
Family/In-Home	$11	11	238	11	9	238	11	8	238	15	10	325	12	10	260

EASTERN REGION
RURAL COUNTIES
COUNTY NAMES: BELL, CLAY, HARLAN, JACKSON, KNOX, LAUREL, ROCKCASTLE, WHITLEY
CUMBERLAND VALLEY AREA DEVELOPMENT DISTRICT #13

	Special Needs		PT	Infants		PT	Toddlers		PT	Pre-School		PT	School-Age		PT
	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max
Center-based	$13	16	282	13	12	282	13	12	282	13	12	282	13	14	282
Group Home	$12	10	260	12	12	260	12	10	260	12	10	260	12	10	260
Family/In-Home	$10	9	217	11	9	238	11	6	238	15	10	325	12	10	260

CENTRAL REGION
RURAL COUNTIES
COUNTY NAMES: ADAIR, CASEY, CLINTON, CUMBERLAND, GREEN, MCCREARY, PULASKI, RUSSELL, TAYLOR, WAYNE
LAKE CUMBERLAND AREA DEVELOPMENT DISTRICT #14

	Special Needs		PT	Infants		PT	Toddlers		PT	Pre-School		PT	School-Age		PT
	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max
Center-based	$14	11	303	16	8	347	16	14	347	15	13	325	14	16	303
Group Home	$14	14	303	15	15	325	15	15	325	15	8	325	13	8	282
Family/In-Home	$15	12	325	15	12	325	15	12	325	15	12	325	15	12	325

CENTRAL REGION
URBAN COUNTIES
COUNTY NAMES: BOURBON, CLARK, FAYETTE, FRANKLIN, JESSAMINE, MADISON, SCOTT, WOODFORD
BLUEGRASS AREA DEVELOPMENT DISTRICT #15

	Special Needs		PT	Infants		PT	Toddlers		PT	Pre-School		PT	School-Age		PT
	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max
Center-based	$14	14	303	14	11	303	13	14	282	13	14	282	13	16	282
Group Home	$14	14	303	13	11	282	12	11	260	12	9	260	12	9	260
Family/In-Home	$15	12	325	13	12	282	11	12	238	11	12	238	11	12	238

CENTRAL REGION
RURAL COUNTIES
COUNTY NAMES: ANDERSON, BOYLE, ESTILL, GARRARD, HARRISON, LINCOLN, MERCER, NICHOLAS, POWELL
BLUEGRASS AREA DEVELOPMENT DISTRICT #15

	Special Needs		PT	Infants		PT	Toddlers		PT	Pre-School		PT	School-Age		PT
	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max
Center-based	$14	14	303	16	11	347	16	14	347	15	14	325	14	16	303
Group Home	$14	14	303	15	15	325	15	15	325	15	9	325	13	9	282
Family/In-Home	$15	12	325	15	12	325	12	12	260	15	12	325	15	12	325

~~PURCHASE AREA DEVELOPMENT DISTRICT #1~~

	Special Needs		Infants		Toddlers		Pre-School		~~School-Age~~	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
~~Center-based~~	$12	12	12	9	12	9	12	9	12	9
~~Group Home~~	$11	11	11	8	11	8	11	8	11	8
~~Family/In-Home~~	$10	10	10	7	10	7	10	7	10	7

~~PENNYRILE AREA DEVELOPMENT DISTRICT #2~~

	Special Needs		Infants		Toddlers		Pre-School		~~School-Age~~	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
~~Center-based~~	$11	11	11	8	10	7	10	7	10	7
~~Group Home~~	$10	10	10	7	9	6	9	6	9	6
~~Family/In-Home~~	$9	9	9	6	8	5	8	5	8	5

~~GREEN RIVER AREA DEVELOPMENT DISTRICT #3~~

	Special Needs		Infants		Toddlers		Pre-School		~~School-Age~~	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
~~Center-based~~	$13	13	13	10	13	10	13	10	13	10
~~Group Home~~	$12	12	12	9	12	9	12	9	12	9
~~Family/In-Home~~	$11	11	11	8	11	8	11	8	11	8

~~BARREN RIVER AREA DEVELOPMENT DISTRICT #4~~

	Special Needs		Infants		Toddlers		Pre-School		~~School-Age~~	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
~~Center-based~~	$13	13	13	10	11	8	11	8	11	8
~~Group Home~~	$12	12	12	9	10	7	10	7	10	7
~~Family/In-Home~~	$11	11	11	8	9	6	9	6	9	6

~~LINCOLN TRAIL AREA DEVELOPMENT DISTRICT #5~~

	Special Needs		Infants		Toddlers		Pre-School		~~School-Age~~	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
~~Center-based~~	$11	11	11	8	10	7	10	7	10	7
~~Group Home~~	$10	10	10	7	9	6	9	6	9	6
~~Family/In-Home~~	$9	9	9	6	8	5	8	5	8	5

~~KENTUCKIANA REGIONAL PLANNING AND DEVELOPMENT AGENCY AREA DEVELOPMENT DISTRICT #6~~

	Special Needs		Infants		Toddlers		Pre-School		~~School-Age~~	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
~~Center-based~~	$15	15	15	12	15	12	14	11	12	9
~~Group Home~~	$14	14	14	11	14	11	13	10	11	8
~~Family/In-Home~~	$13	13	13	10	13	10	12	9	10	7

~~NORTHERN KENTUCKY AREA DEVELOPMENT DISTRICT #7~~

	Special Needs		Infants		Toddlers		Pre-School		~~School-Age~~	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
~~Center-based~~	$16	16	16	13	14	11	14	11	13	10
~~Group Home~~	$15	15	15	12	13	10	13	10	12	9
~~Family/In-Home~~	$14	14	14	11	12	9	12	9	11	8

~~BUFFALO TRACE AREA DEVELOPMENT DISTRICT #8~~

	Special Needs		Infants		Toddlers		Pre-School		~~School Age~~	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
~~Center-based Group~~	$12	12	12	9	11	8	9	6	9	6
~~Home Family/ In-Home~~	$11	11	11	8	10	7	8	5	8	5
	$10	10	10	7	9	6	7	4	7	4

~~GATEWAY AREA DEVELOPMENT DISTRICT #9~~

	Special Needs		Infants		Toddlers		Pre-School		~~School Age~~	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
~~Center-based Group~~	$11	11	9	6	9	6	9	6	9	6
~~Home Family/ In-Home~~	$10	10	8	5	8	5	8	5	8	5
	$9	9	7	4	7	4	7	4	7	4

~~FIVCO AREA DEVELOPMENT DISTRICT #10~~

	Special Needs		Infants		Toddlers		Pre-School		~~School Age~~	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
~~Center-based Group~~	$14	14	14	11	13	10	13	10	13	10
~~Home Family/ In-Home~~	$13	13	13	10	12	9	12	9	12	9
	$12	12	12	9	11	8	11	8	11	8

~~BIG SANDY AREA DEVELOPMENT DISTRICT #11~~

	Special Needs		Infants		Toddlers		Pre-School		~~School Age~~	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
~~Center-based Group~~	$12	12	12	9	12	9	12	9	12	9
~~Home Family/ In-home~~	$11	11	11	8	11	8	11	8	11	8
	$10	10	10	7	10	7	10	7	10	7

~~KENTUCKY RIVER AREA DEVELOPMENT DISTRICT #12~~

	Special Needs		Infants		Toddlers		Pre-School		~~School Age~~	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
~~Center-based Group~~	$13	13	13	10	13	10	11	8	11	8
~~Home Family/ In-Home~~	$12	12	12	9	12	9	10	7	10	7
	$11	11	11	8	11	8	9	6	9	6

~~CUMBERLAND VALLEY AREA DEVELOPMENT DISTRICT #13~~

	Special Needs		Infants		Toddlers		Pre-School		~~School Age~~	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
~~Center-based Group~~	$11	11	11	8	11	8	11	8	11	8
~~Home Family/ In-Home~~	$10	10	10	7	10	7	10	7	10	7
	$9	9	9	6	9	6	9	6	9	6

~~LAKE CUMBERLAND AREA DEVELOPMENT DISTRICT #14~~

	Special Needs		Infants		Toddlers		Pre-School		~~School Age~~	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
~~Center-based Group~~	$11	11	10	7	10	7	10	7	10	7
~~Home Family/ In-Home~~	$10	10	9	6	9	6	9	6	9	6
	$9	9	8	5	8	5	8	5	8	5

~~BLUEGRASS AREA DEVELOPMENT DISTRICT #15~~

	Special Needs		Infants		Toddlers		Pre-School		~~School Age~~	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
~~Center-based Group~~	$14	14	14	11	13	10	13	10	13	10
~~Home Family/ In-Home~~	$13	13	13	10	12	9	12	9	12	9
	$12	12	12	9	11	8	11	8	11	8]

(7) Child care payments shall be limited as follows:

(a) Six (6) semesters (three (3) years) for a two (2) year postsecondary program;

(b) Eight (8) semesters (nine (9) with good cause) for a four (4) year postsecondary program with an additional semester when:

1. If only one (1) additional semester is needed to complete the degree requirements; and

2. If satisfactory progress is being made;

(c) No restrictions on other education and training activities.

(8) These limits apply to both full-time and part-time enrollment.

(9) In preemployment or precomponent, if necessary to guarantee that the child care arrangement shall not be lost, child care payments shall be provided for a period of:

(a) Up to two (2) weeks prior to the scheduled start of employment or component activity; and

(b) Up to one (1) month during a break in employment or component activity if subsequent employment or component activity is scheduled to begin within that period.

(10) Child care payments shall not be made if:

(a) If only one (1) parent is participating; and

(b) The nonparticipating parent is not incapacitated.

(c) The nonparticipating parent is employed and child care is allowed as a deduction as outlined in administrative regulation 904 KAR 2:016.

(11) When child care expenses are paid from another source the agency shall pay:

(a) Only the difference between the total child care and what the other source is paying; and

(b) Up to the maximum daily payment rate per child per provider.

Section 6. Authorization of Child Care Payment. (1) Child care payments shall be authorized upon the receipt of appropriate verification of the cost of care.

(2) Departmental forms required for verification are incorporated by reference in this administrative regulation.

(3) Payments shall be authorized in accordance with 904 KAR 2:050.

Section 7. Restrictions on Authorization of Child Care Payments. Payment shall not be made if:

(1) Verification is not returned by the end of the month following the month in which the cost was incurred;

(2) The participant is sanctioned for noncompliance with JOBS activities, as specified in 904 KAR 2:370; or

(3) A fair hearing decision is pending on an issue of noncompliance with JOBS.

Section 8. Transportation Payments in JOBS components. Transportation reimbursement shall be paid in the following situations:

(1) Precomponent;

(2) Component preparation;

(3) Component participation, with the exception of OJT while the AFDC case remains active;

(4) Transitional extension; or

(5) On-the-job training (OJT) participants discontinued from AFDC, until the end of the component placement.

Section 9. Transportation Payments in Self-initiated Activities. (1) Transportation shall be provided in the same situations as in JOBS components, with the exceptions of:

(a) Transitional extension;

(b) OJT participants discontinued due to increased earnings or hours of employment;

(c) Component preparation; and

(d) Precomponent, for persons waiting to enter self-initiated activities for the first time.

(2) Reimbursement shall be paid only for approved self-initiated activities.

Section 10. Transportation Payment Amount and Authorization. (1) Transportation shall be provided for individuals participating in approved JOBS activities through:

(a) Arrangement by the state AFDC agency or contractor; and

(b) Direct payments to the individual of three (3) dollars per day after receipt of appropriate verification through departmental forms or through the JOBS Automated System (JAS). Payments shall be made as specified in 904 KAR 2:050. ~~[A standard rate of three (3) dollars per day shall be paid for individuals participating in approved JOBS activities.~~

~~(2) Transportation reimbursement shall be made after receipt of appropriate verification through departmental forms or through the JOBS automated system. Payments shall be made as specified in 904 KAR 2:050.]~~

(2) ~~[(3)]~~ Transportation payments shall be limited in the same manner as child care payments, as described in Section 5(7) of this administrative regulation.

(3) ~~[(4)]~~ In precomponent, if necessary to guarantee that the transportation arrangement shall not be lost, transportation payments shall be provided for the period of:

(a) Up to two (2) weeks prior to the scheduled start of component activity; and

(b) Up to one (1) month during a break in component activity if subsequent component activity is scheduled to begin within that period.

Section 11. Restrictions on Authorization of Transportation Payments. Payments shall not be made if:

(1) Appropriate verification is not returned by the end of the month following the month in which the cost was incurred;

(2) The participant is sanctioned for noncompliance with JOBS activities, as specified in 904 KAR 2:370; or

(3) A fair hearing decision is pending on an issue of noncompliance with JOBS.

Section 12. Other Supportive Services in JOBS Components. (1) Nonrecurring services shall be provided if necessary for participation in the approved JOBS activities of:

(a) Component preparation;

(b) Component participation, except for expenses included in the work expense standard deduction for participants in OJT while the AFDC case remains active;

(c) Transitional extension; or

(d) OJT participants discontinued from AFDC, until the end of the component placement.

(2) These services shall be approved by the case manager as defined in 904 KAR 2:370.

(3) Items and services that shall be approved are the purchase of:

(a) Remedial health care items or services not covered under the Medicaid Program;

(b) Uniforms required by education or training provider;

(c) Suitable clothing for a job interview;

(d) School supplies other than books;

(e) Fees to obtain a license;

(f) Timepieces that are necessary for training;

(g) The cost to have a photo identification made in order to take a GED test;

(h) The cost of a criminal records check fee if the provider requires verification; or

(i) Driver's education.

Section 13. Other Supportive Services in Approved Self-initiated Activities. Nonrecurring services shall be provided in the same situations as in JOBS components, with the following exceptions:

(1) Transitional extension;

(2) Discontinued OJT participants; or

(3) Component preparation.

Section 14. Limitations on Other Supportive Services. (1) A cumulative limit of $300 in a twelve (12) month period, beginning with the first day of the month in which the appropriate verification form is issued ~~[first supportive service payment is made]~~, shall be in effect for any participant in these approved JOBS activities:

(a) Component preparation;

(b) Component-related;

(c) Transitional extension; or

(d) Discontinued OJT participants.

(2) Other supportive services shall be limited in the same manner as child care payments, as described in Section 5(7) of this administrative regulation.

Section 15. Restrictions on Authorization of Supportive Service Payments. Payments shall not be made for the period during which:

(1) Verification is not returned by the service provider;

(2) The participant is sanctioned for noncompliance with JOBS activities, as specified in 904 KAR 2:370; or

(3) A fair hearing decision is pending on an issue of noncompliance with JOBS.

Section 16. Child Care Recoupment. The following provisions apply to JOBS child care supportive service overpayments:

(1) Necessary action shall be taken promptly by the department to correct and recoup any overpayments occurring on or after October 1, 1990 in a case:

(a) Of fraud;

(b) Involving a current recipient; and

(c) In which the overpayment would equal or exceed the cost of recovery.

(2) An overpayment shall be recovered through:

(a) Repayment by the individual to the cabinet; or

(b) Reduction in child care payments; or

(c) Reduction of AFDC benefits only upon a voluntary request of

the recipient family.

(3) Repayment by the individual shall allow the recipient family to retain, for any month, a reasonable amount of funds.

(4) Underpayments and overpayments may be offset against each other in adjusting incorrect payments.

Section 17. Material Incorporated by Reference. (1) Forms necessary for verification of child care and supportive services payments in the JOBS program are incorporated effective December 1, 1993. These forms include:

(a) PA-32, revised 1/93;

(b) PA-33, revised 3/94;

(c) PA-33N, revised 3/94;

(d) PA-33.1, revised 6/91;

(e) PA-114, revised 1/93; and

(f) PA-416, revised 1/93.

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

JOHN L. CLAYTON, Commissioner
MASTEN CHILDERS, II, Secretary
APPROVED BY AGENCY: December 29, 1994
FILED WITH LRC: January 18, 1995 at 3 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Marty Mason, Director

(1) Type and number of entities affected: Approximately 5,500 JOBS participants receive child care benefits in a month. Those participants may receive the maximum amount allowed or may receive a lesser amount. The figure of 5,500 was estimated from the number of JOBS participants who received child care in March, April and May of 1994. We do not believe that the revisions in the child care rates or the clarification regarding part-time payments will increase or decrease the number of participants who will receive child care benefits. Approximately 10,088 JOBS participants receive transportation benefits in a month. By changing the method by which transportation payments shall be provided, the number of participants receiving payment should not be affected.

(2) Direct and indirect cost or savings 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 comment received: No hearing was requested following the publication of the notice of intent so no 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 comment received: No hearing was requested following the publication of the notice of intent so no 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 compliance, reporting or paperwork required.

2. Second and subsequent years: See #1.

(3) Effects on the promulgating administrative body: The effect that the new child care rates will have on the cabinet is of a fiscal nature in terms of benefits only. There will be no personnel impact as a result of the revision either in administrative costs or staffing.

(a) Direct and indirect cost or savings: We estimate that the revision to the child care rates will cost the cabinet approximately $36,914 per month to implement. We looked at the month of April 1994 to determine the number of payments made at the maximum amount and converted that total using the new rates to arrive at that figure. This converts to $258,398 for the remaining seven months of the state fiscal year and $442,968 in state fiscal year 1996. The existing budgeted general and federal revenues should be sufficient to cover the additional cost for the child care rate increase. We estimate no fiscal impact as a result of the method in which transportation payments shall be made.

1. First year: $4,057,900 has been budgeted to provide child care as the state portion in state fiscal year 1995. The federal portion budgeted was $11,442,100 for a total of $15.5 million. This budgeted amount should be sufficient to cover the increase in rates for state fiscal year 1995.

2. Continuing cost or savings: $4,259,000 has been budgeted to provide child care as the state portion in state fiscal year 1996. The federal portion budgeted was $12,011,000 for a total of $16,270,000. This budgeted amount should be sufficient to cover the increase in rates for state fiscal year 1996.

3. Additional factors increasing or decreasing costs: Results of later surveys could affect costs depending on whether or not rates increase or decrease.

(b) Reporting and paperwork requirements: None other than what is currently being completed. No new additional requirements.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source if revenue to be used for implementation and enforcement of administrative regulation: Title IV-A federal child care funds and state 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 hearing was requested following the publication of the notice of intent so no comments were received.

(b) Kentucky: No hearing was requested following the publication of the notice of intent so no comments were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This change is federally mandated.

(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:

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Eligibility conditions for JOBS child care must be applied on a consistent and equitable basis in accordance with federal regulations.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 CFR 255.1

2. State compliance standards. The state compliance standards are the same as the federal minimum requirements.

3. Minimum or uniform standards contained in the federal mandate. All state which administer the JOBS Program are required to update maximum child care payments at least biennially.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the Federal mandate. No

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. None

STATEMENT OF EMERGENCY
904 KAR 2:035E

To avoid the loss of federal funding for the AFDC Program for failure to comply with federal law, the administrative regulation 904 KAR 2:035E is amended to implement provisions of the National Voter Registration Act, 42 USC 1973gg-10 and KRS 116.048, including the appropriate forms by reference. The administrative regulation is amended to reference the provision of interpreter services for the deaf and hard of hearing, as specified in 900 KAR 1:070, including interpreter services for non-English speaking individuals. The administrative regulation is amended to reference 904 KAR 3:030, Application process, which incorporates the Kentucky Automated Management and Eligibility System - Income Maintenance (KAMES-IM) form, by reference. The administrative regulation is amended to clarify the current policy and procedures for the AFDC application process, with no change to current policy. The administrative regulation is also being promulgated as an ordinary administrative regulation for public comments.

BRERETON C. JONES, Governor
MASTEN CHILDERS II, Secretary

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development

904 KAR 2:035E. Right to apply and reapply.

RELATES TO: KRS 205.200(1), 205.245, [~~205.520(3), 42 CFR 435.907, 435.909,~~] 45 CFR 206(a)(1), 42 USC 1973gg-10
STATUTORY AUTHORITY: KRS 13A.120, 116.048, 194.050, 205.200(2)
EFFECTIVE: January 18, 1995
NECESSITY AND FUNCTION: The Cabinet for Human Resources shall administer [~~has the responsibility of administering~~] public assistance programs including Aid to Families with Dependent Children (AFDC) and the state [~~, Mandatory and Optional~~] Supplementation Program (SSP) of the aged, blind and disabled [~~(MS) and (OS), and Medical Assistance (MA)~~]. This administrative regulation sets forth the procedure by which an application for assistance under these programs shall be made. KRS 116.048 designates the cabinet to have responsibility for the administration of public assistance programs as a voter registration agency in accordance with 42 USC 1973gg-10. Therefore, this administrative regulation sets forth policy and procedures necessary to provide an eligible public assistance participant the opportunity to register, or to decline from registering, to vote.

Section 1. Right to Apply or Reapply. (1) Each individual wishing to do so shall have the opportunity to apply or reapply for AFDC or SSP [~~any assistance program administered by the Cabinet for Human Resources~~] through the Department for Social Insurance (DSI).

[~~(2) An individual shall be eligible for MA without a separate application if he receives:~~

~~(a) AFDC;~~

~~(b) MS;~~

~~(c) OS; or~~

~~(d) Supplemental security income through the Social Security Administration.~~

~~(3) An SSI applicant may file an application for MA with the Department for Social Insurance.~~

~~(4) An individual applying on the basis of age, blindness, or disability shall not be eligible as a medically needy individual, under 907 KAR 1:011, if his income and resources are within SSI limits.~~

~~(5) Denial of SSI assistance for technical reasons by the Social Security Administration is also considered a denial of MA.~~

~~Section 2. Application Process.~~]

(2) An application shall be considered to have been made:

(a) The date [~~when~~] the individual or his representative has signed, under penalty of perjury:

1. [~~(a)~~] The DSI [~~Department for Social Insurance~~] application form, incorporated by reference in 904 KAR 3:030; and

2. [~~or (b) The Social Security Administration application form for SSI; and~~

~~(c)~~] The application has been received at the DSI [~~appropriate~~] office; or

(b) The date of contact with the agency by a physically or mentally impaired person who needs special accommodation due to the impairment.

(3) If the client is physically unable to come to the office to apply, he may:

(a) Designate an authorized representative to apply for him; or

(b) Request a home visit to complete the application process.

(4) The applicant may be assisted by any individual of his choice in the application process and may be accompanied by this individual in all contacts with the agency.

(5) In accordance with the procedures described in 900 KAR 1:070, interpreter services shall be provided for the:

(a) Deaf; and

(b) Hard of hearing.

(6) Interpreter services shall be provided for a non-English speaking individual, utilizing procedures and forms specified by 900 KAR 1:070.

Section 2. [~~3.~~] Who May Sign an Application. (1) Except for a case based on incapacity, an application for AFDC shall be signed by:

(a) The relative with whom a needy child lives;

(b) The legally appointed committee of the relative; or

(c) A representative authorized in writing to act on behalf of the relative.

(2) An application for AFDC based on incapacity shall be signed by:

(a) Any individual listed in subsection (1) of this section; or

(b) An interested party acting on behalf of the applicant.

[~~(3) An application for MA shall be signed by:~~

~~(a) The individual requesting assistance;~~

~~(b) The relative with whom the child lives; or~~

~~(c) An interested party acting in behalf of the applicant.~~

~~(4) An application for MA for children in foster care or private child caring institutions shall be signed by the representative of:~~

~~(a) The agency to which the child is committed; or~~

~~(b) The institution in which the child is placed.~~]

(3) [~~(5)~~] An application for state supplementation shall be signed by:

(a) The aged, blind or disabled individual;

(b) An interested party;

(c) His legally appointed committee; or

(d) The representative payee receiving the Supplemental Security Income (SSI) benefit.

Section 3. [~~4.~~] Where Applications are Filed and Processed. (1) The application may be made at any DSI office, and shall be processed in the county of residence.

(2) If the client is applying in a county other than the county of residence and the client is hospitalized:

(a) The DSI office in the county of hospitalization shall take the application and transfer the pending application to the county of residence; and

(b) The DSI office in the county of residence shall process the application using the original application date.

(3) If the client is applying in a county other than the county of residence and the client is not hospitalized:

(a) The DSI office in the receiving county shall:

1. Partially complete the application;

2. Transfer it to the county of residence on the same day the application is taken; and

3. Explain to the client that the application will be processed in the county of residence;

(b) The DSI office in the county of residence shall schedule a face-to-face interview. The application is processed using the original application date.

~~[(1) Except for a concurrent application for MA and SSI, an application shall be filed in the office of the Department for Social Insurance in the county in which the applicant resides.~~

~~(2) A concurrent application for SSI and MA shall be filed in the service area office of the Social Security Administration.]~~

(4) ~~[(3)]~~ Application by mail.

(a) A Kentucky resident who is temporarily out-of-state, or someone acting on his behalf may initiate the application process by mail if ~~[when]~~:

1. An emergency arises from accident or sudden illness;

2. Care and services are needed immediately; and

3. Health would be endangered by returning to the state.

(b) Upon notification of the emergency an application form will be forwarded to the initiating party.

Section 4. ~~[5.]~~ Action on Applications. (1) A decision shall be made on each application and payment made within:

(a) Forty-five (45) days for AFDC or SSP ~~[MA for families and children]~~; or

(b) Ninety (90) days for SSP ~~[MA or OS]~~ determinations in which permanent and total disability shall ~~[must]~~ be established.

(2) Exception to this time standard may be made if ~~[when]~~:

(a) The applicant is unable to obtain necessary verification for a determination of eligibility; or

(b) For failure or delay, that cannot be controlled by the department, on the part of the applicant or examining physician ~~[or because of an administrative emergency]~~.

(3) The case record shall document the cause for the delay when the ~~[above]~~ time standards are not met.

(4) Failure to process an application within the ~~[above]~~ time frame shall not be used as the basis for denial.

Section 5. Voter Registration. (1) In accordance with KRS 116.048 and 42 USC 1973gg-10, an applicant or recipient meeting all of the following criteria shall be provided the opportunity to complete an application to register to vote or update his current voter registration:

(a) Be age eighteen (18) or over; and

(b) Be present in the office at the time of the interview or when a change of address is reported; and

(c) Not be registered to vote or not registered to vote at his current address.

(2) An individual not included in the assistance application shall not be registered to vote in this process, including a:

(a) Payee only;

(b) An authorized representative; or

(c) An individual acting as a responsible party.

(3) An individual providing voter registration services who seeks to unlawfully influence an applicant's political preference or party registration as prohibited by KRS 116.048(4) could be fined or imprisoned, not to exceed five (5) years, or both.

(4) Forms and information utilized in the voter registration process shall remain confidential and used only for voter registration purposes.

(5) Only Board of Elections officials may view forms and information utilized directly in the voter registration process.

(6) Completion of the Voter Registration Form is only an application to apply to register to vote. The State Board of Elections shall approve the application to register to vote and send a confirmation or denial notice to the applicant.

(7) Forms necessary to apply for assistance or to register an AFDC or SSP participant to vote are incorporated by reference in 904 KAR 3:030, Section 10.

~~[Section 6. Material Incorporated by Reference. (1) Forms necessary for application for benefits under the AFDC, MS, OS or MA programs are incorporated effective January 1, 1993. These forms include the PA-1, revised October 1992, the PA-1A, revised effective March 1991, PA-1P, revised April 1992, and the PA-1UP, revised effective May 1991.~~

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

JOHN L. CLAYTON, Commissioner
MASTEN CHILDERS, II, Secretary
APPROVED BY AGENCY: December 27, 1994
FILED WITH LRC: January 18, 1995 at 3 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Marty Mason, Director

(1) Type and number of entities affected: The provision of voter assistance will affect anyone who is 18 years of age or over, is eligible to vote and is not currently registered to vote at his current address. The number of individuals affected by this policy is unknown. The intent of the service is to assist clients in voter registration and to make registration convenient, therefore, having a positive impact on the assistance group. The provision of interpreter services shall have a positive impact on deaf, hard of hearing, and non-English speaking individuals. Traditionally, the need for interpreter services is very minimal. The number of individuals that may be affected by the promulgation of this administrative regulation is unknown.

(2) Direct and indirect cost or savings 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 comment received: To be determined after publication of the notice of intent.

(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: To be determined after publication of the notice of intent.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: None

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body: Minimal

(a) Direct and indirect cost or savings:

1. First year: Additional costs for the printing of forms and systems changes to accommodate the federal mandate will be minimal and were anticipated in the departmental budget.

2. Continuing cost or savings: Same as the first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Minimal

(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 general and agency 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: To be determined after publication of the notice of

intent.

(b) Kentucky: To be determined after publication of the notice of intent.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered since provisions are mandated by state and federal law.

(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: None

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not used since the application of policy is required to be applied in a like manner for all individuals.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 1973gg-10

2. State compliance standards. There are no differing state compliance standards.

3. Minimum or uniform standards contained in the federal mandate. The provisions relating to voter registration and interpreter services are consistent with the federal mandate and applied in a like manner on a statewide basis.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. No. The provisions of this administrative regulation coincide with those mandated by 42 USC 1973gg-10.

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. This administrative regulation will not impose any stricter requirements or any additional or different responsibilities than those required by the federal mandate.

STATEMENT OF EMERGENCY
904 KAR 3:030E

To avoid the loss of federal funding for the Food Stamp Program for failure to comply with federal law, the administrative regulation 904 KAR 3:030E is amended to implement provisions of the National Voter Registration Act, 42 USC 1973gg-10 and KRS 116.048, including the appropriate forms by reference. The administrative regulation is amended to reference the provision of interpreter services for the deaf and hard of hearing, as specified in 900 KAR 1:070, including interpreter services for non-English speaking individuals. The administrative regulation is amended to delete the obsolete Kentucky Automated Management and Eligibility - Food Stamp application and inserting the Kentucky Automated Management and Eligibility System - Income Maintenance (KAMES-IM) form in its place, by reference. The administrative regulation is also being promulgated as an ordinary administrative regulation for public comments.

BRERETON C. JONES, Governor
MASTEN CHILDERS II, Secretary

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development

904 KAR 3:030E. Application process.

RELATES TO: KRS 194.050, 7 CFR 273.2, 273.10, 42 USC 1973gg-10

STATUTORY AUTHORITY: KRS 13A.120, 116.048, 194.050

EFFECTIVE: January 18, 1995

NECESSITY AND FUNCTION: The Cabinet for Human Resources shall ~~[is required to]~~ administer a Food Stamp Program as prescribed under 7 USC 2011-2029. KRS 194.050 provides that the secretary shall, by administrative regulation, develop policies and operate programs concerned with the welfare of citizens of the Commonwealth. This administrative regulation sets forth the application process used by the cabinet in the administration of the Food Stamp Program. KRS 116.048 designates the cabinet to have responsibility for the administration of the Food Stamp Program as a voter registration agency in accordance with 42 USC 1973gg-10. Therefore, this administrative regulation sets forth policy and procedures necessary to provide an eligible Food Stamp Program participant the opportunity to register, or to decline from registering, to vote.

Section 1. Right to apply or Reapply. (1) An individual shall have the right to apply or reapply for food stamp benefits. The cabinet shall make the application process readily accessible to households.

(2) In accordance with the procedures described in 900 KAR 1:070, interpreter services shall be provided for the:

(a) Deaf; or

(b) Hard of hearing.

(3) Interpreter services shall be provided for a non-English speaking individual, utilizing procedures and forms specified by 900 KAR 1:070.

Section 2. Application Process. An application shall be considered to have been filed when:

(1) An application form is completed and signed;

(2) The applicant or representative is interviewed;

(3) Required information on the application is verified; and

(4) The application is received by the appropriate office.

Section 3. Who May Sign an Application. An application for food stamps shall be signed by:

(1) A responsible member of the household; or

(2) The household's authorized representative.

Section 4. Where Applications are Filed. (1) Except as provided in subsection (2) of this section, an application shall be filed in the office of the Department for Social Insurance in the county in which an applicant resides.

(2) A concurrent application for Supplemental Security Income and Food Stamps shall be filed in the service area office of the Social Security Administration.

Section 5. Prompt Action on Applications. The cabinet shall provide an eligible household, that completes the initial application process, an opportunity to participate as soon as possible but not later than:

(1) Thirty (30) days after the application is filed for a household ineligible for expedited services; or

(2) The fifth calendar day following the date an application is filed for a household eligible for expedited services.

Section 6. Expedited Service. A household eligible for expedited services shall be:

(1) A household in which:
(a) Monthly gross income is less than $150; and
(b) Liquid resources do not exceed $100; or
(2) A destitute migrant or seasonal farm work household whose liquid resources do not exceed $100; or
(3) A household containing homeless individuals; or
(4) A household for whom monthly rent or mortgage and actual utilities exceed the household's combined monthly gross income and liquid resources.

Section 7. Public Assistance Application Process. (1) A household in which all members are applying for Aid to Families with Dependent Children (AFDC) shall be allowed to simultaneously apply for food stamp benefits. A single interview shall be conducted for both programs.
(2) Time standards specified in Section 5 of this administrative regulation shall apply to public assistance applications.
(3) A household in which all members receive, or are authorized to receive, AFDC or Supplemental Security Income (SSI) shall be considered categorically eligible unless the entire household is:
(a) Institutionalized; or
(b) Disqualified from receiving food stamps.
(4) Categorically eligible households shall not be required to verify the following eligibility factors:
(a) Resources;
(b) Gross and net income limits;
(c) Social Security number information;
(d) Sponsored alien information; and
(e) Residency.

Section 8. Joint SSI and FS Application Process. A household in which all members are applicants or recipients of Supplemental Security Income (SSI) shall be allowed to simultaneously apply for both SSI and food stamps at the appropriate Social Security Administration office.

Section 9. Voter Registration. (1) In accordance with KRS 116.048 and 42 USC 1973gg-10, an applicant or recipient meeting all of the following criteria shall be provided the opportunity to complete an application to register to vote or update his current voter registration:
(a) Be age eighteen (18) or over; and
(b) Be present in the office at the time of the interview or when a change of address is reported; and
(c) Not be registered to vote or not registered to vote at his current address.
(2) An individual not included in the assistance application shall not be registered to vote in this process, including an:
(a) Authorized representative; or
(b) Individual acting as a responsible party.
(3) An individual providing voter registration services who seeks to unlawfully influence an applicant's political preference or party registration as prohibited by KRS 116.048(4) could be fined or imprisoned, not to exceed five (5) years, or both.
(4) Forms and information utilized in the voter registration process shall remain confidential and be used only for voter registration purposes.
(5) Only Board of Elections officials may view forms and information utilized directly in the voter registration process.
(6) Completion of the Voter Registration Form is only an application to apply to register to vote. The State Board of Elections shall approve the application to register to vote and send a confirmation or denial notice to the applicant.
(7) Forms necessary to register a Food Stamp Program participant to vote are incorporated by reference.

Section 10. [9.] Material Incorporated by Reference. (1) Forms necessary for the application process and voter registration in the Food Stamp Program are incorporated by reference. These forms include the:
(a) KFS-77, revised 9/94; [7/93,]
(b) The KIM-100, Revised 1/95;
(c) The KIM-100 Supplement A, revised 1/95;
(d) The KIM-100 Supplement B, revised 5/93;
(e) The KIM-100 Supplement C, revised 7/94;
(f) The KIM-100 Supplement D, revised 1/95;
(g) The KIM-100 Supplement E, revised 1/95;
(h) The KIM-100 Supplement F, revised 5/93;
(i) The KIM-100 Supplement G, revised 1/95;
(j) The KIM-100 Supplement H, revised 1/95;
(k) The KIM-100 Supplement I, revised 1/95;
(l) The KIM-100 Supplement J, revised 1/95;
(m) The KIM-100 Supplement K, revised 5/93;
(n) The KIM-100 Supplement L, revised 1/95;
(o) The KIM-100 Supplement M, revised 1/95;
(p) The KIM-100 Supplement N, revised 5/93;
(q) The KIM-100 Supplement O, revised 5/93;
(r) The KIM-100 Supplement P, revised 5/93;
(s) The KIM-100 Supplement Q, revised 1/95;
(t) The KIM-100 Supplement R, revised 7/94;
(u) The KIM-100 Supplement S, revised 1/95;
(v) The KIM-100 Supplement SS, revised 3/94;
(w) The KIM-100 Supplement T, revised 1/95;
(x) The KIM-100 Supplement U, revised 5/93;
(y) The KIM-100 Supplement V, revised 1/95;
(z) The KIM-100 Supplement W, revised 5/93;
(aa) The KIM-100 Supplement X, revised 1/95;
(bb) The KIM-100 Supplement XX, revised 5/93;
(cc) The KIM-100 Supplement Y, revised 1/95;
(dd) The KIM-100 Supplement Z, revised 1/95;
(ee) The PAFS-706, revised 1/95;
(ff) The Voter Registration Application, revised 1/95. [KFS-100, revised 12/93, the KFS-100 Supplement A, revised 6/91, the KFS-100 Supplement B, revised 10/93, the KFS-100 Supplement C, revised 12/93, the KFS-100 Supplement D, revised 7/92, the KFS-100 Supplement E, revised 6/91, the KFS-100 Supplement F, revised 6/91, the KFS-100 Supplement G, revised 6/91, and the KFS-100 Supplement H, revised 4/91.]
(2) These forms may be inspected and copied at the Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky 40621 and at each of the department's local offices. Office hours are 8 a.m. to 4:30 p.m.

JOHN L. CLAYTON, Commissioner
MASTEN CHILDERS, II, Secretary
APPROVED BY AGENCY: December 27, 1994
FILED WITH LRC: January 18, 1995 at 3 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Marty Mason, Director
(1) Type and number of entities affected: The provision of voter assistance will affect anyone who is over 18 years of age, is eligible to vote and is not currently registered to vote at his current address. The number of individuals affected by this policy is unknown. The intent of the service is to assist clients in voter registration and to make registration convenient, therefore, having a positive impact on the assistance group. The provision of interpreter services shall have a positive impact on deaf, hard of hearing, and non-English speaking individuals. Traditionally, the need for interpreter services is very minimal. The number of individuals that may be affected by the promulgation of this administrative regulation is unknown.
(2) Direct and indirect cost or savings 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 comment received: To be determined after publication of the notice of intent.

(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: To be determined after publication of the notice of intent.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: None

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body: Minimal

(a) Direct and indirect cost or savings:

1. First year: Additional costs for the printing of forms and systems changes to accommodate the federal mandate will be minimal and were anticipated in the departmental budget.

2. Continuing cost or savings: Same as the first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Minimal

(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 general and agency 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: To be determined after publication of the notice of intent.

(b) Kentucky: To be determined after publication of the notice of intent.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered since provisions are mandated by state and federal law.

(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: None

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? The federal statute at 7 USC 2014(b) requires that the Secretary of the United States Department of Agriculture establish uniform national standards of eligibility for participation by households in the Food Stamp Program. The provision at 7 CFR 272.2(b) requires the state agency to enter into an agreement with the federal government, thereby agreeing to administer the program in accordance with the provisions contained in 7 USC 2011 through 2021, and 7 CFR 270 through 285. Therefore, the Food Stamp Program is administered in a like manner on a statewide basis, thereby prohibiting tiering.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 1973gg-10

2. State compliance standards. There are no differing state compliance standards.

3. Minimum or uniform standards contained in the federal mandate. The provisions relating to voter registration and interpreter services are consistent with the federal mandate and applied in a like manner on a statewide basis.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. No. The provisions of this administrative regulation coincide with those mandated by 42 USC 1973gg-10.

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. This administrative regulation will not impose any stricter requirements or any additional or different responsibilities than those required by the federal mandate.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. Voter registration through the Department for Social Insurance has been fully coordinated with the State Board of Elections, who is the liaison with each county clerk's office.

3. State the aspect or service of local government to which this administrative regulation relates. The County Clerk's office in each county is responsible for voter registration. The Department for Social Insurance (DSI) will forward voter registration forms completed in DSI offices to the County Clerk's Office, along with any changes in address as reported by program recipients.

4. How does this administrative regulation affect the local government or any service it provides? This administrative regulation may increase the number of persons registered to vote in each county. However, DSI will assist local governments by providing program participants all forms necessary for voter registration and ensure that the forms are received by the County Clerk's Office.

STATEMENT OF EMERGENCY
905 KAR 2:140E

This emergency administrative regulation and notice of intent were promulgated to enable the cabinet to qualify to receive federal funds for child day care programs under the Social Services Block Grant and the Transitional and At-Risk Child Care Programs. This administrative regulation establishes the guidelines for the provision of a seamless service of child day care to needy families in the Commonwealth. This administrative regulation was promulgated as an emergency to implement the revised child care market rates pursuant to KRS 199.899 and 45 CFR 255.0. This emergency administrative regulation should be replaced by an ordinary administrative regulation. The ordinary administrative regulation shall be filed with the Regulations Compiler on or about March 15, 1995.

BRERETON C. JONES, Governor
MASTEN CHILDERS II, Secretary

CABINET FOR HUMAN RESOURCES
Department for Social Services

905 KAR 2:140E. Child day care programs.

RELATES TO: KRS 199.892 - 896, PL 99-457 Part H, PL 94-142.2, 45 CFR 98, 256, 257

STATUTORY AUTHORITY: KRS 194.050, 199.892, 199.899

EFFECTIVE: January 18, 1995

NECESSITY AND FUNCTION: KRS 194.050 provides that the

Secretary for the Cabinet for Human Resources shall adopt administrative regulations necessary to operate programs and fulfill the responsibilities vested in the Cabinet for Human Resources. This administrative regulation is necessary to enable the Cabinet for Human Resources to qualify to receive federal funds under the Social Services Block Grant, Child Care and Development Block Grant and the Transitional and At-Risk Child Care Programs. The function of this administrative regulation is to establish procedures for the implementation of child day care programs.

Section 1. Definitions. (1) "At-risk child care, (ARCC)" means child care assistance provided to non-AFDC families who need care in order to work and who may otherwise be at risk of becoming dependent upon AFDC.

(2) "Attending a job training or educational program" means regular and scheduled participation in a program offering appropriate skills training or education, if post secondary, consistent with employment goals.

(3) "Center-based child care" means a Type I day care facility.

(4) "Certificate" means a payment mechanism provided by DSS and used by a family to secure day care from the provider of choice.

(5) [~~(4)~~] "Certified family child care home" means a home as governed by KRS 199.8982(1)(c) and 905 KAR 2:100.

(6) [~~(5)~~] "Child care and development block grant, (CCDBG)" means child care assistance provided to families through the state to improve the affordability, quality and availability of child care services for a low income family to work or attend training or educational programs.

(7) [~~(6)~~] "Child protective cases" means cases registered for services in which the case file contains case documentation that substantiates or reflects some indication of child abuse, neglect, dependency or exploitation. This category may include services to prevent abuse, neglect, dependency or exploitation, including multiproblem families.

(8) [~~(7)~~] "Corporal physical discipline" means the deliberate infliction of physical pain and does not include spontaneous physical contact which is intended to protect a child from immediate danger.

(9) [~~(8)~~] "Day care" means the provision of essential child care for a portion of a day on a regular basis and is designed to supplement, but not substitute for, the parent's responsibility for the child's protection, development and supervision.

(10) [~~(9)~~] "Dedicated child care workers, (DCW)" means the Department for Social Services staff who work strictly with the day care program. The dedicated child care worker provides services to families through the following federally funded programs: Social Services Block Grant, (SSBG), Child Care and Development Block Grant, (CCDBG), At-Risk Child Care, (ARCC), and Transitional Child Care, (TCC).

(11) [~~(10)~~] "Dependent care disregard" means a method of providing child care for AFDC and medical assistance recipients with earned income and food stamp recipients with earned income or in training or educational programs which are preparatory to employment by deducting child care expenses from the gross income, thus allowing the AFDC recipient to retain more income to pay child care expenses. In cases where recipients are receiving assistance under more than one program, the highest disregard shall be used.

(12) [~~(11)~~] "Eligibility requirements" means that for a family to qualify for child day care funds, except in those instances where day care is provided under SSBG for child protective cases, a family shall meet both need and income status criteria.

(13) [~~(12)~~] "Employment" means public or private, full or part time, permanent or temporary work, including self-employment.

(14) [~~(13)~~] "Family" means one or more adults and children related by blood or law, including stepparents, residing in the same residence.

(15) "Family child care" means:

(a) Certified family child care homes as governed by 905 KAR 2:100; or

(b) Unregulated care provided for no more than three (3) unrelated children.

(16) "Group home child care" means a Type II day care facility.

(17) [~~(14)~~] "Licensed child day care facility" means a facility as governed by KRS 199.894.

(18) [~~(15)~~] "Physical or mental incapacity" means a child under the age of 18 who has multiple or severe problems diagnosed by a physician or qualified professional, that prevent the child from caring for himself or herself for a part of the day.

(19) [~~(16)~~] "Priorities" mean that the client groups identified for receipt of day care are ranked in chronological order by priority.

(20) [~~(17)~~] "Provider" means owner, operator or employee, including a volunteer, who works in a Type I or Type II licensed day care facility, certified Family Child Care Home, Unregulated Home or Registered Home.

(21) [~~(18)~~] "Purchase of care" means the purchase of child day care services from licensed facilities, certified registered homes or other eligible provider for authorized children to the extent funds are available.

(22) [~~(19)~~] "Registered provider" means a provider that is registered with the Department for Social Services as a provider of child care services through the Child Care and Development Block Grant, (CCDBG) or At-Risk Program, (ARCC).

(23) [~~(21)~~] "Relative" means for registration purposes:

(a) Grandparents, aunts and uncles who are required to register with the Department for Social Services before being eligible to receive payment for child care under CCDBG; and

(b) Relatives of the child by blood or marriage, eighteen years or older, including grandfather, grandmother, brother, sister uncle, aunt, nephew, niece or first cousin, including half-blood and preceding generations, who are not required to register with the Department for Social Services to be eligible to receive payment for child care under ARCC.

(24) [~~(21)~~] "Social services block grant, (SSBG)" means child care assistance provided by licensed or certified providers for families receiving protective and preventive services, including multiproblem families, and low income working parents.

(25) [~~(22)~~] "Special needs child" means a child who has multiple or severe problems, and the severity of the disability requires ongoing specialized care as defined under PL 99-457 Part H or PL 94-142.2.

(26) [~~(23)~~] "Transitional child care, (TCC)" means child care assistance provided to families whose eligibility for AFDC has ceased due to earnings from employment, or as a result of the loss of income disregards due to the expiration of the time limit according to the federal regulation on AFDC. The purpose of TCC is to help prevent welfare dependency or potential welfare dependency.

(27) [~~(24)~~] "Type I day care facility" means a facility:

(a) Other than a dwelling unit which regularly receives four (4) or more children for day care; or

(b) A facility, including a dwelling unit, which regularly provides day care for thirteen (13) or more children.

(c) If preschool children of any day care staff receive care in the facility, they shall be included in the number for which the facility is licensed.

(28) [~~(25)~~] "Type II day care facility" means a home or dwelling unit which regularly provides care apart from parents for seven (7), but not more than twelve (12) children. The provider's own pre-school children shall be included in the number for which the home is licensed.

(29) [~~(26)~~] "Unregulated provider" means a child care provider who is not subject to be licensed, certified or registered by the state or federal government. Families receiving day care funds through the SSBG may not use unregulated care, however, unregulated care may be used by families receiving TCC or ARCC funds. Relative care as provided through the ARCC program, which is not required to be registered, shall be deemed unregulated.

(30) [~~(27)~~] "Waiting list" means a list that may be maintained by district DSS staff once funds are obligated in a district. The list is based on the availability of district day care funds. TCC families shall not be placed on a waiting list due to the uncapped funding source.

(31) [~~(28)~~] "Without regard to income" means that SSBG child day care services for child protective cases shall be provided or purchased without regard to family income. In situations where the court is involved, parents may be ordered to pay for part or all of the cost of day care for their child. Voluntary payments by parents may be accepted.

Section 2. Technical Eligibility for CCDBG. A child shall be eligible for services as verified on the DSS-1A, Application for Services, herein incorporated by reference, if he:

(1) Is under the age of thirteen (13) or is under the age of eighteen (18) and:

(a) Is physically or mentally incapable of caring for himself as verified by the written determination of:

1. A physician;
2. A licensed or certified psychologist;
3. A qualified mental health professional; or
4. As accepted by a collateral agency (schools, comprehensive care center); or

(b) Is under court supervision;

(2) Resides with a family whose income does not exceed:

(a) Sixty (60) percent of the states median income for a family of the same size at time of application; or

(b) Seventy-five (75) percent of the states median income for a family of the same size at the time of reauthorization; and

(c) To the extent necessary the eligibility levels of state median income specified in paragraphs (a) and (b) of this subsection may be revised based on the availability of state and federal funds.

(3) Resides with parents who are working or attending a job training or educational program;

(4) Fee requirement.

(a) A family receiving CCDBG funds shall be required to contribute toward the payment based on the family's income as described in Section 7(3) of this administrative regulation.

(b) An individual who fails to cooperate in paying required fees may, subject to notices and hearing requirements, lose eligibility for the period of time back fees are owed, unless satisfactory arrangements are made to make full payment.

(5) Other eligibility conditions or priority requirements including childhood development and before and after school care services, may be established in addition to Sections 3(1) through (5) and 5(4) as long as they shall not:

(a) Discriminate against children on the basis of:

1. Race;
2. National origin;
3. Ethnic background;
4. Sex;
5. Religious affiliation; or
6. Disability.

(b) Limit parental rights as governed by Section 4 of this administrative regulation; or

(c) Violate provisions of Section 5(4) of this administrative regulation.

Section 3. Technical eligibility for SSBG. (1) The child shall have met the requirements specified in Section 2(1) of this administrative regulation.

(2) The case records shall:

(a) Substantiate or reflect some indication of child abuse, neglect, dependency or exploitation; or

(b) Provide documentation that a family has a need for child care services and with the use of child care the need for protective services may be prevented.

(3) Working parents may be eligible if:

(a) Child care needs exist in order to allow the parent to work;

(b) The family is income eligible as specified in Section 2(2)(a) and (b) of this administrative regulation; and

(c) ARCC and CCDBG funds are obligated.

Section 4. Technical Eligibility and Limitations for TCC. A family shall be notified of its potential eligibility for TCC when its AFDC benefits are terminated.

(1) The following requirements shall be met during any month for which TCC is paid:

(a) The child shall have met the requirements specified in Section 2(1) of this administrative regulation or would be a dependent child except for the receipt of benefits under Supplemental Security Income (SSI) under 42 USC 1382 or foster care under 42 USC 672.

(b) Child care shall be necessary in order to permit a member of an AFDC family to accept or retain employment;

(c) Payments shall not be made for care provided by:

1. Parents;
2. Legal guardians;
3. Members of the assistance group; and
4. Providers not meeting applicable standards of state and local law.

(d) The family shall have ceased to be eligible for AFDC as a result of:

1. Increased hours of, or increased income from, employment; or
2. The loss of income disregards due to the time limitations at Section 4(3)(b) of 904 KAR 2:016;

(e) The family shall have received AFDC:

1. In at least three (3) of the six (6) months preceding the first month of ineligibility; and
2. At least one (1) of the three (3) months was received in the state of Kentucky.

(f) The family:

1. Requests TCC benefits;
2. Provides the information necessary for determining eligibility and fees; and
3. Meets application requirements.

(2) Time limitations.

(a) Eligibility for TCC:

1. Begins with the first month that the family is ineligible for AFDC; and
2. Continues for a period of twelve (12) consecutive months.

(b) A family may begin to receive child care in any month during the twelve (12) month eligibility period.

(3) Sanctions. The family is not eligible for TCC for any remaining portion of the twelve (12) month period if the caretaker relative:

(a) Terminates employment, unless good cause exists as follows:

1. The individual:

a. Is personally providing care for a child under age six (6); and

b. Employment will require the individual to work more than twenty (20) hours per week.

2. Child care:

a. Is necessary for the individual to participate in the program or accept employment; and

b. Is not available; or

c. The available child care does not meet the special needs of the child, e.g., a child who has physical or mental disabilities [~~physically or mentally disabled child~~].

3. The individual is unable to engage in employment or training for mental or physical disabilities [~~reasons~~], including participation in a drug or alcohol rehabilitation program.

4. Transportation is unavailable and there is no readily accessible alternative means of transportation available.

5. Travel time to work site exceeds two (2) hours daily.

6. Illness of another household member requiring the presence of the participant at home.

7. Temporary incarceration.

8. Discrimination by an employer based on age, race, sex color, disability, religious beliefs, national origin or political beliefs.

9. Work demand or conditions that render continued employment unreasonable. Examples are:

a. Consistently not being paid on schedule; or

b. The work presents a risk to the individual's health or safety.

10. Wage rates are decreased subsequent to acceptance of employment.

11. Acceptance of a better job which, because of circumstances beyond the control of the recipient, does not materialize.

12. Employment would result in a net loss of cash income.

13. The client experiences a household emergency, including but not limited to: death of a member of the immediate family, entry into a spouse abuse center, or a natural disaster.

(b) Fails to cooperate with the State IV-A agency in establishing payment and enforcing child support obligations, per 904 KAR 2:006, Section 16.

(4) Fee requirements.

(a) A family receiving TCC shall be required to contribute toward the payment based on the family's income as described in Section 5(3) of this administrative regulation.

(b) An individual who fails to cooperate in paying required fees may, subject to notices and hearing requirements, lose eligibility for the period of time back fees are owed, unless satisfactory arrangements are made to make full payment.

Section 5. Technical Eligibility and Limitations for ARCC. (1) The following requirements shall be met during any month for which ARCC is paid:

(a) The child shall have met the requirements specified in Section 2(1) and (2)(a), (b) of this administrative regulation.

(b) The family:

1. Is at risk of becoming eligible for AFDC;

2. Is not receiving AFDC; and

3. Needs child care in order to accept employment and remain employed.

(2) Child care limitations:

(a) Child care payments shall be provided:

1. Directly to the provider;

2. In an amount equal to the actual cost up to the payment maximum based on market rates described in Section 7(2) of this administrative regulation; or

3. In an amount equal to the difference between subparagraph b of this paragraph and the amount allowed as a deduction for child care costs to recipients of statutory benefits; and

4. If child care arrangements would otherwise be lost:

a. For up to two (2) weeks prior to the start of employment; or

b. For up to one (1) month during a break in employment if subsequent employment is scheduled to begin within that period.

(b) Payments shall not be made to a provider if the provider is:

1. The parent;

2. The legal guardian;

3. Not meeting applicable standards of state and local law;

4. Not registered by the department as required in Section 5 of this administrative regulation; or

5. Not allowing parental access.

(3) Fee requirements

(a) A family receiving ARCC shall be required to contribute toward the payment based on the family's income as described in Section 7(3) of this administrative regulation.

(b) An individual who fails to cooperate in paying required fees may, subject to notices and hearing requirements, lose eligibility for the period of time back fees are owed, unless satisfactory arrangements are made to make full payment.

Section 6. Parental Rights and Responsibilities. (1) Parents of an eligible child who receive or are offered child care services subject to the availability of state and federal funds shall be offered a choice:

(a) To enroll the child with an eligible child care provider that has a grant or contract, selected by the parent to the maximum extent practicable; or

(b) To receive a child care certificate, the DSS-76, Day Care Services Agreement and Child Care Certificate, herein incorporated by reference, which shall:

1. Be issued to the parent;

2. Be of value commensurate with the value of child care services provided in Section 6(1)(a) of this administrative regulation;

3. If chosen by the parent, may be used for child care services provided by a sectarian organization or agency;

4. Not be considered a contract or grant to the provider but assistance to the parent;

5. Allow parents to chose from a variety of child care categories in compliance with federal regulations governing child day care programs including:

a. Licensed child care facilities;

b. Certified family child care facilities (CFCCH);

c. Unregulated child care facilities; or

d. Registered child care facilities; and

6. Inform parents and providers that the agreement may be terminated upon notice that the Department for Social Services has determined that conditions or circumstances at the child day care premises place children at risk of abuse, neglect, or exploitation pursuant to KRS Chapter 620.

(2) Providers of child care services shall afford parents unlimited access to their children and to the provider during normal hours of operation and whenever the child is in the care of the provider.

(3) The cabinet shall:

(a) Maintain a record of substantiated parental complaints; and

(b) Make information regarding parental complaints available to the public upon request.

(4) The cabinet shall make available to the parents and general public, consumer education about parental options relating to child care services including:

(a) Licensing and regulatory requirements; and

(b) Complaint procedures.

Section 7. State and Provider Requirements. (1) The cabinet shall assure that providers of child care services:

(a) Shall comply with licensing and regulatory requirements as governed by 905 KAR 2:001, 905 KAR 2:090, 905 KAR 2:110, 905 KAR 2:120 and 905 KAR 2:100;

(b) That are not required to be licensed or certified as governed by 905 KAR 2:001, 905 KAR 2:090, 905 KAR 2:110, 905 KAR 2:120 and 905 KAR 2:100 shall be registered with the Cabinet prior to payment under the block grant using the DSS-77, Day Care Billing Statement, herein incorporated by reference except under TCC and relative provided care under ARCC; and

(c) Under CCDBG, nonrelative providers registered with the Cabinet shall become certified as governed by 905 KAR 2:100.

(d) Nonrelative providers providing care in the child's home shall be certified by meeting the requirements as follows:

1. The provider shall be at least eighteen (18) years of age;

2. The provider shall be physically capable of providing care to children, as stated by a qualified physician;

3. The provider shall be free of tuberculosis, as stated by a qualified physician or health care specialist;

4. The provider shall not have been convicted of crimes against children, as shown by a criminal records check conducted within the past year by the Kentucky State Police; and

5. The provider shall sign an agreement not to use any form of corporal physical discipline on the children entrusted into their care.

(2) The cabinet has established maximum child day care payments as follows:

These charts represent the local maximum payment rate on a per day/weekly basis. If care exceeds five (5) days, the rate shall be the weekly maximum payment plus the additional designated daily amount reflecting the applicable rate. Chart abbreviations are as follows: FT - full time; PT - part time; WM - weekly maximum.

KENTUCKY CHILD CARE MAXIMUM PAYMENT LEVELS

WESTERN REGION

Purchase ADD #1
County: McCracken

Urban X	Center			Group Home			Family/In Home		
Rural	FT	PT	WM	FT	PT	WM	FT	PT	WM
Infant	$13	16	65	12	12	60	11	16	55
Toddler	$12	16	60	11	11	55	11	16	55
Preschool	$12	14	60	11	10	55	11	16	55
School Age	$12	9	60	11	10	55	11	16	55
Special Needs									
Child	$12	16	60	13	13	65	10	16	50

Purchase ADD #1
Counties: Ballard, Calloway, Carlisle, Fulton, Graves, Hickman, Marshall

Urban X	Center			Group Home			Family/In Home		
Rural	FT	PT	WM	FT	PT	WM	FT	PT	WM
Infant	$13	16	65	13	13	65	11	16	55
Toddler	$13	16	65	13	13	65	11	16	55
Preschool	$13	14	65	13	13	65	13	16	65
School Age	$12	9	60	13	13	65	12	16	60
Special Needs									
Child	$12	16	60	13	13	65	15	16	75

Pennyrile ADD #2
County: Christian

Urban X	Center			Group Home			Family/In Home		
Rural	FT	PT	WM	FT	PT	WM	FT	PT	WM
Infant	$13	16	65	12	12	60	11	16	55
Toddler	$12	16	60	11	11	55	11	16	55
Preschool	$12	14	60	10	10	50	11	16	55
School Age	$11	8	55	10	10	50	11	16	55
Special Needs									
Child	$12	16	60	13	13	65	10	16	50

Pennyrile ADD #2
Counties: Caldwell, Crittenden, Hopkins, Livingston, Lyon, Muhlenberg, Todd, Trigg

Urban X	Center			Group Home			Family/In Home		
Rural	FT	PT	WM	FT	PT	WM	FT	PT	WM
Infant	$13	16	65	13	13	65	11	16	55
Toddler	$13	16	65	11	13	65	11	16	55
Preschool	$13	14	65	13	13	65	13	16	65
School Age	$12	8	60	13	13	65	12	16	60
Special Needs									
Child	$12	16	60	13	13	65	15	16	75

Green River ADD #3
Counties: Daviess, Henderson

Urban X	Center			Group Home			Family/In Home		
Rural	FT	PT	WM	FT	PT	WM	FT	PT	WM
Infant	$13	16	65	12	12	60	11	16	55
Toddler	$13	16	65	12	11	60	11	16	55
Preschool	$13	14	65	12	10	60	11	16	55
School Age	$13	10	65	12	10	60	11	16	55
Special Needs									
Child	$13	16	65	13	13	65	11	16	55

Green River ADD #3
Counties: Hancock, McLean, Ohio, Union, Webster

Urban X	Center			Group Home			Family/In Home		
Rural	FT	PT	WM	FT	PT	WM	FT	PT	WM
Infant	$13	16	65	13	13	65	11	16	55
Toddler	$13	16	65	13	13	65	11	16	55
Preschool	$13	14	65	13	13	65	13	16	65
School Age	$13	10	65	13	13	65	12	16	60
Special Needs									
Child	$13	16	65	13	13	65	15	16	75

Barren River ADD #4
Counties: Allen, Barren, Butler, Edmonson, Hart, Logan, Metcalfe, Monroe, Simpson, Warren

Urban X	Center			Group Home			Family/In Home		
Rural	FT	PT	WM	FT	PT	WM	FT	PT	WM
Infant	$13	16	65	13	13	65	11	16	55
Toddler	$13	16	65	13	13	65	11	16	55
Preschool	$13	14	65	13	13	65	13	16	65
School Age	$12	8	60	13	13	55	12	16	60
Special Needs									
Child	$13	16	65	13	13	65	15	16	75

Lincoln Trail ADD #5
Counties: Breckinridge, Grayson, Hardin, Larue, Marion, Meade, Nelson, Washington

Urban X	Center			Group Home			Family/In Home		
Rural	FT	PT	WM	FT	PT	WM	FT	PT	WM
Infant	$13	16	65	13	13	65	11	16	55
Toddler	$13	16	65	13	13	65	11	16	55
Preschool	$13	14	65	13	13	65	13	16	65
School Age	$12	8	60	13	13	65	12	16	60
Special Needs									
Child	$12	16	60	13	13	65	15	16	75

Kipda ADD #6
Counties: Bullitt, Jefferson, Oldham, Shelby

Urban X	Center			Group Home			Family/In Home		
Rural	FT	PT	WM	FT	PT	WM	FT	PT	WM
Infant	$15	12	75	14	11	70	13	12	65
Toddler	$15	14	75	14	11	70	13	12	65
Preschool	$14	15	70	13	10	65	12	12	60
School Age	$12	16	60	11	8	55	10	12	50
Special Needs									
Child	$15	15	75	14	14	70	15	13	75

Kipda ADD #6
Counties: Henry, Spencer, Trimble

Urban X	Center			Group Home			Family/In Home		
Rural	FT	PT	WM	FT	PT	WM	FT	PT	WM
Infant	$16	12	80	15	15	75	15	12	75
Toddler	$16	14	80	15	15	75	15	12	75
Preschool	$15	15	75	15	10	75	15	12	75
School Age	$14	16	70	13	8	65	15	12	75
Special Needs									
Child	$15	15	75	14	14	70	15	13	75

Northern Ky. ADD #7

Counties: Boone, Campbell, Kenton

Urban X	Center			Group Home			Family/In Home		
Rural	FT	PT	WM	FT	PT	WM	FT	PT	WM
Infant	$16	13	80	15	12	75	14	12	70
Toddler	$14	14	70	13	11	65	12	12	50
Preschool	$14	15	70	13	10	65	12	12	60
School Age	$13	16	65	12	9	60	11	12	55
Special Needs									
Child	$16	16	80	15	15	75	15	14	70

Northern Ky. ADD #7
Counties: Carroll, Gallatin, Grant, Owen, Pendleton

Urban X	Center			Group Home			Family/In Home		
Rural	FT	PT	WM	FT	PT	WM	FT	PT	WM
Infant	$16	13	80	15	15	75	15	12	75
Toddler	$16	14	80	15	15	75	15	12	75
Preschool	$15	15	75	15	10	75	15	12	75
School Age	$14	16	70	13	9	65	15	12	75
Special Needs									
Child	$16	16	80	15	15	75	15	14	75

Buffalo Trace ADD #8
Counties: Bracken, Fleming, Lewis, Mason, Robertson

Urban X	Center			Group Home			Family/In Home		
Rural	FT	PT	WM	FT	PT	WM	FT	PT	WM
Infant	$13	12	65	12	12	60	11	9	55
Toddler	$13	12	65	12	10	60	11	6	55
Preschool	$13	12	65	12	10	60	15	10	75
School Age	$13	14	65	12	10	60	12	10	60
Special Needs									
Child	$13	16	65	12	11	60	10	10	50

Gateway ADD #9
Counties: Bath, Menifee, Montgomery, Morgan, Rowan

Urban X	Center			Group Home			Family/In Home		
Rural	FT	PT	WM	FT	PT	WM	FT	PT	WM
Infant	$13	12	65	12	12	60	11	9	55
Toddler	$13	12	65	12	10	60	11	6	55
Preschool	$13	12	65	12	10	60	15	10	75
School Age	$13	14	65	12	10	60	12	10	60
Special Needs									
Child	$13	16	65	12	10	60	10	9	50

Fivco ADD #10
Counties: Boyd, Carter, Greenup

Urban X	Center			Group Home			Family/In Home		
Rural	FT	PT	WM	FT	PT	WM	FT	PT	WM
Infant	$14	12	70	13	12	65	12	9	60
Toddler	$13	12	65	12	10	60	11	8	55
Preschool	$13	12	65	12	10	60	11	10	55
School Age	$13	14	65	12	10	60	11	10	55
Special Needs									
Child	$14	16	70	13	13	65	12	12	60

Fivco ADD #10
Counties: Elliott, Lawrence

Urban X	Center			Group Home			Family/In Home		
Rural	FT	PT	WM	FT	PT	WM	FT	PT	WM
Infant	$14	12	70	13	12	65	12	9	60
Toddler	$13	12	65	12	10	60	11	8	55
Preschool	$13	12	65	12	10	60	15	10	75
School Age	$13	14	65	12	10	60	12	10	60
Special Needs									
Child	$14	16	70	13	13	65	12	12	60

Big Sandy ADD #11
Counties: Floyd, Johnson, Magoffin, Martin, Pike

Urban X	Center			Group Home			Family/In Home		
Rural	FT	PT	WM	FT	PT	WM	FT	PT	WM
Infant	$13	12	65	12	12	60	11	9	55
Toddler	$13	12	65	12	10	60	11	7	55
Preschool	$13	12	65	12	10	60	15	10	75
School Age	$13	14	65	12	10	60	12	10	60
Special Needs									
Child	$13	16	65	12	11	60	10	10	50

Kentucky River ADD #12
Counties: Breathitt, Knott, Lee, Leslie, Letcher, Owsley, Perry, Wolfe

Urban X	Center			Group Home			Family/In Home		
Rural	FT	PT	WM	FT	PT	WM	FT	PT	WM
Infant	$13	12	65	12	12	60	11	9	55
Toddler	$13	12	65	12	10	60	11	8	55
Preschool	$13	12	65	12	10	60	15	10	75
School Age	$13	14	65	12	10	60	12	10	60
Special Needs									
Child	$13	16	65	12	12	60	11	11	55

Cumberland Valley ADD #13
Counties: Bell, Clay, Harlan, Jackson, Knox, Laurel, Rockcastle, Whitley

Urban X	Center			Group Home			Family/In Home		
Rural	FT	PT	WM	FT	PT	WM	FT	PT	WM
Infant	$13	12	65	12	12	60	11	9	55
Toddler	$13	12	65	12	10	60	11	6	55
Preschool	$13	12	65	12	10	60	15	10	75
School Age	$13	14	65	12	10	60	12	10	60
Special Needs									
Child	$13	16	65	12	10	60	10	9	50

Lake Cumberland ADD #14
Counties: Adair, Casey, Clinton, Cumberland, Green, McCreary, Pulaski, Russell, Taylor, Wayne

Urban X	Center			Group Home			Family/In Home		
Rural	FT	PT	WM	FT	PT	WM	FT	PT	WM
Infant	$16	8	80	15	15	75	15	12	75
Toddler	$16	14	80	15	15	75	15	12	75
Preschool	$15	13	75	15	8	75	15	12	75
School Age	$14	16	70	13	8	65	15	12	75
Special Needs									
Child	$14	11	70	14	14	70	15	12	75

Bluegrass ADD #15
Counties: Bourbon, Clark, Fayette, Franklin, Jessamine, Madison, Scott, Woodford

Urban X	Center			Group Home			Family/In Home		
Rural	FT	PT	WM	FT	PT	WM	FT	PT	WM
Infant	$14	11	70	13	11	65	13	12	65
Toddler	$13	14	65	12	11	60	11	12	55
Preschool	$13	14	65	12	9	60	11	12	55
School Age	$13	16	65	12	9	60	11	12	55
Special Needs									
Child	$14	14	70	14	14	70	15	12	75

Bluegrass ADD #15
Counties: Anderson, Boyle, Estill, Garrard, Harrison, Lincoln, Mercer, Nicholas, Powell

Urban X	Center			Group Home			Family/In Home		
Rural	FT	PT	WM	FT	PT	WM	FT	PT	WM
Infant	$16	11	80	15	15	75	15	12	75
Toddler	$16	14	80	15	15	75	12	12	60
Preschool	$15	14	75	15	9	75	15	12	75
School Age	$14	16	70	13	9	65	15	12	75
Special Needs									
Child	$14	14	70	14	14	70	15	12	75

(3) The cabinet shall assess a fee which the family shall pay to the provider for the cost of child day care based on the following sliding scale:

~~[PURCHASE AREA DEVELOPMENT DISTRICT #1~~

	Special Needs		Infants		Toddlers		Pre-School		~~School Age~~	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
~~Center-based~~	$12	12	12	9	12	9	12	9	12	9
~~Group Home~~	$11	11	11	8	11	8	11	8	11	8
~~Family/In Home~~	$10	10	10	7	10	7	10	7	10	7

~~PENNYRILE AREA DEVELOPMENT DISTRICT #2~~

	Special Needs		Infants		Toddlers		Pre-School		~~School Age~~	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
~~Center-based~~	$11	11	11	8	10	7	10	7	10	7
~~Group Home~~	$10	10	10	7	9	6	9	6	9	6
~~Family/In Home~~	$9	9	9	6	8	5	8	5	8	5

~~GREEN RIVER AREA DEVELOPMENT DISTRICT #3~~

	Special Needs		Infants		Toddlers		Pre-School		~~School Age~~	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
~~Center-based~~	$13	13	13	10	13	10	13	10	13	10
~~Group Home~~	$12	12	12	9	12	9	12	9	12	9
~~Family/In Home~~	$11	11	11	8	11	8	11	8	11	8

~~BARREN RIVER AREA DEVELOPMENT DISTRICT #4~~

	Special Needs		Infants		Toddlers		Pre-School		~~School Age~~	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
~~Center-based~~	$13	13	13	10	11	8	11	8	11	8
~~Group Home~~	$12	12	12	9	10	7	10	7	10	7
~~Family/In Home~~	$11	11	11	8	9	6	9	6	9	6

~~LINCOLN TRAIL AREA DEVELOPMENT DISTRICT #5~~

	Special Needs		Infants		Toddlers		Pre-School		~~School Age~~	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
~~Center-based~~	$11	11	11	8	10	7	10	7	10	7
~~Group Home~~	$10	10	10	7	9	6	9	6	9	6
~~Family/In Home~~	$9	9	9	6	8	5	8	5	8	5

~~KENTUCKIANA REGIONAL PLANNING AND DEVELOPMENT AGENCY AREA DEVELOPMENT DISTRICT #6~~

	Special Needs		Infants		Toddlers		Pre-School		~~School Age~~	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
~~Center-based~~	$15	15	15	12	15	12	14	11	12	9
~~Group Home~~	$14	14	14	11	14	11	13	10	11	8
~~Family/In Home~~	$13	13	13	10	13	10	12	9	10	7

~~NORTHERN KENTUCKY AREA DEVELOPMENT DISTRICT #7~~

	Special Needs		Infants		Toddlers		Pre-School		~~School Age~~	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
~~Center-based~~	$16	16	16	13	14	11	14	11	13	10
~~Group Home~~	$15	15	15	12	13	10	13	10	12	9
~~Family/In Home~~	$14	14	14	11	12	9	12	9	11	8

~~BUFFALO TRACE AREA DEVELOPMENT DISTRICT #8~~

	Special Needs		Infants		Toddlers		Pre-School		~~School Age~~	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
~~Center-based~~	$12	12	12	9	11	8	9	6	9	6
~~Group Home~~	$11	11	11	8	10	7	8	5	8	5
~~Family/In Home~~	$10	10	10	7	9	6	7	4	7	4

~~GATEWAY AREA DEVELOPMENT DISTRICT #9~~

	Special Needs		Infants		Toddlers		Pre-School		~~School Age~~	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
~~Center-based~~	$11	11	9	6	9	6	9	6	9	6
~~Group Home~~	$10	10	8	5	8	5	8	5	8	5
~~Family/In Home~~	$9	9	7	4	7	4	7	4	7	4

~~FIVCO AREA DEVELOPMENT DISTRICT #10~~

	Special Needs		Infants		Toddlers		Pre-School		~~School Age~~	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
~~Center-~~										

based	$14	14	14	11	13	10	13	10	13	10
Group Home	$13	13	13	10	12	9	12	9	12	9
Family/ In Home	$12	12	12	9	11	8	11	8	11	8

BIG SANDY AREA DEVELOPMENT DISTRICT #11

	Special Needs		Infants		Toddlers		Pre-School		Age	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Center-based	$12	12	12	9	12	9	12	9	12	9
Group Home	$11	11	11	8	11	8	11	8	11	8
Family/ In-home	$10	10	10	7	10	7	10	7	10	7

KENTUCKY RIVER AREA DEVELOPMENT DISTRICT #12

	Special Needs		Infants		Toddlers		Pre-School		Age	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Center-based	$13	13	13	10	13	10	11	8	11	8
Group Home	$12	12	12	9	12	9	10	7	10	7
Family/ In Home	$11	11	11	8	11	8	9	6	9	6

CUMBERLAND VALLEY AREA DEVELOPMENT DISTRICT #13

	Special Needs		Infants		Toddlers		Pre-School		Age	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Center-based	$11	11	11	8	11	8	11	8	11	8
Group Home	$10	10	10	7	10	7	10	7	10	7
Family/ In Home	$9	9	9	6	9	6	9	6	9	6

LAKE CUMBERLAND AREA DEVELOPMENT DISTRICT #14

	Special Needs		Infants		Toddlers		Pre-School		Age	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Center-based	$11	11	10	7	10	7	10	7	10	7
Group Home	$10	10	9	6	9	6	9	6	9	6
Family/ In Home	$9	9	8	5	8	5	8	5	8	5

BLUEGRASS AREA DEVELOPMENT DISTRICT #15

	Special Needs		Infants		Toddlers		Pre-School		Age	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Center-based	$14	14	14	11	13	10	13	10	13	10
Group Home	$13	13	13	10	12	9	12	9	12	9
Family/ In Home	$12	12	12	9	11	8	11	8	11	8]

[(3) The cabinet shall assess a fee which the family shall pay to the provider for the cost of child day care based on the following sliding scale:]

CHILD CARE FEE SCHEDULE

Income Range (Monthly)		FAMILY SIZE - Fee per agreement per family						
		2	3	4	5	6	7	8*
0	399	1.00	1.00	1.00	1.00	1.00	1.00	1.00
400	499	1.00	1.00	1.00	1.00	1.00	1.00	1.00
500	599	1.00	1.00	1.00	1.00	1.00	1.00	1.00
600	699	1.00	1.00	1.00	1.00	1.00	1.00	1.00
700	799	1.00	1.00	1.00	1.00	1.00	1.00	1.00
800	899	2.00	1.00	1.00	1.00	1.00	1.00	1.00
900	999	3.25	1.15	1.00	1.00	1.00	1.00	1.00
1000	1099	4.50	2.25	1.00	1.00	1.00	1.00	1.00
1100	1199	6.00	3.50	1.60	1.00	1.00	1.00	1.00
1200	1299	7.50	5.00	3.10	1.00	1.00	1.00	1.00
1300	1399	8.00	6.00	4.60	1.60	1.00	1.00	1.00
1400	1499	8.60	7.00	6.10	2.65	2.00	1.00	1.00
1500	1599	9.25	7.75	7.00	4.05	3.05	1.25	1.00
1600	1699	9.75	8.25	7.85	5.50	4.50	2.30	1.00
1700	1799	10.25	9.75	8.35	7.10	6.25	3.50	1.50
1800	1899	10.75	10.30	9.30	8.35	7.50	5.20	2.50
1900	1999	11.25	10.60	9.30	9.30	8.80	7.00	3.80
2000	2099	11.75	11.25	9.75	9.75	9.75	8.50	5.30
2100	2199	12.25	11.75	10.25	10.25	10.25	10.00	7.10
2200	2299	12.75	12.25	10.70	10.70	10.70	10.70	8.90
2300	2399	13.25	12.75	11.25	11.28	11.25	11.25	10.80
2400	2499	13.75	13.25	11.75	11.75	11.75	11.75	11.75
2500	2599	14.25	13.75	12.25	12.25	12.25	12.25	12.25
2600	2699	14.75	14.25	12.75	12.75	12.75	12.75	12.75
2700	2799	15.25	14.75	13.25	13.25	13.25	13.25	13.25

*For family size above eight (8), the parent fee shall not increase.

(a) Except fees shall not be assessed in:

1. A child protective case under SSBG; or

2. An AFDC, medical assistance or food stamp case where clients are receiving dependent care disregard.

(b) The DCW shall determine the maximum daily reimbursement rate and parent fee, not to exceed rates as specified in Section 7(2) of this administrative regulation and monitor the payment to the child care provider. If the parent fails to pay the fee the DCW shall develop a plan with the parent to pay the fee.

(c) The DCW shall advise the client to report family and financial changes that may affect authorization of payments. Reauthorizations shall be determined:

1. Every six (6) months; and

2. Upon receipt of reported changes.

(4) The Cabinet for Human Resources may, except for TCC and protective service cases, establish priorities for child care services as follows:

(a) Children with special needs;

(b) Job Opportunity and Basic Skills Program or TCC participants who have children ineligible for child care payments under the programs;

(c) Families who lose eligibility in another child care program; and

(d) Other low income working parents or parents attending training or educational programs.

(5) The Department for Social Services shall exchange TCC client specific information to the Department for Social Insurance within ten (10) days of discovery.

(a) The DCW shall report the following case terminations to the local DSI, Division of Field Services Office:

1. When a TCC client quits a job without good cause;

2. Based on a TCC client's failure to pay a parent fee;

3. Based on a TCC client's refusal to cooperate with the Division of Child Support Enforcement; and

4. Client makes suitable arrangements to pay parent fee.

(b) The DCW shall report the following changes in client information to the Division for Child Support Enforcement:

1. TCC case approval for payments;

2. A child left the home;

3. Payments cease for a child;

4. Client's address changes;

5. An absent parent returns to the home;

6. A TCC case is terminated; or

7. A child is added to the case.

(6) Recoupment. The following provisions apply to overpayment in SSBG, CCDBG, TCC and ARCC;

(a) Necessary action shall be taken promptly to correct and recoup an overpayment in a case:

1. Of fraud;

2. Involving a current recipient; and

3. In which the overpayment would equal or exceed the cost of recovery.

(b) An overpayment shall be recovered from the child care provider.

(c) An overpayment shall be recovered through a reduction in the amount payable to the provider.

(d) An underpayment and an overpayment may be offset against each other in adjusting an incorrect payment.

(e) For TCC cases an overpayment, including assistance paid pending a hearing decision, shall be recovered from:

1. The responsible party;

2. The family unit which was overpaid;

3. The provider who was responsible for the overpayment;

4. Individuals who were members of the family when overpaid; or

5. A family that includes a member of a previously overpaid family.

(7) The DCW shall terminate day care services when due to need or income criteria, clients lose eligibility.

(a) If due to program policy changes the DCW shall:

1. Reassess the families so clients may be given ten (10) days notice of their eligibility, if they do not meet the new criteria after their authorization period expires;

2. Send written notices explaining new eligibility criteria with a notice of intended action.

(b) TCC clients may lose eligibility during the entitlement period without causing permanent termination of benefits if:

1. The client fails to cooperate in paying the parent fee, but later makes suitable arrangements;

2. The client moves out of state and returns to Kentucky within the entitlement period; and

3. The child requiring paid care leaves the home and returns.

(c) AFDC Unemployed Parent cases continue to be eligible for TCC without a deprivation.

(8) The child care worker shall notify the client of their rights to notice of adverse actions, hearings and appeals as governed by 905 KAR 1:320, Fair Hearing.

Section 8. Material Incorporated by Reference. (1) Forms necessary for the implementation of child day care services are herein incorporated by reference.

(2) Material incorporated by reference may be inspected and copied at the Department for Social Services, CHR Building, 6th Floor, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

PEGGY WALLACE, Commissioner
MASTEN CHILDERS II, Secretary

APPROVED BY AGENCY: December 29, 1994
FILED WITH LRC: January 18, 1995 at 3 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact: Michael Cheek

(1) Type and number of entities affected: The type and number of entities affected are the 386 certified and 1800 licensed facilities providing care for approximately 12,000 children who are receiving subsidized payment for child care services. Another affected entity is the parents of the children receiving subsidized care.

(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 comment received. A direct savings to the providers of subsidized day care services is the revision in the maximum market rates to reflect the 75% of charges from providers within their geographical area. If all providers of day care services increased there rates to the maximum amount there might be an indirect cost to families not receiving subsidized care services. A Notice of Intent has been filed that may result in additional public comment.

(b) Cost of doing business in the geographical are in which the administrative regulation will be implemented, to the extent available from the public comment received. A direct savings to the providers of subsidized day care services is the revision in the maximum market rates to reflect the 75% of charges from providers within their geographical area. A Notice of Intent has been filed that may result in additional public comment.

(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 first year additional compliance, reporting or paperwork requirements necessary to implement the revised child care rates.

2. Second and subsequent years: There are no second or subsequent years additional compliance, reporting or paperwork requirements necessary to implement the revised child care rates.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: We estimate that there will be an additional first year cost to the agency of $238,292 per month as a result of the increase in the maximum child care rates. Since providers seem to phase-in new rates on their individual schedules and the department has held 10% of the funding for the past six months, we anticipate that the department can absorb the first year increases. We will continue to monitor the monthly expenditures and if necessary reduce the number of children served through attrition.

2. Continuing costs or savings: With the increased maximum child care market rates the department will continue to monitor the monthly expenditures to ensure fiscal accountability for FY 1996, which may include a reduction in the number of clients served.

3. Additional factors increasing or decreasing costs: Additional factors increasing costs include the time schedules used by providers to revise current rates and the development of additional child care providers in each geographical area. The amount of increase may be determined by the law of supply and demand in each area of the state.

(b) Reporting and paperwork requirements: The department has revised some definitions to coincide with the market rate survey and federal categories of child care. These revisions require some system modification and training of staff to implement these revised child care market rates.

(4) Assessment of anticipated effect on state and local revenues: These is a positive effect on state and local revenues as the rates may increase payments to day care providers that will be turned over in the local economy in payments to cover care giver costs and

supplies. Additionally the ability of parents to enter and remain in the job market may increase if additional child care is available.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The source of revenue to be used for implementation of this administrative regulation include the Social Services Block Grant, Child Care Development Block Grant and the Transitional and At-Risk Child care Programs (Title IV-A).

(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: A notice of intent to promulgate has been filed with this emergency regulation which will provide for public comment.

(b) Kentucky: A notice of intent to promulgate has been filed with this emergency regulation which will provide for public comment.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No other alternate methods were considered because implementation of the revised market rate survey are required pursuant to KRS 199.899 and 45 CFR 255.1.

(8) Assessment of expected benefits: The assessment of expected benefits include the implementation of child care market rates that represent the 75% of current charges from providers in each area as a result of the survey completed by the University of Kentucky for the Department for Social Services.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There are no effects on the public health and environmental welfare of the geographical areas but the expected benefits include the implementation of child care market rates that represent the 75% of current charges from providers in each area as a result of the survey completed by the University of Kentucky for the Department for Social Services.

(b) State whether a detrimental effect on environment and public health would result if not implemented: There would be on detrimental effect on the environment and public health if this regulation is not implemented.

(c) If detrimental effect would result, explain detrimental effect: There would be on detrimental effect on the environment and public health if this regulation is not implemented.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(a) Necessity of proposed regulation if in conflict: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(10) Any additional information or comments: There are no additional information or comments of which were are aware.

(11) TIERING: Is tiering applied? No. This regulation was not tiered as it implements the revised market rates on a statewide basis for all subsidized child care payments.

ADMINISTRATIVE REGULATION AS AMENDED BY PROMULGATING AGENCY AND REVIEWING SUBCOMMITTEE

COMPILER'S NOTE: The following administrative regulations were amended by the promulgating agency and the Administrative Regulation Review Subcommittee on February 1, 1995, unless otherwise noted.

COMPILER'S NOTE: The following administrative regulation, 20 KAR 1:080, was amended by the Interim Joint Committee on State Government and the promulgating agency, and became effective on February 8, 1995.

DEPARTMENT OF TREASURY
(As Amended)

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. 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. 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.

Section 1. In deciding which eligible small businesses or agribusinesses shall receive reduced rate loans, the Treasury shall consider the following in that linked deposits funds are invested to:
(1) Assure that initiatives by women and minorities are supported equitably;
(2) Benefit the unemployed;
(3) Promote new, expanded and alternate crop production;
(4) Promote the further development of agribusiness and value added opportunities.

Section 2. In deciding whether to approve a linked deposit investment loan package the department shall:
(1) Confirm the eligibility of the applicant;
(2) The number and kind of jobs to be created or retained;
(3) The amount of the loan;
(4) The amount of money available for loans;
(5) Whether the availability of linked deposit financing is essential for the economic feasibility of the acquisition to be made;
(6) The feasibility of the proposed business or agriculture project; **and**
(7) The financial feasibility of the loan to be made~~[; and~~
~~(8) All other relevant factors]~~.

Section 3. (1) The eligible lending institution shall forward to the Treasury a loan package. The loan package shall include:
(a) The loan application to be completed by the small business or agribusiness applicant; and
(b) An investment application to be completed by the eligible lending institution.

(2) The "Loan Application" (1995) form and the "Investment Application" form are incorporated herein by reference. These forms may be inspected, copied, or obtained from the State Treasury, 183 Capitol Annex, Frankfort, Kentucky 40601, (800) 465-4722, hours 8 a.m. to 4:30 p.m. Monday through Friday.

Section 4. (1) An applicant's loan package shall be reviewed by the Linked Deposits Loan Committee, a committee composed of three (3) Treasury employees appointed by the State Treasurer.
(2) The Linked Deposits Loan Committee shall forward their evaluation and recommendation to the Treasurer, or to her designee, for approval.
(3) Upon approval of the loan package, the:
(a) Eligible lending institution shall receive written notification;
(b) Applicant may be notified by either the lending institution or the State Treasurer's office.
(4) The State Treasurer's office may complete the application review and notification process within one (1) week, unless additional information is needed.

~~[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 deposits 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.

GENERAL GOVERNMENT CABINET
State Board of Elections
(As Amended)

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

RELATES TO: KRS 117.235(6)
STATUTORY AUTHORITY: KRS 117.235(6)
NECESSITY AND FUNCTION: This administrative regulation is necessary to insure that the regular election process shall 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 shall not be impaired.

Section 3. The mock election results shall not be released prior to the regular election precinct results.

BOB BABBAGE, Chairman
APPROVED BY AGENCY: December 12, 1994
FILED WITH LRC: December 14, 1994 at 4 p.m.

AUDITOR OF PUBLIC ACCOUNTS
(As Amended)

45 KAR 1:080. Standards for Title VI reporting.

RELATES TO: KRS Chapter 344, 42 USC 2000d
STATUTORY AUTHORITY: KRS 344.015
NECESSITY AND FUNCTION: The 1994 General Assembly enacted Senate Bill 248 (KRS 344.015) which requires that all state agencies as defined in KRS 12.010 prepare and submit Title VI implementation plans and annual updates to the Auditor of Public Accounts if the agency is subject to Title VI of the Federal Civil Rights Act of 1964. **The Auditor of Public Accounts is responsible for the preparation and issuance of the Single Statewide Audit of Federal Funds for Kentucky state government including compliance with Title VI requirements. This administrative regulation establishes the uniform format agencies are required to use when submitting the Initial Implementation Title VI Plan and Annual Plan Updates to the Auditor of Public Accounts.**

Section 1. (1) Title VI Initial Implementation Plan and Annual Plan Updates shall:
(a) Be submitted in the format set out in Section 4 of this administrative regulation; and
(b) Contain the information specified by the provisions of this administrative regulation.
(2) The entire agency shall be in compliance with Title VI, even if only one (1) federal grant is received.
(3) Standard complaint forms or guidelines shall be developed and adopted by the agency.
(4) Complaints shall be filed orally or in writing.
(5) A compliance review instrument shall be developed by the agency, such as, a self-survey, assessment checklist, preaward, routine or enforcement plan, along with the criteria for selecting and scheduling reviews.
(6) The agency shall provide persons with information relating to its Title VI plan, nondiscrimination policies, complaint procedures, programs and services.
(a) This information may include, brochures, newsletters, contract agreements, educational materials, Title VI Act and federal regulations, and preventive outreach programs.
(b) Informational materials shall be made available in a centralized place for distribution upon request.
(7) The agency shall submit annual Title VI compliance reports and updates to the plan.
(8) Agency and subrecipients shall establish a system for data collection and reporting data which shows the extent to which members of protected parties are participating in the programs and activities.

Section 2. For all state agencies receiving federal funds, an annual Title VI plan update shall be submitted to the Auditor of Public Accounts and the Kentucky Commission on Human Rights by July 1, 1995 and by July 1 each year thereafter.

Section 3. If a state agency that was not a recipient of federal funds on January 1, 1995, receives federal funds it shall prepare and submit the Title VI implementation plan within ninety (90) days of award and receipt of the federal funds.

Section 4. The federal Title VI implementation plan shall contain the information prescribed by this section in succinct and concise language. Subsections (6), (7), (9), (10), (12) and (13) of this section shall be updated annually.
(1) Glossary/definitions. Definitions of all common terms stated in the plan shall be included in this section to ensure that agency staff, recipients and beneficiaries have consistent applicable definitions.
(2) Overview. A clear and brief description of the agency mission and structure and the relationship of Title VI requirements to the agency's operations.
(3) Scope of Title VI applicability to programs and activities. Specify prohibited discrimination practices under Title VI in relation to agency activities.
(4) Responsible official. The name, title, address and telephone number of the primary contact for the agency and the person in charge of implementation, compliance and reporting shall be designated in this section.
(5) Statement of assurances.
(a) Provide a statement that the agency, subrecipients and all parties involved have complied with Title VI.
(b) This statement shall be consistent with any assurances

provided to the applicable federal agency which provides funding for covered activities. Also include:

1. A statement that a subrecipient shall have agreed in writing to adopt the Title VI plan of that agency.

2. If the subrecipient's Title VI plan differs from the state agency plan, a statement that the subrecipient plan shall be available for review from the name and title of officials identified in subsection (4) of this section.

(6) Identify programs or activities subject to Title VI.

(a) Identify each program, type of assistance identified in the federal grant agreement, and the manner in which the agency shall deliver the service or perform the activity.

(b) List the federal program, coverages and potential beneficiaries.

(7) Complaint procedures.

(a) Describe the complaint procedures within the agency as follows:

1. How a complaint shall be filed;

2. Where to file a complaint;

3. Time frame within which the complaint shall be processed by the agency; and

4. Withdrawal of a complaint;

(b) Describe agency procedures relating to investigations, report of findings, hearings and appeals.

(8) Compliance/noncompliance reporting.

(a) Describe agency plans to regulate, monitor, review, and report on the federal programs to assure compliance.

(b) Identify actions to be taken by the agency upon a finding of noncompliance, including:

1. Processing;

2. Reporting;

3. Resolution;

4. Enforcement of corrective actions; and

5. Monitoring of programs.

(9) Agency training plan.

(a) Describe the agency education and training plan, orientation, and technical assistance related to agency implementation of the plan;

(b) Identify ways the agency plans to improve staff capability, knowledge and effectiveness.

(10) Evaluation procedures of Title VI plan.

(a) Specify how the agency shall measure its goals and the time frame established to achieve those goals.

(b) The agency shall:

1. Describe how it plans to evaluate the Title VI plan and maintain continued compliance;

2. Identify any existing needs or plan deficiencies;

3. Maintain written progress reports; and

4. Describe corrective procedures.

(11) Public notice and outreach.

(a) Identify how the agency shall inform persons about the agency's:

1. Title VI plan;

2. Complaint procedures;

3. Nondiscrimination policy; and

4. Programs and services.

(b) Identify the agency contact person, office or department responsible for distribution of information relating to paragraph (a) of this subsection.

(12) Recordkeeping and reporting.

(a) Describe the recordkeeping procedures for the following:

1. Filing and processing of complaints;

2. Administrative data or records applicable to the plan;

3. Data sheets, including, a complaint log or performance reports, standardized forms, and retention of records.

(b) Changes in subsections (8) and (9) of this section of the plan shall be identified in this subsection.

(c) Provide reporting data showing the extent to which members of protected parties are participating in the Title VI programs and activities.

(13) Minority representation on planning board or advisory body.

(a) Describe the representation of minorities on any agency board or advisory body;

(b) If minority representation is deficient on these bodies, describe what policy the agency shall implement to ensure minority participation on advisory bodies; and

(c) Describe the race and national origin of the agency's staff.

Section 5. The agency shall submit Title VI initial plans, and annual Title VI plan updates on the "Commonwealth of Kentucky, Auditor of Public Accounts, Title VI of the Federal Civil Rights Act, Implementation Initial Plan and Plan Update Form" (1995).

Section 6. Incorporation By Reference. (1) "Commonwealth of Kentucky, Auditor of Public Accounts, Title VI of the Federal Civil Rights Act, Implementation Initial Plan and Plan Update Form" (1995) is incorporated by reference.

(2) This document may by inspected, copied, or obtained at the Office of the Auditor of Public Accounts, 144 Capitol Annex, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m., Monday through Friday.

~~[Section 1. Report Format. Title VI implementation plans and annual updates must follow a uniform format, dated September 2, 1994, which is incorporated by reference. The format may be inspected, obtained or copied at the Office of the Auditor of Public Accounts, 144 Capitol Annex, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m., Monday through Friday.~~

~~Section 2. State agencies must submit an initial Title VI implementation plan by December 22, 1994 to the Auditor of Public Accounts and the Kentucky Commission on Human Rights. An annual Title VI plan update must be submitted to the Auditor of Public Accounts and the Kentucky Commission on Human Rights by June 15, 1995 and by June 15 each year thereafter.]~~

A. B. CHANDLER III, Chair
APPROVED BY AGENCY: October 5, 1994
FILED WITH LRC: October 14, 1994 at 11 a.m.

DEPARTMENT OF PERSONNEL
(As Amended)

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

RELATES TO: KRS 18A.030, 18A.110, 18A.165
STATUTORY AUTHORITY: KRS ~~[Chapter 13A,]~~ 18A.110(1)(c), (d), (g), (7)
NECESSITY AND FUNCTION: KRS 18A.110 requires the Commissioner of Personnel to promulgate comprehensive administrative regulations consistent with the provisions of KRS Chapter 18A, which govern the pay plan for all employees in the classified service. This administrative regulation is to assure uniformity and equity in administration of the pay plan in accordance with statutory requirements.

Section 1. Appointments. (1) Initial appointment shall be made at the minimum rate of the pay grade established for the job classification unless the commissioner authorizes a higher rate due to recruitment difficulties or the appointment of a highly qualified applicant at a rate above the minimum.

(2) An appointing authority may, due to [~~the~~] difficulty in recruiting a specifically qualified applicant or applicants, request the appointment of an applicant at a salary not to exceed the midpoint provided all other agency employees with the similar qualifications in the same job class and work county shall have their salaries adjusted by the appointing authority to that rate.

(3) An appointing authority may also request that a highly qualified applicant be given increased credit for relevant education and experience that is beyond the minimum requirements established for the job classification. The maximum allowable rate shall be five (5) percent for each year the applicant's education and experience exceeds the minimum requirements but the maximum number of years for which credit may be allowed shall not exceed four (4) years of relevant education or experience in excess of the minimum requirements. If approved by the commissioner, the appointing authority shall raise the salaries of all agency employees in the same job classification and work county to the same rate if they possess qualifications similar to those of the applicant. [~~Initial appointments shall be made at the minimum rate of the pay grade established for the job classification unless the commissioner authorizes appointment of a highly qualified applicant at a rate above the minimum, not to exceed the midpoint of the pay grade. Such exceptions shall be based on the outstanding and unusual nature of the applicant's education and experience over and above the minimum requirements set for the job classification. Employees possessing qualifications similar to the applicant being appointed that are employed in the same job classification, by the same agency, in the same county shall have their salaries adjusted by the appointing authority to the same rate granted in the in-range appointment if that rate is higher than their current salaries.~~]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) Reversion.

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

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

(c) If an employee's salary is adjusted as the result of participation in a pilot program authorized by KRS 18A.400 through 18A.445, [~~he shall retain~~] that salary **shall not be reduced** as long as he is employed by the agency, **except as authorized by an action for demotion or reversion.**

(7) Pay grade changes. An employee who is advanced to a higher pay grade through a class reevaluation and grade adjustment under Section 7 of this administrative regulation may receive a salary increase as outlined below except that **after the salary increase** [~~in no case shall~~] the employee's salary **shall not** [~~after such increase~~] be below the minimum of the new pay grade:

(a) Five (5) percent uniformly applied within the agency;

(b) Ten (10) percent uniformly applied within the agency;

(c) A dollar amount determined by the Commissioner of Personnel uniformly applied in the class within the same agency. [~~An employee who is advanced to a higher pay grade through a class reevaluation and grade adjustment under Section 7 of this regulation may receive a salary increase of five (5) percent or ten (10) percent except that in no case shall the employee's salary after such increase be below the minimum of the new pay grade.~~]

(8) Other salary adjustments.

(a) An appointing authority, with the approval of the commissioner, may grant a salary adjustment to an employee who was eligible for but did not receive at least a five (5) percent salary advancement due to [~~as the result of any of the following actions: promotional increase,~~] reallocation to a higher grade, implementation

of a special entrance rate, [or] class grade changes, effective on or after January 3, 1986 or completion of a promotional probationary period. [, may have his salary adjusted upon request by the appointing authority and approval by the commissioner.] In no case may the salary adjustment be more than five (5) percent nor be made retroactive to the original effective date but shall be made effective [granted] on the first of the month following approval of the commissioner [increase].

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

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

(2) Annual increment dates shall be established:

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

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

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

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

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

(c) Is transferred;

(d) Receives a demotion;

(e) Is approved for detail to special duty;

(f) Receives an educational achievement award;

(g) Returns from military leave;

(h) Is reclassified; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 10. Supplemental Shift Premium. Upon request of the appointing authority, the commissioner may authorize the payment of a supplemental shift premium for those job classifications in which employees are directed to work an evening or night shift. Once authorized, this premium shall apply to those employees directed to work an evening or night shift in a job classification in the agency for which the shift premium was approved. **An** [~~However, no~~] employee shall **not** receive a supplemental shift premium subsequent to shift reassignment or to a transfer, promotion or demotion to a position that is ineligible for a shift differential premium payment.

Section 11. Distinguished Service Award. (1) Appointing authorities may utilize up to fifty (50) percent of funds saved through a combination of high performance levels and staff reduction to grant distinguished service awards to employees. No more than twenty-five (25) percent of the employees in an agency shall be eligible for a distinguished service award in a fiscal year. Distinguished service awards shall also be contingent upon the availability of surplus funds within the appointing authority's budget and shall be within the sole discretion of the appointing authority. A distinguished service award shall equal three (3) percent of the midpoint of the grade level of the employee and shall be added to the employee's base salary, if that salary is below the midpoint, or paid in a lump sum if the employee's salary exceeds the midpoint.

(2) An employee may be eligible for a distinguished service award if:

(a) The employee has at least forty-eight (48) months service, twenty-four (24) of which must be current; and

(b) Has demonstrated a sustained level of exceptional job performance; or

(c) Has assumed a significant level of additional job responsibilities or duties and performed them in an acceptable manner; or

(d) The appointing authority feels that the employee's acts or ideas have resulted in a significant financial savings or improvement in services to the Commonwealth and its citizens.

(3) An employee shall be eligible for only one (1) distinguished service award in a twenty-four (24) month period.

(4) In order to grant a distinguished service award the appointing authority **shall** [~~must~~] submit the personnel action form and written justification. The award shall not be granted until the request is approved by the Commissioner of Personnel.

LOWELL W. CLARK, Commissioner
BRERETON C. JONES, Governor
APPROVED BY AGENCY: November 18, 1994
FILED WITH LRC: December 5, 1994 at 3 p.m.

DEPARTMENT OF PERSONNEL
(As Amended)

101 KAR 3:045. Unclassified service; classification and compensation incentive systems.

RELATES TO: KRS 18A.155
STATUTORY AUTHORITY: KRS [~~Chapter 13A,~~] 18A.155(1)(b)
NECESSITY AND FUNCTION: KRS 18A.155 requires the Commissioner of Personnel to submit to the Governor proposed administrative regulations for persons in positions enumerated in KRS 18A.115(1)(g), (h), (i), (j), (k), (p), (u) and (v). [~~KRS 18A.155 further provides that these administrative regulations shall be approved by the Governor. Nothing herein shall be construed to preclude the optional use of administrative regulations promulgated under 101 KAR 2:036 [this section] on behalf of employees enumerated in paragraphs (a), (b), (d), (e) and (q) of subsection (1) of KRS 18A.155 and on behalf of members of state boards and commissions who work on a full-time, salaried basis. This administrative regulation complies with and implements this statutory provision [and replaces 101 KAR 3:040].~~]

Section 1. Classification Plan. [~~(1) The commissioner shall, after consultation with the appointing authorities, prepare and recommend to the Governor a classification plan for adoption. The plan shall be based upon similarity of duties performed and responsibilities assumed, so that the same qualifications may reasonably be required for and the same schedule of pay may be equitably applied to all positions in the same class. Each position shall be allocated to its proper class in the classification plan after consultation with appointing authorities. The classification plan shall include for each class of position an appropriate title, description of duties and responsibilities, and the required education, experience and other qualifications.~~

~~(2)~~] The principles and provisions of 101 KAR 2:020 shall apply to positions in the unclassified service.

Section 2. Compensation Plan. (1) [~~After consultation with appointing authorities and the Secretary of the Finance and Administration Cabinet, develop a pay plan for all aforementioned employees in the unclassified service, taking into account such factors as:~~

~~(a) The relative levels of duties and responsibilities of various classes of positions;~~

~~(b) Rates paid for comparable positions elsewhere; and~~

~~(c) The state's financial resources.~~

~~Such pay plan shall become effective only after it has been approved by the Governor after submission to him by the commissioner through the Secretary of the Department of Finance. Amendments to the pay plan may be made in the same manner. Each employee shall be paid at one (1) of the rates set forth in the pay plan for the position in which he is employed.~~

~~(2)~~] With the exception of the provisions **of Section 3 of this administrative regulation** relating to probationary increments, [~~and outstanding merit increases under 101 KAR 3:045,~~] the principles and provisions of 101 KAR 2:036 [~~5~~] shall apply to employees and positions in the unclassified service. An employee in the unclassified service who completes the initial six (6) month period following appointment with satisfactory performance may be granted a statutory increment at the beginning of the month following completion of such period.

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

(b) Inasmuch as the appointing authority has the option of not providing salary increases under this section, an eligible employee whose salary is not adjusted is not considered to have been penalized and therefore shall have no basis for appeal.

(c) An appointing authority, with the approval of the commissioner, may grant a salary adjustment, equivalent to the budgeted annual increment for classified employees, to seasonal, temporary, FFTL and other unclassified employees who have completed twelve (12) months total full-time employment in the classified or unclassified service without a salary increase. **The** [~~Such~~] salary adjustment, if granted, shall be effective on the first day of the month following approval of the increase.

(2) [~~(3)~~] Physicians, employed as such and pursuant to KRS 64.655, **shall be exempt** [~~are exempted~~] from the provisions of 101 KAR 2:036 [~~2:035~~], Section 1, and may be appointed to any rate within the pay range when justified in writing by the appointing authority and approved by the commissioner.

Section 3. Educational Achievement Award. Upon request of the appointing authority and subject to the approval of the commissioner:

(1) An employee may receive one (1) lump sum educational achievement award per fiscal year for satisfactorily completing outside of work hours, 260 classroom hours (or the equivalent as determined by the commissioner) of job related instruction in approved courses. Approved courses must have been completed after an employee initially served six (6) months in state government. Employees shall not receive credit for hours taken while on educational leave, for hours paid for by the agency through tuition assistance, or for hours which previously counted toward an educational achievement award. The lump sum educational achievement award shall be ten (10) percent of the employee's annual base salary but not more than $2,500. The lump sum payment shall be granted only if the 260 classroom hours (or equivalent) have been completed within the past five (5) years prior to the effective date of the increase; or

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

(a) Received a high school diploma, high school equivalency certificate, or a passing score on the G.E.D. test; or

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

(3) To apply for an educational achievement award an employee shall submit supporting documentation to the appointing authority or his designee **on** a DPT Form 10 or its equivalent, demonstrating completion of 260 classroom hours (or the equivalent) together with official transcripts or grade reports for the courses completed. **As provided by** [~~In compliance with the standards set forth in~~] this section, the appointing authority may recommend the application for approval and may forward the documentation to the Commissioner of the Department of Personnel for final approval.

~~[Section 4. Outstanding Merit Increase. (1) Subject to the approval of the commissioner and contingent upon the availability of sufficient budgeted funds, an appointing authority may within his sole discretion, recommend any full-time, unclassified employee whose service credit began prior to July 1, 1987 with at least twelve (12) months continuous service for an outstanding merit increase equal to three (3) percent of his base pay. An outstanding merit increase shall consist of a lump sum payment which shall not be added to base pay.~~

~~(2) An employee may be recommended for an outstanding merit increase if:~~

~~(a) His job performance is judged to be outstanding by the appointing authority; or~~

~~(b) In the discretion of the appointing authority, the employee's acts or ideas have resulted in significant financial savings or improvement in services to the Commonwealth and its citizens.~~

~~(3) An employee shall not be eligible for recommendation for an outstanding merit increase if he has received an outstanding merit increase within the preceding twelve (12) months.~~

~~(4) The appointing authority shall submit written justification to the commissioner and the personnel action form shall be approved by the appointing authority and the commissioner to be effective.]~~

LOWELL W. CLARK, Commissioner
BRERETON C. JONES, Governor
APPROVED BY AGENCY: November 18, 1994
FILED WITH LRC: December 5, 1994 at 3 p.m.

GENERAL GOVERNMENT CABINET
Board of Medical Licensure
(As Amended)

201 KAR 9:005. Ethical conduct.

RELATES TO: KRS **311.565(1)(a), (b), (j), 311.597** [~~311.530 to 311.620, 311.990~~]

STATUTORY AUTHORITY: KRS **311.565(1)(a), (b), (j)** [~~Chapter 13A~~]

NECESSITY AND FUNCTION: KRS 311.565**(1)(j)** [~~(2)(c)~~] authorizes the State Board of Medical Licensure to promulgate a code of conduct governing the practice of medicine and osteopathy based upon generally recognized principles of professional and ethical conduct. This administrative regulation incorporates the Principles of Medical Ethics of the American Medical Association and the American Osteopathic Association [~~adopted July 1, 1980~~].

Section 1. **(1) The following material is incorporated by reference:**

(a) "Code of Medical Ethics", (1994 Edition), American Medical Association; and

(b) "Code of Ethics of the American Osteopathic Association", (1985 Edition), American Osteopathic Association.

(2) This material may be inspected, copied, or obtained at Kentucky Medical Licensure Board, Hurstbourne Office Park, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m. [~~No code or set of rules can be framed which will particularize all ethical responsibilities of the physician in the various phases of his professional life. The enumeration of obligations in the code of ethics is not exhaustive and does not constitute a denial of the existence of other obligations, equally imperative, though not specifically mentioned.~~] [~~A physician shall be dedicated to providing competent medical service with compassion and respect for human dignity.~~]

Section 2. 201 KAR 9:015 is hereby repealed. [~~A physician shall deal honestly with patients and colleagues, and strive to expose those physicians deficient in character or competence, or who engage in fraud or deception.~~

~~Section 3. A physician shall respect the law and also recognize a responsibility to seek changes in those requirements which are contrary to the best interests of the patient.~~

~~Section 4. A physician shall respect the rights of patients, of~~

~~colleagues, and of other health professionals, and shall safeguard patient confidences within the constraints of the law.~~

~~Section 5. A physician shall continue to study, apply and advance scientific knowledge, make relevant information available to patients, colleagues and the public, obtain consultation, and use the talents of other health professionals when indicated.~~

~~Section 6. A physician shall, in the provision of appropriate patient care, except in emergencies, be free to choose whom to serve, with whom to associate, and the environment in which to provide medical services.~~

~~Section 7. A physician shall recognize a responsibility to participate in activities contributing to an improved community.~~]

ROYCE E. DAWSON, President
APPROVED BY AGENCY: July 14, 1994
FILED WITH LRC: July 14, 1994 at 2 p.m.

GENERAL GOVERNMENT CABINET
State Board of Embalmers & Funeral Directors
(As Amended)

201 KAR 15:060. Annual license renewal, late renewal, and reinstatement.

RELATES TO: KRS 316.130
STATUTORY AUTHORITY: KRS 316.210(4) [~~316.130~~]
NECESSITY AND FUNCTION: Sets forth the requirement, pursuant to KRS 316.130, that a funeral director's license and embalmer's license shall [~~must~~] be renewed annually.

Section 1. Annual Renewal of Licenses. (1) Every licensed embalmer and every licensed funeral director who desires to continue to practice shall file a completed application form for renewal with the secretary of the board on or before July 1 of each year. The form shall be accompanied by an annual renewal fee established by statute.

(2) Applicants who timely satisfy the annual renewal requirements shall be eligible to have their name appear in the official list of licensees published by the board.

Section 2. Late Renewal of Licenses. Every licensed embalmer and every licensed funeral director who fails to timely renew their license shall be eligible to have their license renewed if a completed application form, prescribed renewal fee(s) for all previous years, and any prescribed penalty fee is filed with the secretary of the board within three (3) years of the expiration of the license.

Section 3. Reinstatement. (1) The board shall not renew a license of a funeral director or embalmer which has been expired for three (3) years or more.

(2) **The applicant may have their license reinstated provided the applicant satisfies the requirements set forth in Section 2 of this administrative regulation, and the board, in its discretion, may require the applicant to successfully complete all or any part of the licensing examination.** [~~The applicant may have their license reinstated provided the applicant satisfies the requirements set forth in Section 2 of this administrative regulation and demonstrates reasonable competency as a funeral director, embalmer, or both, depending on the license sought to be reinstated.~~

~~(3) In determining competency, the board, in its discretion, may require the applicant to successfully complete all or any part of the licensing examination.~~] [~~All licenses issued by the board expire on the 31st day of July, next, following their issuance and must be renewed annually. Application for renewal of license must be made to the secretary of the board thirty (30) days preceding the expiration of the license, upon printed forms prescribed by the board and must be accompanied by a license fee of twenty (20) dollars as prescribed by law. The applicant will be entitled to have his name appear in the official list published and issued by the board.~~]

EDD PRESTON, President
APPROVED BY AGENCY: October 3, 1994
FILED WITH LRC: November 29, 1994 at 4 p.m.

GENERAL GOVERNMENT CABINET
Department of Agriculture
Division of Animal Health
(As Amended)

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 administrative 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 **demonstrated a** [~~reacted~~] positive **reaction in serum neutralization with a titer of greater than 1 to 4** 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. Blood 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 blood 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 administrative 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 administrative 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.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(As Amended)

405 KAR 5:001. Definitions for 405 KAR Chapter 5.

RELATES TO: KRS 350.010(2), 350.240, 350.300
STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.029, 350.240, 350.300
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part, requires the cabinet to promulgate administrative regulations pertaining to noncoal mineral operations to minimize their adverse effects on the citizens and the environment of the Commonwealth. This administrative regulation provides for the defining of certain essential terms used in 405 KAR Chapter 5.

Section 1. Definitions. (1) "Access road" means a road designed and constructed to gain access from a public road to the mineral operation.

(2) "Acid drainage" means water with a pH of less than six (6.0) and in which total acidity exceeds total alkalinity, discharge from an active, inactive or abandoned mine or from an area affected by a mineral operation.

(3) "Acid-forming materials" means earth materials or rock that contain sulfide minerals or other minerals which, if exposed to air, water or weathering processes, form acids that may create acid drainage.

(4) "Affected area" means any land area which is used to facilitate, or is physically altered by strip mining; surface disturbance from an underground mine; surface disturbance from dredging operations; any area covered by dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, holes or depressions, repair areas, roads, storage areas, shipping areas and processing plants.

(5) "Backfill" means excavated overburden material used to regrade [reconteur] a mined area.

(6) "Cabinet" is defined in KRS 350.010.

(7) "Check dam" means a small structure placed in ditches, usually constructed of rock, intended to reduce run-off velocity for deterring erosion.

(8) "Clay" means a **natural substance or soft rock which, when finely ground and mixed with water, forms a pasty, moldable mass that preserves its shape when air dried; the particles soften and coalesce upon being highly heated and form a stony mass upon cooling.** [natural fine grained material which develops plasticity when mixed with water.] [sedimentary rock which becomes plastic when wet and has no well defined or developed partings along bedding planes, although it may display bedding.]

(9) "Compaction" means the reduction of pore spaces among the particles of soil or rock generally as a result of running heavy equipment over the materials.

(10) ["Critical habitat" means the specific areas within the geographic area, occupied by a threatened or endangered species, on which are found those physical or biological features essential to the conservation of the species and which may require special management considerations or protection; and specific areas outside the geographic area occupied by the species essential for the conservation of the species. Critical habitat areas are designated lands.

(11)] "Cropland" means land used for the production of adapted crops for harvest alone or in rotation with grasses or legumes, and includes: row crops, small grain crops, hay crops, nursery crops, orchard crops and other similar specialty crops. Land used for facilities in support of cropland farming operations which is adjacent to, or an integral part of, these operations is also included for purposes of this land use category.

(11) [(12)] "Department" means the Kentucky Department for Surface Mining Reclamation and Enforcement.

(12) [(13)] "Disturbed area" means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, mineral processing waste, underground development waste or similar waste is placed by mining activities. The disturbed area also includes those areas in which diversion ditches, sedimentation ponds, roads, or other features related to a mineral operation, are installed. Those areas are classified as "disturbed" until reclamation is complete, bond monies or permit have been released and processing plant and stockpile areas have been moved.

(13) [(14)] "Diversion ditch" means a channel constructed to direct water from one (1) location to another.

(14) [(15)] "Division" means the Division of Field Services of the Kentucky Department for Surface Mining Reclamation and Enforcement.

(15) [(16)] "Dolomite" means a sedimentary rock composed primarily of the crystalline carbonate mineral dolomite, CaMg $(Co_3)_2$. Many limestones contain small amounts of Dolomite; however, the term Dolomite is reserved for rocks which contain fifteen (15) percent or more magnesium carbonate.

(16) [(17)] "Dredging operation" means surface disturbance of dredging river or creek sand and gravel.

(17) [(18)] "Edge effect" means the phenomena by which wildlife is enhanced and wildlife diversity is typically increased as a result of two or more different habitat types occurring in close proximity to each other. Where two (2) habitats meet is referred to as an "edge".

(18) [(19)] "Embankment" means an artificial deposit of material that is raised above the natural surface of land and used to contain, divert, or store water, support roads or railways, or other similar purposes.

(19) [(20)] "Ephemeral stream" means a stream which only flows in direct response to precipitation in the immediate watershed, or in response to the melting of a cover of snow and ice, and which has a channel bottom that is always above the local water table.

(20) [(21)] "Erosion" means the detachment and movement of soil or rock fragments by water, wind, ice, or gravity.

(21) [(22)] "Fish and wildlife land use" means an area which is characterized by an intermixed combination of habitat types including: woodlots or forested areas, shrub-scrub areas, grass-legume or open areas, and wetland or open water areas arranged in a manner as to promote edge effect for wildlife.

(22) [(23)] "Floodplain" means the area along, adjacent to and including, a stream which is inundated by a 100 year frequency flood.

(23) [(24)] "Fluorspar " means an ore of the mineral Fluorite CaF_2. This occurs in veins and as bedding replacements found in Western Kentucky, as part of a mining district referred to as the Cave-In-Rock District and in Central Kentucky, as the Central Kentucky Vein and Fault System. Its origin is the result of hydrothermal activity.

(24) [(25)] "Forest land" means lands dominated by canopy forming trees, or from a postmining land use standpoint, areas

planted throughout with trees.

[~~(26) "Fragile lands" means areas containing natural, ecologic, scientific, or aesthetic resources that could be significantly damaged by mineral operations. Examples of fragile lands include uncommon geologic formations, paleontological sites, national natural landmarks, valuable habitats for fish or wildlife, areas where mining may result in flooding, critical habitats for endangered or threatened species of animals or plants, wetlands, environmental corridors containing a concentration of ecologic and aesthetic features, state designated nature preserves and wild rivers, and areas of recreational value due to high environmental quality.~~]

(25) [~~(27)~~] "General permit" means any KPDES permit authorizing a category of discharges under KRS Chapter 224 within a geographical area, issued under 401 KAR 5:055.

(26) [~~(28)~~] "Gravel" means a sedimentary rock type that implies a loosely, compacted, coarse sediment that is generally larger than 4mm, but smaller than boulders; a naturally occurring aggregate.

(27) [~~(29)~~] "Ground cover" means the area of ground covered by the combined aerial parts of live vegetation and the litter produced and distributed naturally and seasonally on site, expressed as a percentage of the total area of measurement.

(28) [~~(30)~~] "Groundwater" means water which is in the zone of saturation or any subterranean waters flowing in well defined channels and having a demonstrable hydrologic connection with the surface. It is differentiated from water held in the soil, from water in downward motion under the force of gravity in the unsaturated zone, and from water held in chemical or electrostatic bondage.

(29) [~~(31)~~] "Growing season" means the period during a one (1) year cycle, from the last killing frost in spring to the first killing frost in fall, in which climatic conditions are favorable for plant growth. In Kentucky, this period normally extends from mid-April to mid-October.

(30) [~~(32)~~] "Highwall" means the face of exposed overburden and mineral to be mined, in an open cut of a strip mine or for entry to an underground mine.

[~~(33) "Historic lands" means areas containing historic, cultural, or scientific resources. Examples of historic lands include properties listed on or eligible for listing on a State or National Register of Historic Places, national historic landmarks, archaeological sites, properties having religious or cultural significance to native Americans or religious groups, and properties for which historic designation is pending.~~]

(31) [~~(34)~~] "Hollowfill" means a fill structure placed in a hollow where the side slopes of the existing hollow, measured at the steepest point, are greater than twenty (20) degrees or the average slope of the profile of the hollow, from the toe of the fill to the top of the fill, is greater than ten (10) degrees.

[~~(35) "Hydrologic balance of surface waters" means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit such as a drainage basin, [aquifer, soil zone,] lake, or reservoir. It encompasses the dynamic relationship between precipitation, run-off, evaporation, and changes in [ground and] surface water storage.~~]

(32) [~~(36)~~] "Imminent danger to the health and safety of the public" means the existence of any condition, or practice, or any violation of a permit or other requirement of applicable state laws and administrative regulations in a mineral operation; which condition, practice, or violation could reasonably be expected to cause substantial, physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same condition or practice giving rise to the peril, would not expose himself to the danger during the time necessary for the abatement.

(33) [~~(37)~~] "Impoundment" means a closed basin formed naturally or artificially built, which is dammed or excavated for the retention of water, sediment, or waste.

(34) [~~(38)~~] "Industrial/commercial land use" means lands used for:

(a) The extraction or transformation of materials, for fabrication of products, wholesaling of products or for long term storage of products; and heavy and light manufacturing facilities. Land used for facilities in support of these operations, which is adjacent to, or an integral part of, that operation is also included; or

(b) The retail or trade of goods or services, including: hotels, motels, stores, restaurants, and other commercial establishments. Land used for facilities in support of these operations, which is adjacent to, or an integral part of, that operation is also included.

(35) [~~(39)~~] "Intermittent stream" means:

(a) A stream, or reach of stream, that drains a watershed of one (1) square mile or more but does not flow continuously throughout the calendar year; or

(b) A stream, or reach of stream, that is below the local water table for at least some part of the year, and obtains its flow from both surface water and groundwater discharge. This term does not include ephemeral streams.

(36) [~~(40)~~] "Land use" means the specific functions, uses, or management related activities of the proposed permit area, including both premining use and postmining use.

[~~(41) "License" means an authorization issued to a person, partnership or corporation to conduct mineral operations under their permit.~~]

(37) [~~(42)~~] "Limestone" means a crystalline sedimentary rock that is primarily composed of the mineral Calcite $CaCO_3$. However, it may be considered as any sedimentary rock composed essentially of carbonates, chiefly Calcite or Dolomite, but may contain small amounts of iron-carbonates (Siderite).

(38) [~~(43)~~] "Mast" means nuts, acorns, and fruit produced by certain woody plant species.

(39) [~~(44)~~] "Mineral operation" means noncoal mining activities including: mining of limestone and dolomite; mining of sand and gravel, surface disturbance of dredging of river or creek sand and gravel; mining of clay; mining of fluorspar and other vein minerals. Mineral operations include the surface disturbance of underground mining as well as strip mining. This term includes mining activities and all activities necessary and incident to the reclamation of the mine or dredging operation as required by this Title. This term does not include coal mining, tar sand mining or oil shale mining.

(40) [~~(45)~~] "Mineral operator" means any person, partnership, or corporation engaged in mineral operations.

(41) [~~(46)~~] "Mineral permittee" means a mineral operator or person holding a permit, or required under KRS Chapter 350 or 405 KAR Chapter 5, to hold a permit to conduct mineral operations during the permit term and until all reclamation obligations imposed by KRS Chapter 350 and 405 KAR Chapter 5 are satisfied.

(42) [~~(47)~~] "Natural drainways" means ephemeral areas, gullies, ravines, streams, and similar topographical features occurring naturally in an area which control the direction of surface water flow.

(43) [~~(48)~~] "Natural hazard lands" means geographic areas in which natural conditions exist that pose or, as a result of mineral operations, may pose a threat to the health, safety, or welfare of people, property, or the environment, including, but not limited to, areas subject to landslides, cave-ins, subsidence, substantial erosion, unstable geology, or frequent flooding.

(44) [~~(49)~~] "Noxious plants" means species that have been included on state and federal lists of noxious plants.

(45) [~~(50)~~] "Outslope" means the face of the spoil, natural ground, or embankment sloping downward from the highest elevation to the lowest elevation [~~toe~~].

(46) [~~(51)~~] "Outstanding resource waters" means surface waters designated by the cabinet, pursuant to 401 KAR 5:031, Section 7.

(47) [~~(52)~~] "Pastureland" means land used primarily for the long term production of adapted, domesticated, forage plants to be grazed by livestock or occasionally cut and cured for livestock feed. Land used for facilities in support of pastureland which is adjacent to, or an integral part of, these operations is also included.

(48) [~~(53)~~] "Perennial stream" means a stream, or stream reach, that flows continuously during all of the calendar year as a result of groundwater discharge or surface run-off.

(49) [~~(54)~~] "Permanent impoundment" means an impounded body of water, that is formed in the pit during mining or retained by a constructed embankment or dugout, which will be retained after mineral operations are complete and which has been approved for retention by the cabinet and other appropriate Kentucky and federal agencies.

(50) [~~(55)~~] "Permit" means written approval issued by the cabinet to conduct mineral operations.

(51) [~~(56)~~] "Permit area" means the area of land and water within boundaries designated in the approved permit application, which shall include, at a minimum, all areas which are or will be affected by mineral operations under that permit. [~~The permit area shall also include all areas overlying underground workings.~~]

(52) [~~(57)~~] "pH" means the index used to describe the hydrogen ion activity of a system defined as the reciprocal of the logarithm of the hydrogen ion concentration at base ten (10). The range of this index is zero to fourteen (14), with seven (7) being neutral.

(53) [~~(58)~~] "PLS" means pure live seed.

(54) [~~(59)~~] "Point source" is defined in 401 KAR 5:050. [~~means any discernible, confined, and discrete conveyance, including, but not limited to; any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.~~]

(55) [~~(60)~~] "Recreation land use" means land used for public or private leisure time use, including developed recreation facilities such as, parks, camps, and amusement areas, as well as areas for less intensive uses such as, hiking, canoeing, and other undeveloped recreational uses.

(56) [~~(61)~~] "Residential land use" means tracts employed for single and multifamily housing, mobile home parks, and other residential lodgings. Also included, is land used for support facilities such as, vehicle parking, open space, and other facilities which directly relate to the residential use of the land.

(57) [~~(62)~~] "Roads" means haul roads and access roads constructed, used, reconstructed, improved or maintained for use in mining and stockpiling finished products, within permit boundaries. The term excludes any roadways located in the mining pit area.

(58) [~~(63)~~] "Run-off" means precipitation that flows overland before entering a defined stream channel and becoming stream flow.

(59) [~~(64)~~] "Safety factor" means the ratio of the available shear strength to the developed shear stress, or the ratio of the sum of the resisting forces to the sum of the loading or driving forces, as determined by engineering practices.

(60) [~~(65)~~] "Sand" means a sedimentary rock type that implies a loosely, compacted, fine sediment that is generally composed of particles that range in size from 1/16mm to 2mm. Most sands are predominantly composed of quartz grains or fragments of siliceous rocks.

(61) [~~(66)~~] "Sediment" means undissolved organic and inorganic material transported or deposited by water.

(62) [~~(67)~~] "Sedimentation pond" means any natural or artificial structure or depression used to remove sediment from water and store sediment or other debris.

(63) [~~(68)~~] "Significant, imminent environmental harm to land, air, or water resources" means a situation which is determined as follows:

(a) An environmental harm is an adverse impact on land, air, or water resources, including, but not limited to, plant and animal life.

(b) An environmental harm is imminent if a condition, practice, or violation exists which:

1. Is causing the harm; or

2. May be reasonably expected to cause the harm at any time before the end of the reasonable abatement time.

(c) An environmental harm is significant, if that harm is appreciable, and not immediately reparable.

(64) [~~(69)~~] "Slope" means average inclination of a surface, measured from the horizontal, generally expressed as the ratio of a unit of vertical distance to a given number of units of horizontal distance. It may also be expressed as a percent or in degrees.

(65) [~~(70)~~] "Soil horizons" means contrasting layers of soil parallel, or nearly parallel to, the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The four (4) master soil horizons are:

(a) "A horizon". The uppermost mineral layer, often called the surface soil. It is the part of the soil in which organic matter is then most abundant, and leaching of soluble or suspended particles is typically the greatest.

(b) "E horizon". The layer commonly near the surface below the A horizon and above the B horizon. The E horizon is most commonly differentiated from the overlying A horizon by a lighter color and generally measurably less organic matter. The E horizon is most commonly differentiated from the B horizon in the same sequence by color of higher value or lower chroma, by coarser texture or by a combination of these properties.

(c) "B horizon". The layer that is immediately below the E horizon and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the A, E, or C horizons.

(d) "C horizon". The deepest layer of soil profile. It consists of loose material or weathered rock that is relatively unaffected by biological activity.

(66) [~~(71)~~] "Spoil" means overburden which has been removed during mineral operations.

(67) [~~(72)~~] "Stabilize" means any method used to prevent movement of soil, spoil piles, or areas of disturbed earth, and includes increasing bearing capacity, increasing shear strength, draining, compacting, riprapping, or by vegetation.

(68) [~~(73)~~] "Stream buffer zone" means an area of forest or field left untouched and undisturbed by the mineral operator during mining, including haul road construction.

(69) [~~(74)~~] "Strip mining" is defined in KRS 350.010.

(70) [~~(75)~~] "Surface disturbance of dredging river or creek sand and gravel" means the surface and land disturbed on the banks of a creek or river for haul roads, storage areas, processing areas, maintenance and repair areas, or any other disturbance to the banks and land created by the dredging of sand and gravel out of rivers or creeks.

(71) [~~(76)~~] "Surface disturbance of underground mining" means above ground activities incidental to subsurface mineral extraction or in situ processing, including construction, use, maintenance, and reclamation of roads; above-ground repair areas, storage areas, processing areas, and shipping areas; areas upon which are sited support facilities including, hoist and ventilating ducts, areas used for the disposal and storage of waste, and areas on which materials incidental to underground mining activities are placed.

(72) [~~(77)~~] "Surface waters" means those waters having well defined banks and beds, either constantly or intermittently flowing; lakes and impounded waters; and marshes and wetlands. Effluent ditches and lagoons used for waste treatment which are situated on property owned, leased, or under valid easement by a permitted discharger, are not considered to be surface waters of the Commonwealth.

(73) [~~(78)~~] "Suspended solids" means organic or inorganic materials carried or held in suspension in water that will remain on a .45 micron filter.

(74) [~~(79)~~] "Temporary mineral operation" means a mineral operation that operates for a total of six (6) months or less at a location.

[~~(80) "Threatened and endangered species" means those species of plants or animals listed by the Secretary of the Interior under the Endangered Species Act of 1973, as amended (16 USC Sec. 1531 et seq.), or those species protected by similar state statutes.~~]

(75) [~~(81)~~] "Topsoil" means the A and E horizon layers of the four (4) master soil horizons.

(76) [~~(82)~~] "Toxic-forming materials" means earth materials or wastes which, if acted upon by air, water, weathering, or microbiological processes, are likely to produce chemical or physical conditions in soils or water that are detrimental to biota or uses of water.

(77) [~~(83)~~] "Waste" means materials which are washed, (otherwise separated or left from a mineral product) slurried or otherwise transported from the processing facilities or preparation plants of any kind.

(78) [~~(84)~~] "Water table" means the upper surface of a zone of saturation, where the body of groundwater is not confined by an overlying impermeable zone.

(79) [~~(85)~~] "Water withdrawal permit" means the written approval issued by the cabinet involving the actual removal or taking of water from any stream, water course, or other body of public water pursuant to KRS 151.140.

(80) [~~(86)~~] "Wetland" means land that has a predominance of hydric soils and that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions.

(a) "Hydric soil" means soil that, in its undrained condition, is saturated, flooded, or ponded long enough during the growing season to develop an anaerobic condition (without oxygen) that supports the growth and regeneration of hydrophytic vegetation.

(b) "Hydrophytic vegetation" means a plant growing in:

1. Water; or

2. A substance that is at least periodically deficient in oxygen during a growing season as a result of excessive water content.

(81) [~~(87)~~] "Wild river" means a water which has been designated as a wild river by the General Assembly pursuant to KRS Chapter 146. [~~A wild river shall be free flowing with its scenic vistas and shorelines relatively unchanged or disturbed by man, and shall be pleasing to the eye.~~]

PHILLIP J. SHEPHERD, Secretary
APPROVED BY AGENCY: September 9, 1994
FILED WITH LRC: September 12, 1994 at 3 p.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(As Amended)

405 KAR 5:015. General provisions.

RELATES TO: KRS 350.010(2), 350.240, 350.300
STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.029, 350.240, 350.300
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part, requires the cabinet to promulgate administrative regulations pertaining to noncoal mineral operations to minimize their adverse effects on the citizens and the environment of the Commonwealth. This administrative regulation sets forth general provisions which apply to this chapter with regard to applicability, conflicting provisions, severability, obligations of mineral permittees, and the need for a preliminary walk.

Section 1. Applicability. (1) This administrative regulation designates 405 KAR Chapter 5 as applicable to mineral operations and any lands used, disturbed or redisturbed, in connection with, or to facilitate those mineral operations, or any other activity related to mineral operation development conducted on or after the effective date of these administrative regulations.

(2) Mineral operations subject to 405 KAR Chapter 5, include: mining of limestone and dolomite; mining of sand and gravel, surface disturbance of dredging of river or creek sand and gravel; mining of clay; mining of fluorspar and other vein minerals. Mineral operations include the surface disturbance of underground mining as well as strip mining.

(3) Except for the provision of Section 4(2) of this administrative regulation, 405 KAR Chapter 5 does not apply to the mining of coal.

Section 2. Conflicting Provisions. The provisions of 405 KAR Chapter 5 are to be construed as being compatible and complimentary with each other. If provisions within this chapter are found to be contradictory, the more stringent provisions shall apply.

Section 3. Severability. If any provision or administrative regulation of 405 KAR Chapter 5 is found to be invalid, the remaining provisions of this chapter shall not be affected nor diminished thereby.

Section 4. General Obligations of Persons Engaged in Mineral Operations. (1) No person shall engage in a mineral operation or related activity without having obtained from the cabinet, a permit [~~and license~~] for the mineral being mined, as required and described under 405 KAR 5:030 [~~and 405 KAR 5:025~~].

(2) No person shall remove and commercially use or sell coal from a mineral operation except where an exemption has been obtained under 405 KAR 7:035.

(3) A person engaged in a mineral operation, shall not throw, pile, dump, or permit, the throwing, piling, dumping, or otherwise placing of any: overburden, stones, rocks, shale, earth, soil; dirt, debris, trees, wood, logs, or any other materials or substances of any kind or nature beyond or outside of the area of land which is under permit; or push materials over outslopes in such a way that normal erosion or slides brought about by natural, physical, changes will permit the materials to go beyond or outside of the area of land, which is under permit.

(4) A person engaged in a mineral operation shall not engage in any activities, which will result in a condition or constitute a practice that, creates an imminent danger to the health or safety of the public.

(5) A person engaged in a mineral operation shall not engage in any activities which will result in a condition or constitute a practice that, causes or can reasonably be expected to cause[~~,~~] significant, imminent[~~,~~] environmental harm, to land, air, or water resources.

(6) Mineral operations shall be conducted in a manner which minimizes damage, destruction, or disruption of services provided by oil, gas, and water wells; oil, gas, and coal slurry pipelines; railroads; electric and telephone lines; and water and sewage lines which pass over, under, or through the mineral operation, unless otherwise approved by the owner of these facilities and the cabinet.

(7) [~~(6)~~] Upon development of any emergency conditions which threaten the life, health, or property of the public, a person engaged in a mineral operation shall immediately notify the person or persons whose life, health, or property are so threatened; shall take all reasonable actions to eliminate the condition creating the emergency, and shall immediately provide notice of the emergency conditions to the division, to local law enforcement officials, and to local government officials. Any emergency action taken by a person engaged in a mineral operation, pursuant to this paragraph, shall not relieve that person of other obligations under this chapter or of obligations under other applicable local, state, or federal laws and regulations.

(8) [~~(7)~~] [~~Requirements for exploration.~~

~~(a) Any person who intends to conduct noncoal mineral exploration shall at least twenty one (21) days prior to conducting the exploration, file with the cabinet a written notice of intention to explore.~~

~~(b) The notice shall include:~~

~~1. The name, address and telephone number of the person seeking to explore;~~

~~2. The name, address and telephone number of the representatives who will be present at, and responsible for, conducting the exploration activities;~~

~~3. A precise description of the exploration area (including latitude, longitude, nearest community, and a copy of a 7.5 minute series topographic map showing the quadrangle and proposed location for the exploration activities;~~

~~4. A statement of the period of intended exploration;~~

~~5. The names and addresses of the owner on record of the surface land and the subsurface mineral estate of the area to be explored; and~~

~~6. A description of the method of exploration to be used and the practices that will be followed to protect the environment and to reclaim the area, before equipment is removed from the proposed exploration area;~~

~~7. The cabinet shall place the notice on public file and make available for public inspection and copying at the appropriate regional office of the department.~~

~~(8)~~] Compliance with the requirements of this chapter does not relieve any person engaged in a mineral operation from compliance with other applicable administrative regulations of the cabinet and other agencies.

PHILLIP J. SHEPHERD, Secretary
APPROVED BY AGENCY: September 9, 1994
FILED WITH LRC: September 12, 1994 at 3 p.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(As Amended)

405 KAR 5:021. Permit [~~and license~~] fees.

RELATES TO: KRS 350.010(2), 350.240, 350.300
STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.029, 350.240, 350.300
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part, requires the cabinet to promulgate administrative regulations pertaining to noncoal mineral operations to minimize their adverse effects on the citizens and the environment of the Commonwealth. This administrative regulation provides for the payment of permit [~~and license~~] fees.

Section 1. Permit Fees. (1) Each application for an original permit, amendment, renewal, and transfer shall be accompanied by a permit fee.

(2) The permit fee shall be **twenty-five (25)** [~~fifty (50)~~] dollars for each year of the permit term. For amendments and transfers the fee shall be assessed for the years remaining in the permit term. The permit term may be for one (1) to five (5) years.

[~~Section 2. License Fees. (1) Each application for a license shall be accompanied by a license fee.~~

~~(2) The license fee shall be $200 per year.~~]

Section **2.** [~~3.~~] Method of Payment. Fees are to paid to the Kentucky State Treasurer; payable by cash, company check, cashier's check, or money order.

PHILLIP J. SHEPHERD, Secretary
APPROVED BY AGENCY: July 13, 1994
FILED WITH LRC: July 14, 1994 at 10 a.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(As Amended)

405 KAR 5:030. Permit requirements.

RELATES TO: KRS 350.010(2), 350.130, 350.240, 350.300
STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.029, 350.240, 350.300
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part, requires the cabinet to promulgate administrative regulations pertaining to noncoal mineral operations; to minimize their adverse effects on the citizens and the environment of the Commonwealth. This administrative regulation specifies certain information to be submitted by the applicant relating to legal status, financial information, general site information, map requirements, cultural and environmental resource information, and mining and reclamation plans. This administrative regulation also addresses the waivers and approvals necessary to conduct noncoal mineral operations, including those of other agencies. Also contained herein, are provisions concerning review of permits and other permit related procedural matters.

Section 1. General. (1) This administrative regulation pertains to any person who applies for a permit to conduct mineral operations.

(2) Preliminary permit requirements. A person or mineral operator desiring a permit shall submit a preliminary map at a scale one (1) inch equals 400 feet or 500 feet, marked to show the proposed permit area and adjacent areas; including but not limited to, location of access roads, spoil or waste areas, and sedimentation ponds. Personnel of the cabinet shall conduct, within fifteen (15) working days after filing, an on-site investigation of the area with appropriate persons including appropriate representatives of the applicant.

(3) Permanent permit requirements. An original and two (2) complete, separately bound and distinct copies of the application shall be submitted to the cabinet, at the location and address prescribed by the cabinet.

Section 2. Identification of Interests. (1) Each permit application shall contain the names and addresses of:

(a) The applicant, including his phone number;

(b) The registered agent for service of process, if applicable, including his phone number;

(c) Any owners, partners, or if a corporation, any officers or stockholders owning ten (10) percent or more stock;

(d) The project engineer, along with his registration number and name of associated firm;

(e) The company and engineer in which correspondence concerning the subject permit shall be addressed to;

(f) Surface owners of record within the area proposed for mining, including areas overlying underground workings;

(g) Mineral owners of record within the area proposed for mining, including areas overlying underground workings; and

(h) Surface owners of record within 500 feet of the proposed permit boundary and areas overlying underground workings.

(2) If the company has undergone a name change or changes during the previous five (5) years, list the names.

(3) Specify the applicant's legal structure.

(4) If the business is owned by an individual or is a partnership, and is performed under an assumed name, specify the county and state where the name is registered.

(5) List previous Kentucky permits held by the applicant or any individual, partnership or corporation associated with the applicant.

(6) Provide the name of the contact person at the site, including his phone number.

(7) [~~Specify whether the applicant currently holds a valid license from the division, and provide the effective date and expiration date of that license, if applicable.~~

~~(8)~~] Specify the type of application, along with the permit number.

Section 3. Bond Information. When bond is required, as specified under 405 KAR 5:080, the following information shall be provided in the permit application:

(1) The bond amount per acre;

(2) The total amount of bond; and

(3) The bond type:

(a) If a surety is used, provide the bond number and surety.

(b) If a certificate of deposit is used, provide the bank name and CD number.

(c) If a letter of credit is used, provide the bank name and letter of credit number.

Section 4. Equipment Inventory. The permit application shall contain a list of all equipment, model numbers, and condition of the equipment proposed to be used for removing overburden and reclaiming the affected area of the proposed mineral operation.

Section 5. Waivers and Approvals. (1) If blasting [~~the proposed mineral operation~~] will occur within 300 feet of an occupied dwelling or if mineral extraction will occur within 100 feet of an occupied dwelling, the permit application shall contain a waiver from the [~~affected land~~]owner, acknowledging approval of the activity.

(2) **Except where mine access roads or haul roads join the right-of-way** if the proposed mineral operation will occur within 100 feet of the right-of-way of a public road, or if relocation of a public road is proposed, the permit application shall contain **proof of notification to and any required approvals from** [~~a statement from~~] the appropriate agency or local government with jurisdiction over the road [~~that the public and the landowner affected will be protected~~].

(3) If a permanent pond other than a final pit impoundment with no embankment is proposed, approval from the landowner for [~~approving~~] the structure and a **written acknowledgment from the landowner that the mineral permittee will have no continuing maintenance responsibility after permit release** [~~commitment from the landowner for maintenance~~] [~~,~~] is required.

(4) If relocation, channelization, or other significant disturbance to an intermittent or perennial stream is proposed, or if the proposed mineral operation will occur within, or in any way impact, a floodplain, wetland, or other water of the Commonwealth, the applicant shall obtain the appropriate permits and approvals from the United States Army Corps of Engineers and the Kentucky Division of Water. Approval shall also be required by the cabinet for any disturbances within 100 feet of an intermittent or perennial stream.

(5) If a sedimentation pond or any other point source discharge is proposed, a KPDES permit [~~shall be obtained~~] from the Kentucky Division of Water is required.

(6) If water withdrawal is proposed, a Water Withdrawal Permit shall be obtained from the Kentucky Division of Water.

(7) If there are local zoning regulations, state this in the application [~~show the zoning approval~~].

(8) **If applicable, approval from the owner of the utilities and facilities as provided in 405 KAR 5:015, Section 4(6).** [~~If there are existing utilities such as gas lines, electric lines and poles, water lines, etc., the applicant shall submit letters of agreement signed by the applicant and the utility company that confirm that the applicant has consulted with the utility company and the company is in agreement that the proposed mining plan adequately protects the utilities.~~]

Section 6. Right to Mine. The permit application shall contain a signed statement by the applicant attesting that the applicant has the legal right to mine, along with the appropriate date.

Section 7. Verification of Application. The permit application shall contain a statement, signed by the applicant, acknowledging that all statements and representatives, made in the application, are true and correct.

Section 8. Map Requirements. The permit application shall include original and two (2) copies of a section of the appropriate United States Geological Survey Topographical Map which shall:

(1) Delineate the proposed permit area and [~~, including~~] any areas overlying **proposed** underground workings;

(2) Be of a scale of not more than one (1) inch to 400 feet;

(3) Show all other mine operations within 500 feet, of the proposed permit boundaries and **proposed** underground workings, including[~~,~~] those within the proposed permit boundaries;

(4) Delineate the property boundaries of all landowners within the proposed permit area and areas overlying **proposed** underground workings and all landowners within 500 feet of the proposed permit boundary and areas overlying **proposed** underground workings, along with the names of all the landowners;

(5) Delineate all proposed [~~envisioned~~] access roads onto the proposed mineral operation;

(6) Show the site slope;

(7) Show the name and location of all streams, rivers, lakes, outstanding resource waters pursuant to 401 KAR 5:026 and 5:031, or other public water bodies; proposed stream buffer zones; roads, cemeteries, houses, churches, schools and other public buildings; oil and gas wells; public properties such as, parks, wildlife management areas, and nature preserves, and utility lines on the area to be affected, and within 1,000 feet of the proposed permit boundary.

(8) Locate any sites listed on the National Register of Historic Places and any known archaeological sites.

(9) Delineate any wetlands which may be affected by the proposed mineral operation.

(10) Show the drainage pattern on and away from the area to be affected, including the direction of flow, proposed constructed drainways, natural drainways to be used for drainage, and the streams or tributaries to receive discharges from the proposed mineral operation.

(11) Show any proposed pit area, sediment structures, storage areas, and any other facilities and features related to the mineral operation.

(12) Provide a north point arrow.

(13) Contain a legend which shall:

(a) Provide the company name;

(b) Provide the application number;

(c) Provide the county and quadrangle names;

(d) Provide the site coordinates;

(e) Provide the site address;

(f) Provide the map scale and contour interval;

(g) Provide a description of the site location including:

1. The nearest stream; and

2. The distance and direction from the nearest road intersection or town;

(h) Identify each insignia, symbol, number, or letter used to designate features, facilities, or areas;

(i) Provide acreage breakdowns of the various mineral operation features and facilities including, pit areas, storage areas, sediment structures, access roads, and the total number of acres of area to be affected; and

(j) Specify the deposit to be mined.

(14) Provide a signed, notarized statement that the map has been prepared and certified by a professional engineer, registered under the provisions of KRS Chapter 322. This statement shall read, "I, the undersigned, hereby certify that this map is correct, and shows to the best of my knowledge and belief all the information required by the mineral operation laws and administrative regulations of the state". This statement shall include:

(a) The engineer's registration number; and
(b) The date on which the map was prepared.

Section 9. General Site Information. The permit application shall contain the following general site information:
(1) Location of the mineral operation to include:
(a) Latitude and longitude;
(b) The nearest community;
(c) The name of the nearest stream;
(d) The nearest public road intersection;
(e) The name of the United States Geological Survey quadrangle or quadrangles, in which the proposed mineral operation will occur.
(2) A county by county list of the types of disturbances planned, accompanied by the acreage to be involved with each disturbance.
(3) Specification of the mineral to be extracted.
(4) Specification of the major watershed or watersheds, which will be affected, by the proposed mineral operation.
(5) Specification of whether any active discharges exist which may affect the proposed mineral operation. If so, provide the following information:
(a) The pH of the discharge; and
(b) The source of the discharge.
(6) Specification of whether underground workings will be encountered, and the distance, in feet, to the nearest active deep mine.
(7) Specification of the types of disturbances planned for the proposed mineral operation.

Section 10. Cultural resource information. The applicant shall specify whether any sites listed on the National Register of Historic Places or any known archaeological sites exist within, or adjacent to, the proposed permit boundary. [~~If these sites exist, the following information shall be provided:~~
~~(1) Identification and description of the site or sites;~~
~~(2) A description of the measures to be taken to mitigate adverse impacts to the site or sites; and~~
~~(3) Show the location of the sites on the map.~~]

Section 11. Environmental resources information. (1) [~~The applicant shall specify whether the proposed mineral operation will occur within, or in any way affect, a wetland. If so, delineate wetland areas on the map.~~
~~(2)~~] The applicant shall indicate whether there are any wildlife management areas, wildlife refuges, nature preserves, state or national parks, state or national forests, or similar public lands within the vicinity of the proposed mineral operation. If these lands exist, delineate them on the map.
(2) [~~(3)~~] The applicant shall indicate whether disturbances within the channel of, or within 100 feet of, an intermittent or perennial stream are proposed.
(3) [~~(4)~~] The applicant shall indicate whether there are any outstanding resource waters, pursuant to 401 KAR 5:026 and 5:031, within the vicinity of the proposed mineral operation. If so, delineate these waters on the map.

Section 12. **Surface Water Quantity and Quality** [~~Hydrologic Balance of Surface Waters~~] Protection Plan. The permit application shall contain a **surface water quantity and quality** [~~hydrologic balance of surface waters~~] protection plan which shall demonstrate to the satisfaction of the cabinet compliance with 405 KAR 5:050 and 5:055, and shall include the following information:
(1) The number of sedimentation ponds proposed, accompanied by designs, drawings and specifications for each structure to include:
(a) The structure number;
(b) The number of acres to be disturbed within the drainage area;
(c) The number of acres in the drainage area;
(d) Sediment storage capacity;
(e) Storage capacity at the principal spillway;
(f) Storage capacity at the emergency spillway;
(g) Spillway capacities;
(h) Structure height measured from the downstream toe; and
(i) All other engineering designs, dimensions and calculations required to demonstrate compliance with 405 KAR 5:050 and 5:055 or otherwise required by the cabinet.
(2) If sediment removal becomes necessary, the permit application shall contain a description of how sediment will be removed and disposed.
(3) The applicant shall state whether any permanent sedimentation ponds are proposed.
(4) The permit application shall contain descriptions, designs, diagrams, figures, and calculations as necessary to adequately explain and illustrate all other sediment control structures.
(5) The permit application shall contain descriptions, designs, diagrams, figures, and calculations as necessary to adequately explain and illustrate any other methods proposed for protecting surface waters.

Section 13. Permanent and Temporary Impoundments. [~~(1)~~] If an impoundment is part of the plan of reclamation or method of mineral operation, the permit application shall contain detailed designs and specifications for the impoundment which demonstrates compliance with 405 KAR 5:055.
[~~(2) If a permanent impoundment is proposed, a narrative shall be provided, in addition to the specifications of subsection (1), addressing information pertinent to the permanent impoundment.~~]

Section 14. Spoil Handling Plan. The permit application shall contain or be accompanied by a plan for the handling and disposal of spoil, in excess of that involved with backfilling and grading, which shall demonstrate to the satisfaction of the cabinet, compliance with the requirements of 405 KAR 5:060.

Section 15. Toxic Materials Handling Plan. The permit application shall contain, or be accompanied by, a plan for the handling of acid-forming or toxic-forming materials, waste materials, or other unstable materials which shall demonstrate, to the satisfaction of the cabinet, compliance with the requirements of 405 KAR 5:060.

Section 16. Backfilling and Grading Plan. The permit application shall contain, or be accompanied by, a plan for backfilling and grading, which shall demonstrate to the satisfaction of the cabinet, compliance with the requirements of 405 KAR 5:060.

Section 17. Topsoil Handling and Restoration Plan. The permit application shall contain, or be accompanied by, a plan for the handling and restoration of topsoil, which shall demonstrate to the satisfaction of the cabinet, compliance with the requirements of 405 KAR 5:060.

Section 18. Land Use Plan. (1) The permit application shall contain a land use plan, which demonstrates compliance with 405 KAR 5:065, and is consistent with 405 KAR 5:070, that:
(a) Specifies the premining use or uses within, and adjacent to, the proposed permit boundary.
(b) Specifies the intended postmining land use for the proposed permit area.
(c) If the postmining land use is different from the premining land use, shall provide a discussion justifying the change.
(2) The land uses are listed at 405 KAR 5:065, and are defined in 405 KAR 5:001.

Section 19. Revegetation Plan. The permit application shall contain a revegetation plan which shall demonstrate, to the satisfaction of the cabinet, compliance with the requirements of 405 KAR

5:070, and is consistent with, 405 KAR 5:065, and that provides the following information:

(1) Identification of the material that will be redistributed on the regraded area as a plant growth medium.

(2) [~~Results of analysis, or a commitment that analysis will be conducted, for the topsoil for the following parameters:~~

~~(a) Buffer pH;~~

~~(b) Nitrogen;~~

~~(c) Potassium;~~

~~(d) Phosphorous;~~

~~(e) Percent of organic material; and~~

~~(f) Texture class.~~

~~(3) Results of analysis, or a commitment that analysis will be conducted, for minimum application rates for fertilization requirements.~~

~~(4)~~] Permanent grass species, permanent legume species, and quick cover species to be seeded during revegetation, along with their application rates (pounds/acre).

(3) [~~(5)~~] Tree and shrub species to be planted during revegetation, along with their stocking rates (number/acre).

(4) [~~(6)~~] The type of mulch to be used, along with the mulching rate (pounds or tons/acre), or other soil stabilization practices to be incorporated.

Section 20. Designs and Attachments. (1) The permit application shall be accompanied by appropriate descriptions, designs, diagrams, figures, and calculations as necessary to adequately explain and illustrate proposed sediment control structures, as required under Sections 12 and 13 of this administrative regulation; spoil disposal fills; access and haul roads; stream crossings; and ditches.

(2) Access and haul road designs shall conform to the specifications established in 405 KAR 5:040.

(3) The designs and plans shall demonstrate, to the satisfaction of the cabinet, compliance with all pertinent requirements of 405 KAR Chapter 5, and shall be certified by a Kentucky registered professional engineer.

Section 21. Newspaper Advertisement: Publication of Notice of Intention to Mine. (1) A prospective applicant for a new permit required under KRS Chapter 350, shall publish at least once, a public notice of his intention to file an application for that permit. The publication shall be made by advertisement in the newspaper of largest bona fide circulation, in the county wherein the proposed mining site is located. If the proposed mining site is in more than one (1) county, publication is required in the newspaper of largest bona fide circulation in each county.

(2) The publication shall be made not less than ten (10) nor more than thirty (30) days prior to the filing of the permit application with the department.

(3) The public notice of the intention to file an application shall be entitled, "Notice of Intention to Mine Noncoal Minerals", and shall be in a manner and form prescribed by the department and shall include, though not be limited to, the following:

(a) Name and address of the applicant;

(b) Permit application number;

(c) The location of the proposed mining site;

(d) A brief description of the kind of mining activity proposed, together with a statement of the amount of acreage affected by the proposed mineral operations.

(4) The applicant for a new permit required by KRS Chapter 350, shall establish the date and place at which the, "Notice of Intention to Mine Noncoal Minerals", was published, by attaching to his application proof satisfactory to the cabinet of [~~, an affidavit from the publishing newspaper certifying~~] the time, place and content of the published notice.

Section 22. Permit Revisions. A revision to a permit shall be obtained when the mineral permittee desires to modify his mineral operations or make changes to the original permit that does not involve increased acreage. The following stipulations shall apply to permit revisions:

(1) The application for revision shall be filed with the cabinet and approved [~~within sixty (60) days~~] prior to the date on which the mineral permittee expects to revise the mineral operation;

(2) The term of a permit shall remain unchanged by a revision; and

(3) The application for revision shall be submitted in the form prescribed by the cabinet.

Section 23. Permit Amendments. Upon application by the mineral permittee, the cabinet may amend a valid existing permit, so as to increase the permitted area to be affected by mineral operations under the permit. Applications for amendment may be filed at any time during the term of the permit.

(1) The mineral permittee shall file an application in the same form and with the same content as required for an original permit under this administrative regulation.

(2) The mineral permittee may need to file a supplemental bond with the cabinet in an amount to be determined, as provided under 405 KAR 5:080, for each additional acre or fraction thereof.

Section 24. Permit Renewals. Any valid permit issued pursuant to this chapter shall carry with it, the right of successive renewal upon expiration of the term of the permit. Successive renewal shall be allowed only for those areas specifically within the boundaries of the existing permit.

(1) An application for renewal of a permit shall be filed with the cabinet at least sixty (60) days prior to the expiration date of the permit.

(2) If an application for renewal of a valid existing permit includes a proposal to extend the mineral operation beyond the boundaries authorized under the existing permit, the portion of the application which addresses any new land areas shall be subject to all applicable requirements of this chapter, and a new original permit application shall be required for these areas.

(3) The permit renewal shall be issued if the following requirements are met:

(a) The application for renewal shall be submitted in the form prescribed by the cabinet;

(b) The mineral permittee shall submit all revised or updated information required by the cabinet, including but not limited to:

1. An updated operational plan current to the date of request for renewal; and

2. Specification of the status and extent of all mineral operations on the existing permit area;

(c) [~~The mineral permittee is in compliance with all applicable statutes and administrative regulations;~~

~~(d)~~] The present mineral operation is in compliance with all applicable statutes and administrative regulations; and

(d) [~~(e)~~] The mineral permittee shall provide any additional bond that the cabinet may require.

Section 25. Permit Succession. [~~transfers. (1) No permit issued pursuant to this chapter shall be transferred by sale, assignment, lease, or otherwise except upon the prior written approval of the cabinet.~~]

(1) [~~(2)~~] There shall be no succession on the permitted area without the prior written approval of the cabinet.

(2) [~~(3)~~] The initial mineral permittee shall notify the cabinet, in writing, of any proposed succession[~~, sale, assignment, lease, or other transfer~~].

(3) [~~(4)~~] The cabinet may release the first mineral operator from reclamation responsibility under this chapter as to that particular mineral operation, however:

(a) There shall be no release until the successive mineral

operator has been issued a permit and has otherwise complied with the requirements of this chapter; and

(b) The successor shall immediately assume, as a part of his obligation under this chapter, all liability for the reclamation of the area affected by the former permitted mineral operation.

(4) [~~(5)~~] If the cabinet has given its prior written approval to the succession [~~transfer~~], a successor in interest to a mineral permittee who applies for a successor [~~new~~] permit within thirty (30) days of succeeding to the interest, and who obtains immediate bond coverage at least equivalent to the amount of the bond of the original mineral permittee, may continue mineral operations according to the approved permit plan of the original mineral permittee until the successor's application is granted or denied.

(5) [~~(6)~~] The bond coverage provided by the successor in interest shall take effect immediately upon the commencement of mineral operations by the successor.

Section 26. Review of Permits. (1) Within thirty (30) working days of receiving the permit application, the cabinet shall make one (1) of three (3) decisions:

(a) To technically withdraw the permit application;

(b) To deny the permit application; or

(c) To approve the permit application.

(2) If the permit application is technically withdrawn or denied, the thirty (30) working day period shall be stopped on the date of this decision.

(3) The time period shall restart on the date when the permit application is returned with deficiencies corrected.

(4) If the application is not approved, the cabinet shall set forth the reasons, in writing, for which the application is not approved; and the cabinet may propose modifications, delete areas, or reject the entire application.

(5) If the mineral permittee disagrees with the decision of the cabinet he may, by written notice, request a hearing by the cabinet, pursuant to 405 KAR 5:095.

(6) The cabinet shall notify the applicant by registered mail within twenty (20) days after a decision is made.

Section 27. Criteria for Permit Approval and Denial. No application for a permit and no mineral operation shall be approved, unless the application affirmatively demonstrates and the cabinet determines on the basis of information set forth in the application, and other available pertinent information, that:

(1) The permit application is accurate, complete, and that all requirements of 405 KAR Chapter 5 have been complied with.

(2) The mineral operation proposed can be carried out under the method of mineral operation outlined in the permit application in a manner that will satisfy all requirements of 405 KAR Chapter 5.

(3) The proposed mineral operation will not constitute a hazard to, or do physical damage to life, to an occupied dwelling, public building, school, church, cemetery, commercial or institutional building, public road, stream, lake, other public property or to members of the public, or their real and personal property.

(a) All necessary measures shall be included in the method of mineral operation in order to eliminate the hazard or damage.

(b) If it is not technologically feasible to eliminate the hazard or damage by adopting specifications in the method of mineral operation, then that part of the mineral operation which constitutes the cause of the hazard or damage shall be deleted from the application and mineral operation.

(4) The proposed mineral operation will not adversely affect [~~fragile lands,~~] natural hazard lands, **or** a wild river established pursuant to KRS Chapter 146 [~~or jeopardize the continued existence of an endangered or threatened species listed by the Secretary of the Interior, pursuant to the Endangered Species Act of 1973, as amended (16 USC Sec. 1531 et seq.) or result in the destruction or adverse modifications of the habitat of these species~~].

(5) The proposed mineral operation will not be inconsistent with other mineral operations anticipated in areas adjacent to the proposed permit area.

(6) The proposed permit area is:

(a) Not included within the boundaries of the National Park System, the National Wildlife Refuge System, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act (16 USC 1276(a)), and the National Recreation Areas designated by Act of Congress;

(b) Not included within 300 feet, measured horizontally, of any public park, public building, school, church, community or institutional building;

(c) Not included within 100 feet, measured horizontally, of a cemetery, and access to be provided to a cemetery at all times;

(d) Not within 100 feet, measured horizontally, of the outside right-of-way line of any public road, except:

1. Where mine access roads or haul roads join the right-of-way; or

2. Where the cabinet allows the roads to be relocated or allows disturbances within 100 feet of the roads, once the applicant has obtained necessary approval from the governmental authority with jurisdiction over the public road, as required under Section 5 of this administrative regulation; and if after public notice and opportunity for public hearing a written finding is made, by the cabinet, that the interest of the public and the landowners affected thereby will be protected.

(e) Not within the distances specified in Section 5 of this administrative regulation [~~300 feet~~], measured horizontally, of an occupied dwelling unless the applicant submits with the permit application a written affidavit from the owner of the dwelling specifying an allowance, as required by Section 5 of this administrative regulation. This waiver shall be knowingly and intelligently executed, and be separate from a lease or deed, unless the lease or deed contains an explicit waiver. Waivers obtained from previous owners shall remain effective for subsequent owners who had actual or constructive knowledge of the existing waiver when the dwelling was purchased. A subsequent owner shall be deemed to have constructive knowledge if the waiver has been properly filed in public property records pursuant to state law or if the mining has proceeded to within the distance limit prior to the date of purchase; and

(f) Not within 100 feet of an intermittent or perennial stream unless appropriate permits and approvals, required under Section 5 of this administrative regulation, have been obtained authorizing mineral operations at a closer distance to, or through, the stream. The authorization shall not be given unless the applicant demonstrates to the satisfaction of the cabinet that the authorization is environmentally sound and that all other applicable laws and administrative regulations have been satisfied.

Section 28. Permit Conditions; Permit Term. (1) Permits issued by the cabinet may contain certain conditions necessary to ensure that the mineral operation will be conducted in compliance with all applicable statutes and administrative regulations.

(2) All mineral operations shall be conducted in accordance with all applicable statutes and administrative regulations and any conditions imposed by the cabinet on the permit.

(3) Each permit shall be issued for a fixed term not to exceed five (5) years.

Section 29. Denial of a Permit for Past Violations. (1) A mineral operator or person whose permit has been revoked or suspended shall not be eligible to receive another permit or begin another mineral operation, or be eligible to have suspended permits or mineral operations reinstated until he has complied with all applicable requirements of KRS Chapter 350 and 405 KAR Chapter 5 with respect to all permits issued him.

(2) A mineral operator or person whose surface coal mining

operation permit has been revoked or suspended shall not be eligible to receive another permit or begin another mineral operation, or be eligible to have suspended permits or mineral operations reinstated until he has complied with all applicable requirements of KRS Chapter 350, 405 KAR Chapters 1 and 3, and 405 Chapters 7 through 24 with respect to all surface coal mining operation permits issued him.

(3) A mineral operator or person who has forfeited any bond filed with the cabinet for any mineral operation or any surface coal mining operation shall not be eligible to receive another permit or begin another mineral operation unless;

(a) The land for which the bond was forfeited has been reclaimed without cost to the state; or

(b) The mineral operator or person has paid a sum as the cabinet finds is adequate to reclaim the lands.

(4) If the applicant, mineral operator, any subcontractor, or any person acting on behalf of the applicant, has either conducted activities with a demonstrated pattern of willful violations of 405 KAR Chapter 5, or has repeatedly been in noncompliance of this chapter, then the permit application shall be denied; however nothing contained herein shall be construed as to relieve a mineral permittee of responsibility with respect to any permit issued to him.

(5) If the cabinet determines that any activity **of the applicant** regulated pursuant to 405 KAR Chapter 5**[~~, which is owned or controlled by the applicant,~~]** is currently in violation of any environmental law or **environmental** administrative regulation of the Commonwealth, then the cabinet shall require the applicant, before the issuance of the permit, to either:

(a) Submit proof which is satisfactory to the cabinet that the violation has been corrected, or is in the process of being corrected in good faith; or

(b) Establish, to the satisfaction of the cabinet, that the applicant has filed and is presently pursuing, a good faith administrative or judicial appeal to contest the validity of the violation.

(6) If the applicant submits the proof specified under subsection (5) of this section, then the cabinet may issue the permit with an appropriate condition that either the reclamation work be continued in good faith until completion or that if the applicant loses his action contesting the violation that the violation be corrected within a specified time. Failure to comply with any conditions shall be grounds for revocation of the permit.

(7) If the applicant disagrees with the cabinet's determination under this section, then he has the right to request an administrative hearing pursuant to 405 KAR 5:095.

Section 30. Permit Conference and Public Comment. (1) Procedures for requests. Any person whose interests are or may be adversely affected by the issuance of the application, including the officer or head of any federal, state or local government agency or authority, may request **[~~an informal conference. The agency or individual shall request~~]** that the cabinet hold an informal conference on any application for a permit. **The request shall:**

(a) **[~~(1)~~]** Briefly summarize the issues to be raised by the requester at the conference.

(b) Be filed with the cabinet with fifteen (15) days of the newspaper advertisement.

(2)(a) [~~(b)~~] **[~~(2)~~]** The conference shall be held at the Division of Field Services.

(b) [~~(c)~~] **[~~(3)~~]** **The conference shall be held within fifteen (15) days of the date of the request.** The date, time, and location of the conference shall be sent to the applicant and parties requesting the conference.

(c) [~~(d)~~] **[~~(4)~~]** The conference shall be conducted by a representative of the cabinet who may accept oral or written statements and any other relevant information from any party to the conference.

(d) [~~(e)~~] **[~~(5)~~]** If all parties requesting the conference stipulate agreement before the requested conference and withdraw their requests, the conference need not be held.

(e) [~~(f)~~] **[~~(6)~~]** All comments and evidence will be taken into consideration by the Division of Field Services in Frankfort before a final decision is made on the disposition of the application.

(f) [~~(g)~~] **[~~(7)~~]** The record shall be maintained and shall be accessible to the parties during the life of the mineral operation.

(3) [~~(2)~~] Any person whose interests are or may be adversely affected by the issuance of the application, including the officer or head of any federal, state or local government agency or authority, may submit written comments to the cabinet.

Section 31. Existing Mineral Operations **[~~not Previously Regulated~~]**. (1) Existing mineral operations that were not permitted or regulated prior to the effective date of this administrative regulation shall obtain a permit within 180 days of the effective date of this administrative regulation.

(2) The cabinet may grant limited variances from the distance limitations of Section 27(6) of this administrative regulation where an existing disturbance within those limits was made prior to the effective date of this administrative regulation by an existing mineral operation that was not permitted or regulated prior to the effective date of this administrative regulation. These variances shall only be granted when no practical and reasonable remedial compliance measure can be identified.

(3) The distance limitations of Section 27(6) of this administrative regulation shall not apply where lesser distance limitations have been approved in a valid permit issued prior to the effective date of this administrative regulation. The distance limitations established in those permits shall continue to apply.

Section 32. Documents Incorporated by Reference. (1) The following form is hereby incorporated by reference: Application for Surface Disturbance Mining Permit Noncoal Mining, NCR-2, March, 1990.

(2) This form may be reviewed or obtained at the Department for Surface Mining Reclamation and Enforcement, #2 Hudson Hollow, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

PHILLIP J. SHEPHERD, Secretary
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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(As Amended)

405 KAR 5:035. Signs and markers.

RELATES TO: KRS 350.010(2), 350.240, 350.300
STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.029, 350.240, 350.300
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part, requires the cabinet to promulgate administrative regulations pertaining to noncoal mineral operations to minimize their adverse effects on the citizens and the environment of the Commonwealth. This administrative regulation sets forth provisions concerning signs and markers for noncoal mineral operations.

Section 1. General. (1) All signs required to be posted shall be of a standard design that can be seen and read easily and shall be made of **durable material** **[~~wood or metal~~]**.

(2) Signs and other markers shall be maintained by the mineral permittee during all mineral operations, to which they pertain, and shall be kept legible and visible and shall conform to all local

ordinances and codes.

(3) Signs constructed pursuant to this administrative regulation shall be constructed of **durable material** [~~wood or metal~~], with the sign face to be at least two (2) feet in height and four (4) feet in width, and the top of the sign to stand not less than six (6) feet above the ground.

Section 2. Mine and Permit Identification Signs. (1) Signs identifying the mine area shall be displayed at all points of access to the permit area from public roads and highways.

(2) Signs shall clearly identify the name, business address, and telephone number of the mineral permittee and identification numbers of current mineral operation permits or other authorizations to operate.

(3) The signs shall not be removed until after release of permit.

(4) Failure to post the signs shall be grounds for revocation of the permit.

(5) The permit boundaries shall be clearly marked by durable and easily recognized markers for the purposes of the permit walk.

Section 3. Stream Buffer Zone Markers. Except where specifically approved, lands within 100 feet of perennial and intermittent streams shall not be disturbed. These areas are to be designated as buffer zones, and shall be marked along the interior boundary of the buffer zone by durable and easily recognized markers. [~~in a manner consistent with perimeter markers.~~]

Section 4. Blasting Signs. Blasting signs shall be posted in accordance with the requirements of the Department of Mines and Minerals.

Section 5. Topsoil markers. (1) If applicable, stockpiles, and other areas where topsoil or other plant growth material are segregated, shall be marked.

(2) If soil horizons are removed and stored separately, each soil horizon stockpile shall have a separate and appropriately marked sign.

(3) Placement and quantity of markers shall be sufficient to clearly define the stockpiles.

(4) Markers shall remain in place until the material is removed.

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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(As Amended)

405 KAR 5:040. Access roads and haul roads.

RELATES TO: KRS 350.010(2), 350.240, 350.300

STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.029, 350.240, 350.300

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part, requires the cabinet to promulgate administrative regulations pertaining to noncoal mineral operations to minimize their adverse effects on the citizens and the environment of the Commonwealth. This administrative regulation sets forth general provisions and specifications for constructing haul roads and access roads for noncoal mineral operations.

Section 1. General. (1) Each mineral permittee shall design, construct, utilize, and maintain roads and restore the area to meet the requirements of this administrative regulation and to control or minimize erosion and siltation, air and water pollution, and to prevent damage to public or private property.

(2) To the extent possible using the best technology currently available, roads shall not cause damage to fish, wildlife, and related environmental values and shall not cause additional contributions of suspended solids to streamflow or to run-off outside the permit area. Any additional contributions shall not be in excess of limitations of state or federal law.

(3) The design of roads shall be certified by a qualified registered professional engineer as being in accordance with specifications **of this administrative regulation**, except to the extent that alternative specifications are used. Alternative specifications may be used only after approval by the cabinet upon a demonstration by a qualified registered professional engineer that they will result in performance, with regard to safety, stability and environmental protection, equal to or better than, that resulting from roads complying with the specifications of this administrative regulation.

(4) Use of a preexisting private road, or any portion thereof by the mineral operator requires:

(a) That the road be kept open and in a condition that local traffic can use it without damage to their means of transportation.

(b) That if any disturbance by the mineral operator makes the road impassable, a detour of comparable usability shall be provided.

(5) No part of any road shall be located in the channel of an intermittent or perennial stream unless specifically approved by the cabinet for stream crossings.

(6) Stream fords are prohibited unless they are specifically approved by the cabinet as temporary routes during periods of construction. The fords shall not adversely affect stream sedimentation or fish, wildlife, and related environmental values. All other stream crossings shall be made using bridges, culverts, or other structures designed, constructed, and maintained to meet the requirements of Section 4 of this administrative regulation.

(7) Access roads, haul roads, and any yard areas or parking areas shall be maintained with proper surface materials to prevent erosion.

(8) The deposition of mud and other debris on public roads shall be minimized to the extent possible in order to prevent public nuisance.

Section 2. Specifications for Access and Haul Roads. (1) The grade of an access road shall be such that:

(a) There shall be no more than 400 feet of grade exceeding ten (10) percent.

(b) The maximum grade shall not exceed fifteen (15) percent for 300 feet.

(c) There shall not be more than 300 feet of maximum grade for each consecutive I,000 feet of road constructed.

(d) All grades referred to in this subsection shall be subject to a tolerance of two (2) percent grade.

(2) Appropriate drainage control shall be provided for access and haul roads conforming to the following stipulations:

(a) A ditch shall be provided on both sides of a throughcut, and on the inside shoulder of a cut-fill section, with ditch relief cross drains being spaced according to grade.

(b) Water shall be intercepted before reaching a switch back or large fill and be led off.

(c) Water on a fill or switch back shall be released below the fill, not over it.

(d) Ditch relief structures shall be installed, where possible, according to Appendix A of this administrative regulation which represents spacing in terms of percent of ditch line grade on the basis of 100 square inch openings per culvert.

(3) Cut slopes shall not be steeper than specifically authorized by the cabinet, and shall not be steeper than 1v:1.5H in unconsolidated materials or 1v:0.25h in rock, except that steeper slopes may be

specifically authorized by the cabinet if geotechnical analysis demonstrates that a minimum safety factor of one and five-tenths (1.5) can be maintained.

(4) Embankment slopes shall not be steeper than 1v:2H, except where the embankment material is a minimum of eighty-five (85) percent rock. Slopes with eighty-five (85) percent rock shall not be steeper than 1v:1.35H.

(5) If a berm is produced in skimming the road, it shall not be left on the ditch side.

(6) Access roads shall not be surfaced with any acid-forming or toxic-forming material, the surface being that part of the road exposed to the elements of wind, rain, and sun.

(7) No bridges, culverts, stream crossings, or similar structures, shall be removed until the reclamation is completed.

(8) When an access road is to be abandoned, [~~and will no longer be used as a road by the mineral operator, the landowners, or the state or national forest services,~~] surface drainage and vegetative cover shall be provided to minimize erosion.

(a) Regardless of the future use of the road, adequate surface drainage shall be provided.

(b) A road will be considered to be abandoned when the mineral operator has ceased to use the road and has not turned the road over to another party for his use.

(c) When adequate surface drainage and vegetative cover has been provided, the mineral operator shall be relieved of all further obligations in maintaining the road.

(9) [~~If the cabinet determines that modifications are necessary because of topography or particular watershed situations, the cabinet may make the modifications.~~

~~(10)~~] All measurements referred to in this section, including grade limitations, shall be subject to a tolerance of plus or minus five (5) percent of measurement.

(10) [~~(11)~~] Typical section showing width of road cut, fill slopes, surface material of road, a center line profile with grades, pipe location and size, shall be included in the permit application.

Appendix A of 405 KAR 5:040

DITCH LINE GRADIENT (PERCENT)	SPACING OF CULVERTS (FEET) (Shall not exceed)
2	600
3	500
4	400
5	320
6	275

PHILLIP J. SHEPHERD, Secretary
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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(As Amended)

405 KAR 5:045. Protection [~~of cultural and~~] environmental resources.

RELATES TO: KRS 350.010(2), 350.240, 350.300
STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.029, 350.240, 350.300
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part, requires the cabinet to promulgate administrative regulations pertaining to noncoal mineral operations to minimize their adverse effects on the citizens and the environment of the Commonwealth. This administrative regulation sets forth provisions for the protection of [~~historical sites, archaeological sites,~~] fish and wildlife values and **other environmental features** [~~related environmental entities~~].

Section 1. [~~Cultural Resources. (1) No mineral operation shall adversely effect a site listed on the National Register of Historic Places.~~

~~(2) Adequate steps shall be taken for the protection of significant known archaeological sites, as determined by the cabinet.~~

~~(3) The cabinet may prohibit any mineral operation that would adversely affect any other historic land, as determined by the cabinet.~~

~~Section 2.~~] Environmental Resources. (1) Any mineral permittee shall, to the extent possible, minimize disturbances and adverse impacts to fish and wildlife, and related environmental values.

(2) [~~Any mineral permittee shall comply with all federal and state laws and regulations related to endangered or threatened species.~~] [~~No mineral operation shall be conducted which is likely to jeopardize the continued existence of an endangered or threatened species listed by the Secretary of the Interior, or which is likely to result in the destruction or adverse modification of a designated critical habitat of these species, in violation of the Endangered Species Act of 1973 as amended (16 USC Sec. 1531 et seq.), or is likely to negatively impact a species protected by similar state statutes.~~]

[~~(3)~~] No mineral operation shall be conducted which will result in the adverse effects to or modification of a wetland without the appropriate permits and approvals.

(3) [~~(4)~~] No mineral operation shall be conducted within the boundaries of the National Park System; the National Wildlife Refuge System; the National System of Trails; the National Wilderness Preservation System; National Recreational Areas; state nature preserves dedicated pursuant to KRS 146.410; or state wildlife management areas; the Wild and Scenic Rivers System, including study rivers designated under section 5(a), of the Wild and Scenic Rivers Act (16 USC Sec. 1276 (a)), or rivers or study river corridors as established in any guidelines pursuant to that Act; rivers and their corridors designated under the state Wild Rivers Act pursuant to KRS Chapter 146; or similar public lands.

(4) [~~(5)~~] No land within 100 feet of an intermittent or perennial stream shall be disturbed by mineral operations, except where appropriate permits or approvals have been obtained.

[~~(6) The cabinet may prohibit any mineral operation that would adversely affect any fragile land, as determined by the cabinet.~~]

(5) [~~(7)~~] The cabinet shall prohibit any mineral operation on a natural hazard land if necessary to protect the health, safety, or welfare of people, property, or the environment.

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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
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405 KAR 5:050. Protection of surface water quantity and quality [~~the hydrologic balance of surface waters~~].

RELATES TO: KRS 350.010(2), 350.240, 350.300
STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.029, 350.240, 350.300
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part, requires the cabinet to promulgate administrative regulations

pertaining to noncoal mineral operations to minimize their adverse effects on the citizens and the environment of the Commonwealth. This administrative regulation sets forth general provisions and specifications for the protection of surface waters from noncoal mineral operations.

Section 1. General. (1) Appropriate protection measures shall be designed, constructed, and maintained to minimize disturbance of **surface water quantity and quality** [~~the hydrologic balance of surface waters~~] within the permit area, to prevent material damage to **surface water quantity and quality** [~~the hydrologic balance of surface waters~~] outside the permit area, and to prevent additional contributions of sediment to streamflow or to run-off outside the permit area.

(2) Protection measures include practices carried out within and adjacent to the disturbed area.

(3) The scale of downstream practices shall reflect the degree to which successful techniques are applied at the sources of the disturbance.

(4) **Surface water quantity and quality** [~~Hydrologic balance of surface waters~~] protection measures consist of the utilization of proper mining, reclamation methods, and incorporated practices, singly or in combination, including but not limited to:

(a) Disturbing the smallest practicable area at any one time during the mineral operation through progressive backfilling and grading, and timely revegetation;

(b) Shaping the backfill material to encourage a reduction in the velocity of run-off, to an extent which is consistent with the requirements of this chapter;

(c) Retention of sediment within the pit and disturbed area;

(d) Utilization of straw dikes, riprap, check dams, mulches, vegetative buffer zones, dugout ponds, silt fence, and other measures that reduce overland flow velocity, reduce run-off volume, and entrap sediment;

(e) Utilization of other appropriate treatment facilities such as chemical treatment for acid and metals; and

(f) Sedimentation ponds.

(5) Maximum utilization shall be made of on site sediment control practices.

(6) All surface drainage from the disturbed area, including disturbed areas which have been graded, seeded, or planted, shall pass through sediment control structures and, where necessary, other treatment facilities that have been approved by the cabinet, before leaving the permit area.

(a) **For the purpose of this administrative regulation, disturbed area shall not include those areas in which only diversion ditches, sedimentation ponds, or roads are installed in accordance with 405 KAR Chapter 5 and the upstream area is not otherwise disturbed by the mineral permittee.**

(b) Sediment control structures shall be retained until untreated drainage from the disturbed area has met the water quality requirements of the administrative regulations of the Division of Water and the revegetation requirements of 405 KAR 5:070 have been met.

(c) [~~(b)~~] All sedimentation ponds required shall be constructed in accordance with this chapter and placed in appropriate locations prior to any mining in the affected drainage area in order to control sedimentation or otherwise treat water.

(d) [~~(c)~~] Sedimentation ponds may be used individually or in series, and shall be located as near as possible to the disturbed area, and where possible, out of major stream courses.

(7) No mineral operation shall violate any state or federal water quality standard or the effluent limitations established in the administrative regulations of the Division of Water.

(8) The cabinet may require other actions, above and beyond the requirements of this administrative regulation, as necessary to ensure that surface waters are protected.

Section 2. Pond Design Specifications. At a minimum, all sedimentation ponds shall be designed to meet the requirements for impoundments in 405 KAR 5:055 and the following additional specifications:

(1) Sedimentation ponds shall be designed, constructed, and maintained to prevent short circuiting.

(2) Sedimentation ponds shall be designed [~~provide a detention time~~] so that discharges from the pond shall meet the effluent limitations of the administrative regulations of the Division of Water.

(3) [~~There shall be no overflow through the emergency spillway resulting from a ten (10) year, twenty four (24) hour precipitation event or lesser event, except where a single open channel spillway is approved under 405 KAR 5:055.~~

~~(4)~~] The elevation of the crest of the emergency spillway shall be a minimum of one and one-half (1.5) feet above the crest of the principal spillway.

Section 3. Sediment Removal. (1) Sediment shall be removed from sedimentation ponds so as to assure maximum sediment removal efficiency and attainment and maintenance of effluent limitations of the administrative regulations of the Division of Water or as directed by the cabinet.

(2) Sediment removal shall be done in a manner that minimizes adverse effects on surface waters due to its chemical and physical characteristics, on infiltration, on vegetation, and on surface and groundwater quality.

(3) Sediment that has been removed from sedimentation ponds and that meets the requirements for topsoil may be redistributed over graded areas.

[~~Section 4. Other Permits and Approvals. (1) Storm water permits, withdrawal permits, and KPDES permits are issued by the Division of Water. General KPDES permits are available from the Division of Water on mineral operations that have a mineral operation permit from the department if they meet certain criteria.~~

~~(2) If a mineral operation is located in a flood plain it requires the approval of the Division of Water and the Corps of Engineers.~~

~~(3) If a mineral operation requires stream crossings such as low water fords, bridges, etc., the structures are required to be approved by the Division of Water.~~]

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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
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405 KAR 5:055. Permanent and temporary impoundments.

RELATES TO: KRS 350.010(2), 350.240, 350.300
STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.029, 350.240, 350.300
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part, requires the cabinet to promulgate administrative regulations pertaining to noncoal mineral operations to minimize their adverse effects on the citizens and the environment of the Commonwealth. This administrative regulation sets forth provisions for impoundments.

Section 1. Requirements for Permanent and Temporary Impoundments. (1) Design certification. The design of impoundments shall be certified by a qualified registered professional engineer as designed to meet the requirements of this administrative regulation using

current, prudent engineering practices, and any design criteria established by the cabinet. The qualified registered professional engineer shall be experienced in the design and construction of impoundments.

(2) All impoundments classified as Class B-moderate hazard or Class C-high hazard, and all permanent "dams," as defined in KRS 151.100, shall comply with 401 KAR 4:030. Criteria for the hazard classifications are established by 401 KAR 4:030.

(3) Stability.

(a)1. Permanent and temporary "dams" (as defined in KRS 151.100), permanent and temporary Class B and C impoundments, and all permanent impoundments, shall have a minimum static safety factor of 1.5 for the normal pool with steady seepage saturation conditions, and a seismic safety factor of at least one and two-tenths (1.2).

2. Impoundments not included in subparagraph 1 of this paragraph shall have a minimum static safety factor of one and three-tenths (1.3) for the normal pool with steady state seepage saturation conditions.

(b) The constructed height of the dam shall be increased a minimum of five (5) percent over the design height to allow for settlement, unless it has been demonstrated to the cabinet that the material used and the design will ensure against all settlement.

(c) The minimum top width of the embankment shall not be less than the quotient of (H+35)/5, where H is the height, in feet, of the embankment as measured from the upstream toe of the embankment to the top of the embankment.

(d) Unless the cabinet approves steeper slopes, based upon a satisfactory demonstration of stability by the applicant acceptable to the cabinet, the sum of the upstream and downstream side slopes (h/v) of the settled embankment shall not be less than 5h:1v, with neither slope steeper than 2h:1v. Slopes shall be designed to be stable in all cases, even if flatter side slopes are required.

(e) The fill material shall be free of sod, large roots, other large vegetative matter, and frozen soil.

(f) The placing and spreading of fill material shall be started at the lowest point of the foundation. The fill shall be brought up in horizontal layers of such thickness as is required to facilitate compaction and meet the design requirement of this administrative regulation. Compaction shall be conducted as specified in the design approved by the cabinet.

(g) The entire embankment including the surrounding areas disturbed by construction shall be stabilized with respect to erosion by a vegetative cover or other means immediately after the embankment is completed. The active upstream face of the embankment where water will be impounded may be riprapped or otherwise stabilized and no vegetative cover is needed. Areas in which the vegetation is not successful or where rills and gullies develop shall be repaired and revegetated.

(h) Slope protection shall be provided to protect against surface erosion at the site and protect against sudden drawdown.

(i) Measures shall be taken to control seepage in order to ensure stability of the embankment.

(4) Freeboard. Impoundments shall have adequate freeboard to resist overtopping by waves and by sudden increases in storage volume. The minimum elevation at the top of the settled embankment shall be one (1.0) foot above the water surface in the impoundment with the emergency spillway flowing at design depth. For embankments subject to settlement, this one (1.0) foot minimum elevation requirement shall apply at all times, including the period after settlement. Freeboard requirements shall not apply to incised impoundments which have no embankment or levee.

(5) Foundation.

(a)1. Foundation and abutments for the impounding structure shall be designed to be stable under all conditions of construction and operation of the impoundment and shall be designed based on adequate and accurate information on the foundation conditions.

2. For permanent and temporary "dams" (as defined in KRS 151.100), for permanent and temporary Class B and C impoundments, and for all permanent impoundments, foundation investigations as well as any necessary laboratory testing of materials shall be performed in order to determine the design requirements for foundation and embankment stability.

3. Where an approved temporary impoundment has been constructed and the mineral permittee subsequently seeks a permit revision to upgrade the structure to a permanent impoundment, the cabinet may waive the foundation investigations and laboratory testing required by subparagraph 2 of this paragraph under the following circumstances:

a. The structure has been recently verified as being a Class A-low hazard structure;

b. The structure does not meet the definition of the term "dam," as defined at KRS 151.100; and

c. The cabinet approves conservative, assumed values for the strength parameters used in the stability analyses to ensure compliance with subsection (3)(a) of this section.

(b) All vegetative and organic materials shall be removed and foundations excavated and prepared to resist failure. Cutoff trenches shall be installed if necessary to ensure stability.

(6) Spillways. Impoundments shall include a combination of principal and emergency spillways which shall be designed and constructed to safely pass the design precipitation event specified in this subsection, unless the cabinet requires a larger event. Twenty-four (24) hours may be used in lieu of six (6) hours for the duration of a design precipitation event specified in this subsection.

(a) Class A impoundments that are not "dams" (as defined in KRS 151.100) shall pass the:

1. Twenty-five (25) year, six (6) hour precipitation event if it is a temporary impoundment; or

2. The fifty (50) year, six (6) hour precipitation event if it is a permanent impoundment.

(b) Temporary class A impoundments that are "dams" (as defined in KRS 151.100) shall pass the 100 year, six (6) hour precipitation event.

(c) Permanent and temporary class B and C impoundments and all permanent "dams" (as defined in KRS 151.100) shall comply with the criteria established in 401 KAR 4:030.

(d) Emergency spillway grades and allowable velocities shall be approved by the cabinet.

(7) Single spillway. Class A impoundments that are not "dams" (as defined in KRS 151.100) may use a single spillway if the spillway:

(a) Is an open channel of nonerodible construction and capable of maintaining sustained flows; and

(b) Is not earth or grass lined.

(8) **Temporary impoundments existing on the effective date of this administrative regulation that are, and continue to be, Class A hazard, shall not be required to be modified to meet the requirements of subsections (1) through (7) of this section unless the cabinet, based upon an inspection, determines that modification to meet some or all of these requirements is necessary to protect the public health or safety or to protect the environment.**

(9) Emergency procedures. If any examination or inspection of an impoundment discloses that a potential hazard exists, the person who examined the impoundment shall immediately notify the department and the Kentucky Division of Water, or if these agencies cannot be reached, Disaster and Emergency Services. The mineral permittee shall immediately implement emergency procedures formulated for public protection and remedial action. If adequate emergency procedures cannot be formulated or implemented by the mineral permittee, the cabinet shall be notified, and the cabinet shall notify the appropriate agencies that other emergency procedures are required to protect the public.

Section 2. Additional Requirements for Permanent Impoundments. (1) General.

(a) The retention of a permanent impoundment is subject to the approval of the cabinet.

(b) Permanent pit impoundments with no embankment are encouraged.

(c) [However,] It shall be demonstrated to the cabinet's satisfaction that adequate sources of water are available to maintain the water level of the impoundment at a reasonable elevation at all times. Adequate sources of water supply for impoundments may be from springs, drainage areas of sufficient size, groundwater percolation, a flowing stream, or any combination of these sources.

(d) [(c)] [In accordance with 405 KAR 5:030, a narrative description of the water impoundment shall be submitted in addition to the plans and specifications. This narrative shall describe, in detail, all pertinent information pertaining to the water impoundment.

(e)] [(d)] In accordance with 405 KAR 5:030, if a permanent impoundment is proposed, an affidavit from the landowner[,] approving the impoundment and **acknowledging that the mineral permittee will have no continuing maintenance responsibility after permit release** [committing to maintenance], is required, except for final pit impoundments with no embankment.

(f) Permanent impoundments shall be demonstrated to be a part of the approved postmining land use.

(2) If a permanent impoundment is proposed, the following stipulations shall be met:

(a) Adequate means of access, such as roads or ramps, are left or provided to the water impoundment.

(b) A terrace shall be provided above, but in near proximity to, the high water level of the permanent impoundment, except on the portion of the impoundment comprising the highwall of the pit.

(c) Any spoil above the terrace shall be graded until it is rounded off and blended into the area contour above the terrace.

(d) All spoil piles adjoining access roads to permanent impoundments shall be graded to minimize erosion and blend into the surrounding area.

(e) The angle of the slope from the roadbed to the top of the spoil may be greater than the surrounding area if adequate drainage measures are taken to prevent erosion of the slope, including but not limited to, terracing and vegetation.

(f) The roadbed shall be adequately drained and culverts shall be provided so as to prevent it from being eroded.

(g) The area above the highwall on any permanent water impoundment shall be protected by a landscape barrier or a fence approved by the Department for Surface Mining Reclamation and Enforcement.

PHILLIP J. SHEPHERD, Secretary
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405 KAR 5:060. Handling of materials.

RELATES TO: KRS 350.010(2), 350.240, 350.300
STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.029, 350.240, 350.300
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part, requires the cabinet to promulgate administrative regulations pertaining to noncoal mineral operations to minimize their adverse effects on the citizens and the environment of the Commonwealth. This administrative regulation sets forth provisions concerning backfilling and grading, handling of wastes, handling of acid or toxic-forming materials, topsoil handling and conditioning, disposal of excess spoil, and additional performance standards for mineral operations on steep slopes.

Section 1. Backfilling and Grading. (1) General statement concerning backfilling. All overburden that is not placed in approved excess spoil fills shall be placed back in existing pits and graded.

(2) Surface drainage.

(a) Natural drainways in the area affected by the mineral operation shall be kept free from overburden except where approved by the cabinet.

(b) If, during the mineral operation, it is necessary to cross a natural drainway, proper drainage structures shall be provided.

(c) Sufficient water retarding structures, silt control structures, and diversion ditches, constructed as approved by the cabinet, shall be placed to control all run-off from the mineral operation before the work begins. These structures shall be located as near as possible to the disturbed area, and out of perennial streams unless approved by the cabinet.

(d) Any water accumulating on a bench or similar area where the drainage is off the mineral operation shall be pumped or siphoned into sediment control structures.

(e) The moving of overburden to release accumulated water shall be prohibited unless a drainway can be constructed with the approval of the cabinet.

(3) If the mineral operation produces a highwall, at least one (1) suitable access shall be provided to lands above the highwall within each 4,000 feet of distance along the highwall. In addition, access shall be provided as necessary so no landowner is prevented access to his property.

(4) Spoil or overburden removed shall be placed, graded, and stabilized so that soil erosion, surface disturbance, and stream sedimentation will be minimized.

(5) All grading shall be kept current and shall be completed before equipment pertinent to the mineral operation is moved from the site unless approved, in writing, by the cabinet's inspector.

(6) If conditions develop in the mineral operation so that the approved reclamation plan and backfilling and grading plan cannot be carried out as planned, modifications of the plan shall be submitted by the mineral operator to the cabinet for approval.

Section 2. Waste Materials. (1) The conduct of mining and the handling of refuse and other mining wastes shall be done in such a way as to reduce adverse effects in the area and to protect the public and adjoining landowners from damage to their lands, to streams, and to other property.

(2) Upon final abandonment, all buildings, structures, metal, lumber, and other refuse resulting from the mineral operation shall be removed or buried.

(3) Spoil, overburden, refuse, or any other mining waste shall not be placed on a previous or potential slide area. The placement of the material shall be subject to approval by the cabinet.

(4) Unless specifically authorized by the cabinet by a permit from the Division of Waste Management, household wastes or other wastes, generated off site, shall not be placed within the pit area or within the permit boundary of a mineral operation.

Section 3. Acid-forming or Toxic-forming Materials. (1) All acid or toxic-forming material shall be buried with not less than four (4) feet of clean fill as cover.

(2) Measures shall be taken to prevent stream and soil pollution, such as placement of acid or toxic-forming materials outside of natural drainways.

(3) The mineral permittee shall conduct testing of materials as directed by the cabinet.

Section 4. Topsoil Handling. (1) General requirements.

(a) If practicable, all topsoil or subsoil to be saved for redistribution, specified under subsection (2) of this section, shall be removed as a separate layer or layers from the area to be disturbed and shall be segregated from other materials.

(b) If practicable, after removal, these materials shall be redistributed immediately to backfill areas, or otherwise stockpiled.

(c) After redistribution, if the topsoil becomes encrusted and hard, it shall be scarified prior to seeding.

(2) Soil removal. For areas where topsoil is to be removed and saved as a plant growth medium:

(a) Vegetative cover that would interfere with the salvage or use of the topsoil shall be cleared. Herbaceous vegetation and other small plant forms which will add to the organic constituency of the topsoil, but do not interfere with topsoil salvaging, may be retained along with the topsoil.

(b) All the topsoil present in the area to be disturbed shall be removed and segregated for redistribution.

1. If less than six (6) inches of topsoil is present, then at least the upper six (6) inches of **[~~top~~]**soil shall be removed and segregated for redistribution, except where less than six (6) inches of soil is present.

2. Where less than six (6) inches of soil is present, whatever soil and subsoil is available, at the area to be disturbed, shall be removed and segregated for redistribution.

[~~(c) To the extent practicable, all subsoil, above and beyond that which is referenced in this subsection, shall be removed and segregated for redistribution. This subsoil material shall be redistributed as a separate layer immediately below the soil materials referenced in this subsection.~~]

(3) Soil storage.

(a) Soil materials removed pursuant to subsection (2) of this section shall be stockpiled only if it is impractical to promptly redistribute the materials on regraded areas.

(b) Stockpiled soil shall be selectively placed on stable areas, outside of water drainways and shall:

1. Be protected from wind and water erosion through the seeding of quick cover grasses or legumes and application of mulch;

2. Be seeded with perennial grasses and legumes if the soil is to be stockpiled for more than two (2) years; and

3. Be protected from unnecessary compaction.

(4) Soil amendments.

(a) Lime shall be applied to redistributed topsoil in an amount to obtain a buffer pH of six and four-tenths (6.4).

(b) Adequate fertilizer shall be applied to redistributed topsoil [~~based upon soil tests performed by a qualified laboratory using standard methods~~]. At a minimum, 100 pounds of nitrogen (N) and 100 pounds of phosphate (P_2O_5) shall be applied per acre.

(c) Areas where topsoil has been redistributed shall be seeded with quick cover and permanent grasses and legumes as soon as possible during first normal period of favorable planting.

(d) Suitable mulch or other soil stabilizing practices shall be used in addition to temporary cover on all regraded and topsoiled areas to control erosion, promote germination of seeds, and increase the moisture retention capacity of the soil. The cabinet may, on a case-by-case basis, waive the requirement for mulch if the cabinet finds, based on seasonal, soil, and slope factors, that the temporary vegetative cover will achieve proper erosion control until a permanent cover is established, except that no waiver shall be granted for any area having a slope greater than ten (10) percent.

Section 5. Disposal of Excess Spoil. (1) General. Excess spoil shall be placed in designated disposal areas, within a permit area, in a controlled manner to:

(a) Minimize the adverse effects of leachate and surface water run-off from the fill on surface and groundwater;

(b) Ensure mass stability and prevent mass movement during and after construction; and

(c) Ensure that the final fill is suitable for reclamation and revegetation compatible with the natural surroundings and the approved postmining land use.

(2) Location. Where possible, placement in pits shall be the preferred location for disposal. Otherwise the disposal area shall be located on the most moderately sloping and naturally stable area available among those upon which, in the judgment of the cabinet, spoil could be placed in compliance with all applicable requirements of 405 KAR Chapter 5, and shall be placed, where possible, upon or above a natural terrace, bench, or berm if such placement provides additional stability and prevents mass movement.

(3) Placement in pits. On a case-by-case basis, the cabinet may waive all or part of the requirements of subsections (4) through (7) of this section where spoil is placed in pits where there is no potential for mass movement or substantial erosion.

(4) Design certification.

(a) The fill and appurtenant structures shall be designed using current, prudent engineering practices by a qualified, registered professional engineer experienced in the design of earth and rock fills who shall certify the design of the fill and appurtenant structures.

(b) The fill shall be designed and constructed to attain a minimum long-term static safety factor of one and five-tenths (1.5). The foundation and abutments of the fill and all other features shall be sufficient to ensure stability of the fill and appurtenant structures under all stages and conditions of construction.

(5) Stability.

(a) Stability analyses shall be performed by a qualified, registered professional engineer. Parameters used in the stability analyses shall be based upon adequate investigations of foundation and fill material, as approved by the cabinet, including field reconnaissance; subsurface investigations; and data obtained from laboratory analyses of the materials or, if approved by the cabinet, data obtained from other sources that yield results which ensure compliance with the applicable stability requirements of this administrative regulation. The analyses of foundation conditions shall take into consideration the effect of underground mine workings, if any exist in the area, upon the stability of the fill and appurtenant structures.

(b) If the toe of the fill rests on an area which has a natural land slope in excess of 2.8h:1v (thirty-six (36) percent) or a lesser slope as may be designated by the cabinet based on local conditions, keyway cuts (excavations to stable bedrock), rock toe buttresses, or a combination of these shall be constructed to ensure stability of the fill.

(6) Placement of excess spoil.

(a) Vegetative and organic materials shall be removed, either progressively or in a single set of operations, from the disposal area prior to placement of the excess spoil. Topsoil shall be removed, segregated, and stored and redistributed in accordance with Section 4 of this administrative regulation. If approved by the cabinet, vegetative material may be used as mulch or may be included in the topsoil to control erosion, promote growth of vegetation, or increase the moisture retention of the soil.

(b) Excess spoil shall be transported and placed in a controlled manner in horizontal lifts of a thickness approved by the cabinet; concurrently compacted as necessary to ensure mass stability and to prevent mass movement during and after construction; graded so that surface and subsurface drainage is compatible with the natural surroundings; and covered with topsoil or substitute material.

(c)1. The final configuration of the fill shall be suitable for the approved postmining land use.

2. The top of the fill shall be graded no steeper than 20h:1v (five (5) percent) toward properly designed drainage channels in natural ground along the periphery of the fill. Surface run-off from the top surface of the fill shall not be allowed to flow over the outslope of the fill. The outslope of the fill shall not exceed 2h:1v (fifty (50) percent) or a lesser slope as may be required by the cabinet to ensure stability or minimize erosion.

3. Terraces may be constructed on the outslope of the fill. Terrace benches shall be graded with a three (3) to ten (10) percent slope toward the fill. The outslope between terrace benches shall not exceed 2h:1v (fifty (50) percent) or a lesser slope as may be required by the cabinet to ensure stability or minimize erosion. Run-off shall be collected by a ditch along the intersection of each terrace bench and the outslope. This ditch shall route run-off to stabilized diversion channels and shall have a maximum slope that is no greater than 20h:1v (five (5) percent) unless a steeper slope is necessary for permanent roads in conjunction with an approved postmining land use and a steeper slope will not adversely affect the stability of the fill or result in excessive erosion.

(d) Impoundments shall not be allowed on the fill.

(7) Drainage control.

(a) The fill design shall include diversions and underdrains as necessary to control erosion, minimize water infiltration into the fill, and ensure stability except the cabinet may waive underdrain requirements for fills that are not hollowfills if it is demonstrated to the cabinet's satisfaction in the application that underdrains are not necessary because the disposal area does not contain any springs, manmade or natural drainways, or wet-weather seeps and because seepage of water due to precipitation will not adversely affect the stability of the fill. In no case shall surface run-off from above the fill be diverted through or under the fill.

(b) Surface water run-off from the area above the fill shall be diverted away from the fill and into stabilized diversion channels. Surface run-off from the fill surface shall be diverted to stabilized channels off the fill. Diversions associated with excess spoil fills and appurtenant structures shall be designed and maintained to safely pass the peak run-off from a ten (10) year, twenty-four (24) hour precipitation event, except that diversions associated with hollowfills and where flow from an intermittent or perennial stream is diverted the design event shall be the 100 year, twenty-four (24) hour precipitation event.

(c) Underdrains shall be constructed of durable, nonacid-forming, and nontoxic-forming rock; shall be free of coal, clay, and nondurable material; and shall be designed and constructed using current, prudent engineering practices. The underdrain system shall be protected from piping and contamination by a filter system designed and constructed to ensure proper long-term functioning of the underdrain using current, prudent engineering practices. For hollowfills a subdrainage system for the fill shall be constructed in accordance with the following:

1. Be installed along the natural drainways;

2. Extend from the toe to the head of the fill; and

3. Contain lateral drains to each area of potential drainage or seepage.

(d) The cabinet may approve diversions located on fill material where necessary due to topography and configuration of the fill, if the cabinet determines that there will be no adverse impacts to the excess spoil fill, the public health and safety, and the environment.

(8) Surface area stabilization. During and after construction of the fill and appurtenant structures, slope protection shall be provided to minimize surface erosion at the site of excess spoil disposal and at the locations of appurtenant structures. All disturbed areas, including diversion channels that are not riprapped or otherwise protected, shall be revegetated upon completion of construction.

Section 6. Additional performance standards for mineral operations on slopes of more than twenty (20) degrees.

(1) The mineral permittee shall prevent the following materials from being placed or allowed to remain on the downslope:

(a) Spoil;

(b) Waste materials, including waste mineral matter;

(c) Debris, including that from clearing and grubbing of haul road construction; and

(d) Abandoned or disabled equipment.

(2) Nothing in this section shall prohibit the placement of material in road embankments located on the downslope, so long as the material used and embankment design comply with the requirements for roads and other transportation facilities in 405 KAR Chapter 5 and the material is moved and placed in a controlled manner.

(3) Woody materials shall not be buried in the backfilled area unless the cabinet determines that the proposed method for placing woody material within the backfill will not deteriorate the stable condition of the backfilled area. Woody materials may be chipped and distributed over the surface of the backfill as mulch, if special provision is made for their use and approved by the cabinet.

(4) Unlined or unprotected drainage channels shall not be constructed on backfills unless approved by the cabinet as stable and not subject to erosion.

PHILLIP J. SHEPHERD, Secretary
APPROVED BY AGENCY: September 9, 1994
FILED WITH LRC: September 12, 1994 at 3 p.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(As Amended)

405 KAR 5:070. Revegetation.

RELATES TO: KRS 350.010(2), 350.240, 350.300
STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.029, 350.240, 350.300
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part, requires the cabinet to promulgate administrative regulations pertaining to noncoal mineral operations to minimize their adverse effects on the citizens and the environment of the Commonwealth. This administrative regulation sets forth provisions for the reestablishment of vegetation on noncoal mineral operations.

Section 1. General. (1) Each mineral permittee shall establish on all lands disturbed during the course of the mineral operation, a condition which will result in a permanent vegetative cover, effective in controlling erosion, and which supports the approved postmining land use.

(2) Plant species for revegetation shall be selected on the basis of:

(a) Their ability to achieve the approved postmining land use;

(b) Their ability to control erosion, both in the short term and in the future, but which will allow for plant succession for areas to be returned to forest land or fish and wildlife habitat;

(c) Their ability to promote soil rebuilding; and

(d) Their benefit to wildlife.

(3) Regraded areas shall be seeded or planted as soon as possible; however, the seeding or planting shall be conducted during the appropriate time of year for the plant materials selected in accordance with accepted agricultural or reforestation practices.

(4) Experimental seeding or stocking of trees or shrubs, not typically used, may be allowed if no more than twenty (20) percent of the permit area is seeded or planted with these species; except that, any species used shall meet the requirements of subsection (1) of this section, shall not be in violation of applicable state and federal introduced species statutes, and are not considered poisonous or noxious.

(5) Roads shall be seeded to legumes and perennial grasses only, unless the cabinet determines that the roadway will not contribute to significant off site damage to the public, the environment, or adjacent property owners if left unreclaimed.

(6) If conditions warrant, the cabinet may allow exceptions to this administrative regulation, if the exceptions are consistent with 405 KAR Chapter 5.

Section 2. Soil Stabilization and Amendments. Liming, fertilization, mulching and related practices shall be conducted in accordance with 405 KAR 5:060, Section 4. If there is a problem in reestablishing vegetation, soil tests shall be performed to determine necessary remedial measures.

Section 3. Revegetation Success. (1) Success of revegetation shall primarily be determined on the basis of ground cover, and if applicable, tree and shrub stocking.

(2) Ground cover.

(a) For establishing ground cover for the various postmining land uses, at least four (4) grass and legume species shall be seeded, one (1) of which may be a quick cover species. At least one (1) permanent legume species, in addition to two (2) or more permanent grasses, shall be required for the pastureland postmining land use.

(b) At least one (1) quick cover grass or legume species shall be seeded. However, annual grasses and small grains shall be considered only as a tool in establishing temporary vegetative cover for restoration, and shall not be included in the evaluation of revegetation success.

(c) Ground cover shall be at least ninety (90) percent for areas where the postmining land use is pastureland, or where the area will be seeded to grasses and legumes under the cropland land use.

(d) Ground cover shall be at least eighty (80) percent for all other postmining land uses.

(e) For the selection of ground cover species, the mineral permittee shall consider, but not necessarily be limited to, the seeding mixtures listed in Appendix A of this administrative regulation.

(3) Tree and shrub stocking.

(a) For areas to be reforested, at least **300** [~~450~~] trees or shrubs shall be present per acre, including volunteers, during the success evaluation required under Section 4 of this administrative regulation; except, where a greater stocking rate is required for shrub plantings for wildlife pursuant to paragraph (d) of this subsection. A lesser stocking rate may be approved by the cabinet if the tree or shrub planting is only for cosmetic purposes or for similar reasons.

(b) At least four (4) species of trees or shrubs shall be stocked for areas to be reforested with each of the four (4) principal species comprising at least ten (10) percent of the total stocking, of which none shall exceed fifty (50) percent of the total stocking. A lesser diversity may be approved by the cabinet if tree or shrub planting is only for cosmetic purposes or for similar reasons. Only one (1) species of tree is required if a commercial pine plantation is established.

(c) Of the four (4) or more species referenced in paragraph (b) of this subsection, at least one (1) conifer species and at least one (1) hardwood or mast producing species shall be selected for the forest land and fish and wildlife land uses. For forestland, at least fifty (50) percent of the woody plants shall be trees.

(d) For areas within the permit boundary where shrubs, and no trees, are stocked for wildlife a stocking rate of 600 stems per acre shall be required.

(e) If used, black locust (Robina psuedoacacia) shall not exceed twenty-five (25) percent of the woody plant mixture; and European black alder (Alnus glutinosa) shall not exceed fifty (50) percent of the total woody plant mixture.

(f) [~~Black locust shall not be intermixed with sycamore (Platanus occidentalis) or cottonwood (Populus deltoides), but may be planted within portions of the permit area where sycamore and cottonwood are not stocked.~~

~~(g)~~] Black locust seed shall be scarified, except if used in fall and spring seeding.

(g) [~~(h)~~] All trees and shrubs counted for success shall be alive and healthy.

(h) [~~(i)~~] Only canopy forming trees shall be stocked for a postmining land use of forest land.

(i) [~~(k)~~] Tree and shrub stocking for wildlife may include border plantings, clump plantings, or strip plantings.

(j) [~~(l)~~] For areas to be reforested, the use of competitive ground cover species such as KY 31 tall fescue (Festuca arundinaria), crown vetch (Coronilla varia), alfalfa (Medigo spp.), and the nonprostate, highway variety of sericea lespedeza (Lespedeza cuneata) shall be limited.

(k) [~~(m)~~] The area above the highwall on any water impoundment shall be planted with trees in order to provide a protective barrier and screen.

(l) [~~(n)~~] On very stony areas that cannot be hand planted without difficulty, direct seeding of woody species will be permitted; otherwise, woody species shall be hand planted, except for black locust.

(4) **The cabinet may approve a seeding mixture other than those established in Appendix A of this administrative regulation if the mineral permittee submits adequate justification to the cabinet.** [~~If a seeding mixture other than one established in Appendix A is chosen, for guidance in selecting woody species, and for assistance in other areas of revegetation, the mineral permittee shall consult published reclamation documents. The information may be obtained from the cabinet.~~]

(5) Bare areas within the revegetated area shall not exceed one-fourth (.25) acre in size.

(6) Where a seam or stratum of solid rock at the surface makes revegetation impractical, none shall be required.

Section 4. Inspection and Reporting Procedures. (1) When planting is completed a planting report shall be filed with the cabinet. The division's planting report form shall be used for compiling this information.

(2) Inspection and evaluation for vegetation success shall be made during appropriate seasons in order to determine if satisfactory vegetation has been established. In no instance shall this inspection be made until after the completion of two (2) growing seasons. The appropriate report forms shall be used for compiling this information.

(3) The following form is hereby incorporated by reference: Noncoal Planting Report, NCR-18, March, 1990.

(4) This form may be reviewed or obtained at the Department for Surface Mining Reclamation and Enforcement, #2 Hudson Hollow, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

APPENDIX A OF 405 KAR 5:070
RECOMMENDED HERBACEOUS MIXTURES
FOR REVEGETATION

Note: A species enclosed in parenthesis may be substituted for the species to the left. Its seeding rate is enclosed in parenthesis.

Species Mixture	Seeding Rate (Pounds/acre PLS)
Spring - February 15 to May 15	
1. Orchardgrass	10
White or Ladino clover	2
Red clover	6
2. Orchardgrass	10
White or Ladino clover	1
Red clover	4
Korean or Kobe lespedeza or mix of these	10
3. Orchardgrass	10
Birdsfoot trefoil (Alfalfa)	8 (15)

	Red clover	6
4.	Wheat (Spring oats)	25 (32)
	Switchgrass	10
	Indiangrass	10
	Big bluestem	5
	Little bluestem	5
	Birdsfoot trefoil	6

Except for mixture 4, add one (1) of the following quick cover species to the selected permanent spring seeding mixture:

Wheat (before April 15)	30
Spring oats (before April 15)	32
Balbo rye (before April 15)	30
Perennial ryegrass	10
Annual ryegrass	5
Weeping lovegrass (after April 1)	2

Summer - May 15 to August 1

Orchardgrass	10
Korean or Kobe lespedeza or mix of these	15
Red clover	4
White clover (Birdsfoot trefoil)	1 (6)
Alfalfa	12

Add one (1) of the following quick cover species to the permanent summer seeding mixture:

Sorghum	20
Foxtail (German) millet	12
Japanese millet	15
Soybeans	40
Cowpeas	40
Pearl millet	10

Fall - August 1 to October 1

1.	Orchardgrass	10
	White or Ladino clover	2
	Red clover	6
2.	Orchardgrass	10
	Alfalfa (Birdsfoot trefoil)	15 (8)
	Red clover	6
3.	Deertongue	12
	Birdsfoot trefoil	8
	Red clover	6

Add one (1) of the following quick cover species to the selected permanent fall seeding mixture:

Winter wheat	30
Balbo rye or Winter rye	30
Winter oats	32
Perennial ryegrass	10
Annual ryegrass	5

Mixtures for Wet or Poorly Drained Areas and Pond Borders

Spring - February 15 to May 15

Japanese millet	10
Redtop (Reed canarygrass)	3 (15)
Alsike clover	4
Common annual lespedeza (quick cover species)	10

Fall - August 1 to October 1

Redtop	3
Reed canarygrass	15
Alsike clover	6
Common annual lespedeza (quick cover species)	10

Mixture for Areas to be Stocked With Woody Plants

Spring or Fall Seeding

Redtop	3
Perennial ryegrass	5
Birdsfoot trefoil (Appalow lespedeza)	10 (20)
Foxtail millet (quick cover species)	5

If both Appalow lespedeza and birdsfoot trefoil are used, cut their seeding rates in half.

Note: Seeding Rates are for Pure Live Seed. Seeding rates of the permanent species can be increased if desired, but do not exceed the seeding rate of the temporary species.

Use only one (1) of the temporary species at the rates shown. If more than one (1) are used, reduce the seeding rates of each temporary species appropriately.

PHILLIP J. SHEPHERD, Secretary
APPROVED BY AGENCY: September 9, 1994
FILED WITH LRC: September 12, 1994 at 3 p.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(As Amended)

405 KAR 5:085. Enforcement.

RELATES TO: KRS 350.010(2), 350.130, 350.240, 350.300

STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.029, 350.240, 350.300, 350.990

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part, requires the cabinet to promulgate administrative regulations pertaining to noncoal mineral operations to minimize their adverse effects on the citizens and the environment of the Commonwealth. This administrative regulation sets forth provisions governing the issuance of the various notices and orders to be issued by authorized representatives of the cabinet. The administrative regulation directs that there be issued a notice of noncompliance and order for remedial measures if there is a violation. The administrative regulation requires that an order for cessation and immediate compliance be issued for failure to abate a violation during a specified abatement period or for situations of an imminent danger to the health or safety of the public or significant, imminent environmental harm to land, air, or water resources. The administrative regulation sets forth the general form of the notices and orders and authority to vacate, modify, or terminate the orders or notices.

Section 1. General. (1) The secretary of the cabinet may from time to time or for a definite period designate, by written order or by other means appropriate under the circumstances, authorized representatives to perform duties pursuant to the administrative regulations contained in 405 KAR Chapter 5.

(2) Unless the secretary has made a written order contrary to the terms of this subsection, personnel authorized by the Commissioner

of the Department for Surface Mining Reclamation and Enforcement are deemed the authorized representatives of the cabinet for the purposes of this administrative regulation.

Section 2. Inspections. (1) General. In accordance with the provisions of this chapter, the cabinet shall conduct or cause to be conducted such inspections, studies, investigations or other determinations as it deems reasonable and necessary to obtain information and evidence which will ensure that mineral operations are conducted in accordance with the provisions of all applicable statutes and administrative regulations, and all terms and conditions of the permit.

(2) Right of entry and access. Authorized employees of the cabinet shall have unrestricted right of entry to [~~all mineral exploration areas and~~] all parts of the mineral operation for any purpose associated with their proper duties pursuant to this chapter, including but not limited to, making inspections, and delivering documents or information of any kind to persons associated with the [~~exploration or~~] mineral operation.

(3) Timing and frequency of inspections.

(a) The cabinet shall conduct periodic inspections of all mineral operations.

(b) Inspections shall ordinarily be conducted at irregular and unscheduled times during normal workdays, but may be conducted at night or on weekends or holidays when the cabinet deems these inspections necessary to properly monitor compliance with all applicable laws and administrative regulations.

(c) The cabinet shall have no obligation to give prior notice that an inspection will be conducted or to obtain a warrant.

(4) Citizens request for inspections. [~~Any citizen of this Commonwealth having knowledge that any of the statutes and administrative regulations pertaining to mineral operations are willfully and deliberately not being enforced may bring the failure to enforce to the attention of the cabinet according to the provisions of this administrative regulation.~~]

(a) Any citizen may request that the cabinet conduct an inspection by furnishing to the cabinet, a signed, written statement, or an oral report followed by a signed written statement, giving the cabinet reason to believe that a violation, condition, or practice in violation of KRS Chapter 350, administrative regulations promulgated pursuant thereto, or permit conditions exists, and setting forth a telephone number and address at which the person can be contacted.

(b) The identity of any person supplying information to the cabinet relating to a possible violation or imminent danger or harm shall remain confidential with the cabinet if requested by that person, unless disclosure is required by law.

(c) Within a reasonable time, the cabinet shall send to the person the following:

1. If no inspection was conducted, an explanation of the reasons why no inspection was conducted;

2. If an inspection was conducted, a description of the enforcement action taken, if any, or an explanation of why no enforcement action was taken.

[~~(a) All requests to enforce the law shall be in writing, under oath, with facts set forth specifically stating the nature of the failure to enforce the law, with sufficient information to identify the statutory provision, administrative regulation, order, or permit condition allegedly violated and the act or omission alleged to constitute a violation.~~

~~1. The request shall state the name, address and telephone number of the person making the request.~~

~~2. The request shall state the name, address and telephone number of the legal counsel, if any, of the person making the request.~~

~~3. The stating of false facts and charges in the affidavit shall constitute perjury and shall subject the affiant to penalties under the law of perjury.~~

~~4. The cabinet shall investigate the allegations made in the demand and respond, in writing, to the person making the request. The response shall specifically state the results of the investigation and the action, if any, the cabinet has taken or intends to take.~~

~~5. The identity of any person supplying information to the cabinet relating to a possible violation or imminent danger or harm shall remain confidential with the cabinet if requested by that person, unless disclosure is required by law.~~

~~(b) If the cabinet refuses a request for a hearing, or delays action for more than sixty (60) days after the request to enforce the provision, the citizen shall have the right to bring an action of mandamus in the circuit court of the county in which the subject mineral operation is being conducted. The action may be brought immediately after a request for enforcement if the violations constitute an imminent threat to the health or safety of the complaining citizen or would immediately affect a legal interest of the complaining citizen.~~]

Section 3. Notice of Noncompliance and Order for Remedial Measures. (1) Any authorized representative of the cabinet shall issue a notice of noncompliance and order for remedial measures if, on the basis of an inspection, he finds a violation of KRS Chapter 350, 405 KAR Chapter 5, any permit condition, or any other applicable **requirement** [~~statute or administrative regulation~~].

(2) A notice of noncompliance and order for remedial measures issued pursuant to this section shall be in writing and shall be signed by the authorized employee who issued it. The notice shall contain the following information:

(a) The nature of the violations;

(b) The remedial measures required, if any, which may include accomplishment of interim steps, if appropriate;

(c) A reasonable time table for remedial action, if any, which may include a time table for accomplishment of interim steps, if appropriate; and

(d) An adequate description of the portion of the mineral operation to which the notice applies.

(3) An authorized employee may modify an order for remedial measures for good causes.

(4) Extensions and modifications of notices for remedial action. An authorized employee may extend the time set for remedial action or for accomplishment of an interim step, if the failure to meet the time previously set was not caused by lack of diligence on the part of the person to whom the notice of noncompliance and order for remedial measures was issued.

(a) The total time for remedial action under the notice, including all extensions, shall not exceed ninety (90) days from the date of issuance of the notice **except upon a showing by the mineral permittee that it is not feasible to abate the violation within ninety (90) calendar days due to cne (1) or more of the circumstances set forth in paragraph (b) of this subsection. An abatement period exceeding ninety (90) days pursuant to this subsection shall not be granted for situations in which the mineral permittee's failure to abate within ninety (90) days has been caused by a lack of diligence or intentional delay by the mineral permittee in completing the remedial action required.**

(b) The following circumstances may qualify mineral operations for an abatement period of more than ninety (90) days:

1. The mineral permittee of the ongoing mineral operation has timely applied for and diligently pursued a permit renewal or other necessary approval of designs or plans, but the permit or approval, for reasons not within the control of the mineral permittee, has not been and will not be issued prior to ninety (90) days after the valid permit or approval expires or is required;

2. There is a valid judicial order precluding abatement within ninety (90) days to which the mineral permittee has diligently pursued all rights of appeal and to which he has no other effective legal remedy;

3. The mineral permittee cannot abate within ninety (90) days due to a labor strike; or

4. Weather conditions preclude abatement within ninety (90)

days; due to weather conditions abatement within ninety (90) days would clearly cause more environmental harm than it would prevent; or abatement within ninety (90) days requires action that would violate safety standards established by statute or regulation under the Mine Safety and Health Act.

(c) If an abatement period in excess of ninety (90) days is approved by the cabinet, interim abatement measures shall be imposed to the extent necessary to minimize harm to the public and the environment.

(d) If any of the conditions in paragraph (b) of this subsection exist, the mineral permittee may request the authorized representative of the cabinet to grant an abatement period exceeding ninety (90) days. The authorized representative of the cabinet shall not grant such an abatement period without the approval of the Director of the Division of Field Services or his designee, and the abatement period granted shall not exceed the shortest possible time necessary to abate the violation. The mineral permittee shall have the burden of establishing by clear and convincing proof that he is entitled to an extension under the provisions of this subsection. In determining whether or not to grant an abatement period exceeding ninety (90) days, the authorized representative of the cabinet may consider relevant written or oral information from the mineral permittee and other sources. The authorized representative of the cabinet shall promptly and fully document in the applicable file his recommendation for granting or denying the request and the reasons therefor. The authorized representative's immediate supervisor shall review this document before approving or disapproving the extended abatement period and shall promptly and fully document the reasons for his approval or disapproval in the applicable file.

(e) A determination made under paragraph (d) of this subsection shall be in writing and shall be subject to administrative and judicial review pursuant to 405 KAR 5:095.

(f) No extension granted under this subsection may exceed ninety (90) days in length. For situations in which the condition or circumstance that prevented abatement within ninety (90) days exists at the expiration of the extension, the mineral permittee may request a further extension in accordance with the procedures of this subsection.

(5) Based upon the written recommendation of authorized representative of the cabinet who issued the notice or noncompliance and order for remedial measures, the director of the Division of Field Services may vacate a notice of noncompliance and order for remedial measures determined to be issued in error.

Section 4. Order for Cessation and Immediate Compliance. (1) Issuance.

(a) If the person to whom a notice of noncompliance and order for remedial measures has been issued fails to comply with the terms of the notice within the time for remedial action established in the notice or as subsequently extended, an authorized representative of the cabinet shall immediately issue to the person an order for cessation and immediate compliance.

(b) An authorized representative of the cabinet shall immediately issue an order for cessation and immediate compliance if he finds, on the basis of an inspection, any condition or practice; any violation of KRS Chapter 350; any violation of 405 KAR Chapter 5; or any violation of a term or condition of the applicable permit [~~or exploration approval~~] which:

1. Creates an imminent danger to the health or safety of the public; or

2. Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.

(c) An authorized representative of the cabinet shall immediately issue an order for cessation and immediate compliance if he finds, on the basis of an inspection, that mineral operations are being conducted by a person without a valid mineral operations permit for the activities [~~or that exploration operations are being conducted without proper notice of intention to explore or approval for the operations, as applicable,~~] in accordance with this chapter.

(2) Form and content.

(a) An order for cessation and immediate compliance shall be in writing and shall be signed by the authorized representative of the cabinet who issued it. The order shall set forth with reasonable specificity:

1. The nature of the violation;

2. A reasonable description of the portions of the mineral operations to which it applies;

3. The remedial measures, if any, necessary to abate the violation in the most expeditious manner possible; and

4. The time established for abatement, if appropriate, including the time for complying with any interim steps.

(b) At the same time that the authorized representative of the cabinet issues an order for cessation and immediate compliance pursuant to subsection (1)(b) or (c) of this section, he shall also issue a notice of noncompliance and order for remedial measures.

(3) Effect.

(a) The order for cessation and immediate compliance shall require the cessation of all mineral operations[~~, all exploration and reclamation operations,~~] or the portions or operations thereof relevant to the condition, practice, or violation covered by the order. The order shall require the person to whom it is issued to take any affirmative steps which the authorized representative of the cabinet deems necessary to abate the condition, practice, or violation in the most expeditious manner possible. The order may require the use of existing or additional personnel and equipment.

(b) The order shall remain in effect until the condition, practice, or violation has been abated; until the order is vacated, modified, or terminated in writing pursuant to subsection (4) of this section; or until it is vacated, modified, or terminated by a hearing officer.

(c) Reclamation operations and other activities intended to protect public health and safety and the environment shall continue during the period of any order unless the order states that the reclamation operations and other activities shall cease.

(4) Modification, extension, vacation, and termination.

(a) An authorized representative of the cabinet may, by written notice, modify or terminate an order for cessation and immediate compliance issued under this section for good cause and may extend the time for abatement if the failure to abate within the time previously set was not caused by lack of diligence on the part of the person to whom it was issued.

(b) The secretary or his authorized representative shall terminate an order for cessation and immediate compliance, by written notice to the person to whom the order was issued, when he determines that all conditions, practices, and violations listed in the order have been abated. Termination shall not affect the right of the cabinet to assess civil penalties for those violations or to impose any other applicable sanctions as authorized by law.

(c) Based upon the written recommendations of the regional administrator and the authorized representative of the cabinet who issued the order for cessation and immediate compliance, the director of the division of field services may vacate an order for cessation and immediate compliance determined to have been issued in error.

(5) Within sixty (60) days after issuing an order for cessation and immediate compliance, the cabinet shall notify in writing a person who has been identified as owning or controlling the mineral permittee, that the cessation order was issued and that the person has been identified as an owner or controller.

Section 5. Notice of Inspection of Noncompliance. (1) Issuance. If an authorized representative of the cabinet issues a notice of noncompliance and order for remedial measures or an order for cessation and immediate compliance, he shall reinspect the areas

affected by the mineral operations [~~or the exploration operations~~] on or soon after the date given in the notice or order for completion of remedial measures. At the time of this reinspection, the authorized representative of the cabinet shall issue a notice of inspection of noncompliance.

(2) Form and content. The notice of inspection of noncompliance shall set forth whether:

(a) The remedial measures have been completed, and the notice or order is therefore terminated;

(b) The remedial measures have not been completed, but the notice or order is modified or extended for good cause; or

(c) The remedial measures have not been completed. Following such a determination, the cabinet shall:

1. For situations in which the inspection was a reinspection of a notice of noncompliance and order for remedial measures, issue an order for cessation and immediate compliance; and

2. For situations in which the inspection was a reinspection of an order for cessation and immediate compliance and if the order for cessation and immediate compliance has not been abated, initiate an administrative hearing for suspension or revocation of the permit or approval, initiate an administrative hearing for bond forfeiture, or initiate administrative hearings for other appropriate relief.

Section 6. Service of Notices and Orders. (1) Any notice of noncompliance and order for remedial measures, any order for cessation and immediate compliance, and any notice of inspection of noncompliance shall be served on the person to whom it was issued or the person's designated agent promptly after issuance.

(2) Each notice or order shall be served by hand, by certified mail (return receipt requested), or by registered mail to the person to whom the notice or order has been issued or to his designated agent for service. The notice or order shall also be served by hand to the individual who, based upon reasonable inquiry by the authorized representative, appears to be in charge at the site of the mineral operations referred to in the notice or order. If no such individual can be located at the site, a copy of the notice or order may be tendered to any individual at the site who appears to be an employee or agent of the person to whom the notice or order has been issued. Service, whether by hand or by mail, shall be complete upon tender of the notice or order and shall not be deemed incomplete because of refusal to accept. For mineral operations, service by mail shall be addressed to the designated agent for service; to the permanent address of the mineral permittee as identified on the permit or in the application; or, if no address is identified for the mineral permittee in the application, to such other address as is known to the cabinet. If no person is present at the site of the mineral operations, services by mail shall by itself be sufficient notice.

(3) Designation by any person of an agent for service of notices and orders issued pursuant to this administrative regulation and notices of hearing issued pursuant to 405 KAR 5:085, shall be made a part of the applicable permit application. The person shall continue as agent for service of process until written revision of the permit is approved which designates another person as agent.

(4) The cabinet may furnish copies of notices and orders to any person having an interest which is or may be adversely affected by the mineral operations and any person having an interest in the permit [~~or exploration~~].

Section 7. Penalties. The cabinet may assess penalties pursuant to KRS 350.990.

PHILLIP J. SHEPHERD, Secretary
APPROVED BY AGENCY: September 9, 1994
FILED WITH LRC: September 12, 1994 at 3 p.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(As Amended)

405 KAR 7:095. Assessment of civil penalties.

RELATES TO: KRS 350.990(1), 30 CFR Parts 730-733, 735, 845, 917, 30 USC 1268

STATUTORY AUTHORITY: KRS Chapter 13A, 350.020, 350.028, 350.465, 350.990(1), 30 CFR Parts 730-733, 735, 845, 917, 30 USC 1268

NECESSITY AND FUNCTION: KRS 350.990(1) directs the cabinet to promulgate an administrative regulation setting forth the method for calculating monetary penalties. This administrative regulation establishes how and when penalties will be assessed and includes a point system for calculating penalties, rules for assessing continuing violations, and a provision allowing waiver of the point system.

Section 1. How Penalty Assessments are Made. The cabinet shall review each violation, condition or practice cited in a notice of noncompliance and order for remedial measures or order of cessation and immediate compliance in accordance with the assessment procedures described in 405 KAR 7:092 and this administrative regulation to determine whether a civil penalty will be assessed, the amount of the penalty, and whether each day of a continuing violation will be deemed a separate violation for purposes of the total penalty assessed.

Section 2. When Penalty Will be Assessed. (1) The cabinet shall assess a penalty for each violation, condition or practice cited in an order of cessation and immediate compliance.

(2) The cabinet shall assess a penalty for each violation cited in a notice of noncompliance and order for remedial measures, if the violation is assigned thirty-one (31) points or more under the point system described in Section 3 of this administrative regulation.

(3) The cabinet may assess a penalty for each violation cited in a notice of noncompliance and order for remedial measures if the violation is assigned thirty (30) points or less under the point system described in Section 3 of this administrative regulation. In determining whether to assess a penalty, the cabinet shall consider the factors listed in 405 KAR 7:092, Section 3(2).

Section 3. Point System for Penalties. The cabinet shall use the point system described in this section to determine the amount of any penalty. Points shall be assigned as follows:

(1) History of previous violations. The cabinet shall assign up to thirty (30) points based on the history of previous violations.
One (1) point shall be assigned for each past violation cited in a notice of noncompliance and order for remedial measures. Five (5) points shall be assigned for each violation (but not a condition or practice) cited in an order of cessation and immediate compliance. The history of previous violations, for the purpose of assigning points, shall be determined and the points assigned with respect to a particular coal exploration or surface coal mining operation. Points shall be assigned as follows:

(a) A violation shall not be counted, if the notice or order is the subject of pending administrative or judicial review or if the time to request such review or to appeal any administrative or judicial decision has not expired, and thereafter it shall be counted for only one (1) year.

(b) No violation for which the notice or order has been vacated shall be counted; and

(c) Each violation shall be counted without regard to whether it led to a civil penalty assessment.

(2) Seriousness. The cabinet shall assign up to thirty (30) points based on the seriousness of the violation, as follows:

(a) Probability of occurrence. The cabinet shall assign up to fifteen (15) points based on the probability of the occurrence of the event which a violated standard is designed to prevent. Points shall be assessed according to the following schedule:

1. No probability of occurrence; zero points.
2. Insignificant probability of occurrence; one (1) to four (4) points.
3. Unlikely probability of occurrence; five (5) to nine (9) points.
4. Likely probability of occurrence; ten (10) to fourteen (14) points.
5. Occurred; fifteen (15) points.

(b) Extent of potential or actual damage. The cabinet shall assign up to fifteen (15) points, based on the extent of the potential or actual damage, in terms of area and impact on the public or environment, as follows:

1. If the damage or impact which the violated standard is designed to prevent would remain within the coal exploration or permit area, the cabinet shall assign zero to seven (7) points, depending on the duration and extent of the damage or impact.

2. If the damage or impact which the violated standard is designed to prevent would extend outside the coal exploration or permit area, the cabinet shall assign eight (8) to fifteen (15) points, depending on the duration and extent of the damage or impact.

(c) Administrative requirements. In the case of a violation of an administrative requirement, such as a requirement to keep records, the cabinet shall, in lieu of paragraphs (a) and (b) of this subsection, assign up to fifteen (15) points for seriousness, based upon the extent to which enforcement is obstructed by the violation.

(3) Negligence. The cabinet shall assign up to twenty-five (25) points based on the degree of fault of the person to whom the notice or order was issued in causing or failing to correct the violation, condition, or practice which led to the notice or order, either through act or omission. Points shall be assessed as follows:

(a) A violation, condition or practice which occurs through no negligence shall be assigned no penalty points for negligence. No negligence means an inadvertent violation, condition or practice which was unavoidable by the exercise of reasonable care.

(b) A violation, condition or practice which is caused by negligence shall be assigned twelve (12) points or less, depending on the degree of negligence. Negligence means the failure of a permittee to prevent the occurrence of the violation, condition or practice due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation, condition or practice due to indifference, lack of diligence, or lack of reasonable care.

(c) A violation, condition or practice which occurs through a greater degree of fault than negligence shall be assigned thirteen (13) to twenty-five (25) points, depending on the degree of fault. A greater degree of fault than negligence means reckless, knowing, or intentional conduct.

(4) Good faith in attempting to achieve compliance. The cabinet shall subtract up to fifteen (15) points based on the degree of good faith of the person to whom the notice or order was issued in attempting to achieve rapid compliance after notification of the violation, condition or practice. Points shall be subtracted as follows:

(a) Rapid compliance. Six (6) to fifteen (15) points shall be subtracted from the total points if the person to whom the notice or order was issued took extraordinary measures to abate the violation, condition or practice in the shortest possible time and that abatement was achieved before the time set for abatement.

(b) Normal compliance. Zero to five (5) points shall be subtracted from the total points if the person to whom the notice or order was issued abated the violation, condition or practice by the abatement date.

Section 4. Determination of Amount of Penalty. For each violation, condition, or practice cited in a notice or order, the cabinet shall determine the amount of any civil penalty by converting the total number of points assigned under Section 3 of this administrative regulation to a dollar amount, according to the schedule in Appendix A of this administrative regulation.

Section 5. Assessment of Separate Violations for Each Day. (1) The cabinet may assess separately a civil penalty for each day from the date of issuance of the notice or order to the date of abatement of the violation. In determining whether to make such an assessment, the cabinet shall consider the factors listed in 405 KAR 7:092, Section 3(2) and may consider the extent to which the person to whom the notice or order was issued gained any economic benefit as a result of a failure to comply. For any violation which continues for two (2) or more days and which is assigned more than seventy (70) points under Section 3 of this administrative regulation, the cabinet shall assess a civil penalty for a minimum of two (2) separate days.

(2) In addition to the civil penalty provided for in subsection (1) of this section, whenever a violation, condition or practice contained in a notice of noncompliance and order for remedial measures or order for cessation and immediate compliance has not been abated within the abatement period set in the notice or order, a civil penalty of not less than $750 shall be assessed for each day during which such failure continues according to the provisions of 405 KAR 7:092, Section 13(2).

Section 6. Waiver of Use of Point System to Determine Civil Penalty. (1) The cabinet upon its own initiative, or upon a written request by the person to whom the notice or order was issued that is received within fifteen (15) days of mailing of the proposed penalty assessment, may waive the use of the point system contained in Section 3 of this administrative regulation to set the civil penalty, if the cabinet determines that, taking into account exceptional factors present in the particular case, the penalty is demonstrably unjust. However, the cabinet shall not waive the use of the point system or reduce the proposed assessment on the basis of an argument that a reduction in the proposed penalty could be used to abate the violation, condition or practice. The basis for every waiver shall be fully explained and documented in the records of the case.

(2) If the cabinet waives the use of the point system, it shall use the criteria set forth in 405 KAR 7:092, Section 3(2) to determine the appropriate penalty. When the cabinet has elected to waive the use of the point system, it shall give a written explanation of the basis for the assessment made to the person to whom the notice or order was issued.

Section 7. Procedures for Assessment of Civil Penalties Document. "Procedures for Assessment of Civil Penalties", Kentucky Department for Surface Mining Reclamation and Enforcement, **January 6, 1995** [~~June 15, 1994~~], is hereby incorporated by reference. This document may be reviewed or a copy may be obtained at the Department for Surface Mining Reclamation and Enforcement, #2 Hudson Hollow, Frankfort, Kentucky, 40601, Monday through Friday, 8 a.m. through 4:30 p.m.

APPENDIX A OF 405 KAR 7:095

Penalty Schedule

Point	Dollars	Points	Dollars
1	20	36	1,600
2	40	37	1,700
3	60	38	1,800
4	80	39	1,900
5	100	40	2,000
6	120	41	2,100
7	140	42	2,200
8	160	43	2,300
9	180	44	2,400

10	200	45	2,500
11	220	46	2,600
12	240	47	2,700
13	260	48	2,800
14	280	49	2,900
15	300	50	3,000
16	320	51	3,100
17	340	52	3,200
18	360	53	3,300
19	380	54	3,400
20	400	55	3,500
21	420	56	3,600
22	440	57	3,700
23	460	58	3,800
24	480	59	3,900
25	500	60	4,000
26	600	61	4,100
27	700	62	4,200
28	800	63	4,300
29	900	64	4,400
30	1,000	65	4,500
31	1,100	66	4,600
32	1,200	67	4,700
33	1,300	68	4,800
34	1,400	69	4,900
35	1,500	70 and above	5,000

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 16:200. Revegetation.

RELATES TO: KRS 350.093, 350.095, 350.100, 350.405, 350.410, 350.420, 350.435, 350.465, 30 CFR Parts 730-733, 735, 816.111-.116, 917, 30 USC 1253, 1255, 1265

STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.100, 350.465, 30 CFR Parts 730-733, 735, 816.111-.116, 917, 30 USC 1253, 1255, 1265

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 sets forth requirements for revegetation of areas affected by surface mining activities, including requirements for temporary and permanent vegetative cover, use of introduced species, timing of revegetation, mulching and other soil stabilizing practices, standards for measuring revegetation success, and reporting requirements.

Section 1. General Requirements. (1)(a) Each permittee shall establish on all affected land a diverse, effective, and permanent vegetative cover that meets the requirements of this administrative regulation and the revegetation provisions of 405 KAR 16:180, and that supports the approved postmining land use.

(b) For prime farmland areas, the requirements of 405 KAR 20:040 shall apply in lieu of the productivity standards of this administrative regulation unless those areas are exempted by 405 KAR 8:050, Section 3, in which case the productivity standards of this administrative regulation shall apply.

(2) All revegetation shall be in compliance with the plans submitted under 405 KAR 8:030, Sections 24(4) and 37, as approved by the cabinet, and shall be carried out in a manner that encourages a prompt vegetative cover and recovery of productivity levels compatible with the approved postmining land use.

(3) If the approved postmining land use is not cropland or pastureland, all disturbed land except water areas, rock areas such as those used for drainage control and wildlife enhancement, and surface areas of roads that are approved as a part of the postmining land use or uses shall be seeded or planted to achieve a permanent vegetative cover of the same seasonal variety native to the region that is capable of soil stabilization, self-regeneration, and plant succession. The vegetative cover shall be considered of the same seasonal variety if it consists of a mixture of species of equal or superior utility for the approved postmining land use when compared with the utility of naturally occurring vegetation during each season of the year.

(4) If the postmining land use is cropland or pastureland, establishment of crops or pasture species normally grown in the mine vicinity and normal husbandry practices, and compliance with 405 KAR 16:180, Section 3(2) for cropland, will meet the requirements of subsection (1)(a) of this section.

(5)(a) Plant species used for revegetation shall be compatible with the plant and animal species of the area, and shall meet the requirements of applicable state and federal laws or regulations for seeds, poisonous and noxious plants, and introduced species.

(b) Except for cropland, selection of species, distribution patterns, seeding rates, and planting arrangements shall be approved case-by-case by the cabinet based upon this administrative regulation and TRM #21, "Plant Species, Distribution Patterns, Seeding Rates, and Planting Arrangements for Revegetation of Mined Lands", Kentucky Department of Fish and Wildlife Resources, Kentucky Department of Natural Resources, Division of Forestry, and Kentucky Department for Surface Mining Reclamation and Enforcement (**January 6, 1995** ~~[July 12, 1994]~~). ~~[TRM #20, "Methodologies for the Evaluation, Protection, and Enhancement of Fish and Wildlife Resources for Coal Mining and Reclamation Operations", Kentucky Department for Fish and Wildlife Resources and Kentucky Department for Surface Mining Reclamation and Enforcement (December 6, 1991).]~~ This document is incorporated by reference. It may be reviewed, copied, or obtained at the Department for Surface Mining Reclamation and Enforcement, #2 Hudson Hollow, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. through 4:30 p.m. Two (2) or more permanent legume species and two (2) or more permanent grasses shall be established on pastureland unless fewer species are approved by the cabinet based on a pasture management plan specifically tailored to the species mix.

(6) Subject to the approval of the cabinet, small incidental areas related to the fulfillment of the postmining land use may be exempted from the revegetation standards if no adverse environmental impact will occur if the exemption is granted.

(7) The extended liability period under the performance bond requirements of 405 KAR Chapter 10 shall begin after the last time of augmented seeding, fertilizing, irrigating, or other related work, and shall continue for not less than five (5) years; except:

(a) Discrete areas of 0.25 acre or less needing reseeding due to circumstances specified in subparagraphs 1 through 5 of this paragraph may be reseeded (including reliming, refertilizing, and remulching) without restarting the five (5) year liability period. The total acreage of these areas reseeded during the liability period shall not exceed three (3) percent of the permit area acreage. This paragraph shall only apply to:

1. Reseeding associated with repair of rills and gullies;

2. Reseeding areas where vegetation was disturbed by vehicular traffic not under the control of the permittee;

3. Reseeding areas where vegetation was disturbed by the

installation or removal of oil and gas wells or utility lines;

4. Reseeding areas where there was poor seed germination of the initial seeding; and

5. Reseeding areas where vegetation was unavoidably disturbed in the course of conducting some other necessary reclamation activity.

(b) Liming, fertilizing, mulching, seeding, or stocking of haul roads, locations where sedimentation ponds and off-site temporary diversions that divert water to or away from sedimentation ponds have been removed, and locations where collected sediment and embankment material from sedimentation pond removal have been disposed shall not restart the five (5) year liability period. Vegetation established in these areas shall be in place for at least two (2) years before Phase III bond release;

(c) For cropland, the five (5) year liability period shall commence at the date of initial planting for the long-term intensive agricultural postmining land use;

(d) Irrigating, reliming, and refertilizing cropland and pastureland; reseeding cropland; and renovating pastureland by overseeding with legumes after Phase II bond release and after three (3) years from the initial seeding shall be considered normal husbandry practices and shall not restart the liability period if the amount and frequency of these practices do not exceed normal agricultural practices used on unmined land within the region; and

(e) Other normal husbandry practices that may be conducted without restarting the liability period are disease, pest, and vermin control; pruning; and transplanting and replanting of trees and shrubs in accordance with Section 6 of this administrative regulation.

(8) For pastureland, and for cropland except prime farmland subject to 405 KAR 20:040, ground cover and productivity success standards shall be met during the growing seasons of any two (2) years of the liability period except the first year; and areas approved for other uses shall equal or exceed the applicable success standards during the growing season of the last year of the liability period.

Section 2. Use of Introduced Species. Introduced species may be substituted for native species only if approved by the cabinet under the following conditions:

(1) The species shall meet the applicable requirements of Section 1(2), (3), (4), and (5) of this administrative regulation.

(2)(a) Appropriate field trials or other studies shall be conducted or published literature shall be submitted to demonstrate to the satisfaction of the cabinet that proposed, unproven, introduced species are desirable and are necessary for achieving the postmining land use; or

(b) The species are necessary to achieve a quick, temporary, and stabilizing cover that aids in controlling erosion; and measures to establish permanent vegetation are included in the approved plan submitted under 405 KAR 8:030, Sections 24(4)(e) and 37.

Section 3. Timing. Seeding and planting of disturbed areas with permanent species shall be conducted no later than during the first normal period for favorable planting conditions after final preparation. The normal period for favorable planting shall be that planting time generally accepted locally, or as approved by the cabinet in the permit, for the type of plant materials selected. In accordance with Section 4 of this administrative regulation and 405 KAR 16:020, a disturbed area shall be seeded and mulched, as contemporaneously as practicable with the completion of backfilling and grading, to establish a temporary cover of small grains, grasses, or legumes until a permanent cover is established.

Section 4. Soil Amendments and Stabilization. (1) Nutrients and soil amendments shall be applied to regraded areas in accordance with 405 KAR 16:050, Section 5.

(2) Suitable mulch or other soil stabilizing practices shall be used in addition to temporary cover on all regraded and topsoiled areas to control erosion, to promote germination of seeds, and increase the moisture retention capacity of the soil. The cabinet may, on a case-by-case basis, waive the requirement for mulch if the cabinet finds, based on seasonal, soil, and slope factors, that the temporary vegetative cover will achieve proper erosion control until a permanent cover is established, except that no waiver shall be granted for any area having a slope greater than ten (10) percent.

(3) For areas within the permit boundary to be used as cropland, the area shall be seeded or planted in order to maintain a vegetative cover effective in controlling erosion until the permittee chooses to grow crops.

Section 5. Success Standards for Ground Cover and Productivity. (1) Determination of success of ground cover and productivity may be made on the basis of reference areas from unmined lands in the vicinity of the operation, where applicable, or by application of the specific ground cover and productivity standards of this section (tree and shrub stocking standards are set forth in Section 6 of this administrative regulation).

(2)(a) For an approved postmining land use of pastureland or cropland used for the production of hay (except prime farmland subject to 405 KAR 20:040);

1. Ground cover (percent) and productivity (tons of forage per acre) shall be at least ninety (90) percent of that of an approved reference area with a statistical confidence of ninety (90) percent; or

2. Ground cover shall be at least ninety (90) percent, and productivity shall be at least ninety (90) percent of the average yield for that hay in the county in the three (3) years prior to the year of measurement, as determined from "Kentucky Agricultural Statistics 1989-1990", [~~and~~] "Kentucky Agricultural Statistics 1990-1991", "Kentucky Agricultural Statistics 1991-1992", [~~and~~] "Kentucky Agricultural Statistics 1992-1993", **and Kentucky Agricultural Statistics 1993-1994",** with a statistical confidence of ninety (90) percent.

3. "Kentucky Agricultural Statistics 1989-1990" [~~and~~] "Kentucky Agricultural Statistics 1990-1991", "Kentucky Agricultural Statistics 1991-1992", [~~and~~] "Kentucky Agricultural Statistics 1992-1993", **and "Kentucky Agricultural Statistics 1993-1994",** Kentucky Agricultural Statistics Service, Kentucky Department of Agriculture, and National Agricultural Statistics Service, U.S Department of Agriculture, are incorporated by reference. These documents may be reviewed, copied, or obtained at the Department for Surface Mining Reclamation and Enforcement, #2 Hudson Hollow, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(b) For areas within the permit boundary where row crops will be planted (except prime farmland subject to 405 KAR 20:040);

1. Ground cover on any area not planted in row crops shall be at least ninety (90) percent with a statistical confidence of ninety (90) percent; and

2. Crop production shall be at least ninety (90) percent of that of an approved reference area or at least ninety (90) percent of the average yield for the crop in the county in the three (3) years prior to the year of measurement, as determined from "Kentucky Agricultural Statistics 1989-1990", "Kentucky Agricultural Statistics 1990-1991", "Kentucky Agricultural Statistics 1991-1992", [~~and~~] "Kentucky Agricultural Statistics 1992-1993", **and "Kentucky Agricultural Statistics 1993-1994",** [~~yield data available from the Kentucky Department of Agriculture,~~] with a statistical confidence of ninety (90) percent.

(c) Forest land, or other areas within the permit boundary where woody plants are stocked, shall have at least eighty (80) percent ground cover with a statistical confidence of ninety (90) percent, with no sign of significant erosion as set forth in 405 KAR 16:190, Section 6.

(d) For all other land uses, ground cover shall be at least eighty (80) percent with a statistical confidence of ninety (90) percent, with no sign of significant erosion as set forth in 405 KAR 16:190, Section

6.

(e) For all land uses other than cropland planted in row crops, at Phase III bond release there shall be no discrete bare area or sparsely covered (less than fifty (50) percent ground cover) area greater than 0.25 acre in size.

(3) For previously mined areas that were not reclaimed to the requirements of 405 KAR Chapters 16 through 20, the ground cover of living plants shall not be less than the ground cover existing before the redisturbance and shall be at least eighty (80) percent with a statistical confidence of ninety (90) percent, with no sign of significant erosion as set forth in 405 KAR 16:190, Section 6.

Section 6. Tree and Shrub Stocking. This section sets forth stocking standards and criteria for counting woody plants for measuring stocking success, and shall apply [applies] in addition to Section 5 of this administrative regulation, where the approved postmining land use or the approved fish and wildlife protection and enhancement plan requires the planting of trees or shrubs.

(1) If forest land is the [an] approved postmining land use, [:

~~(a) The forested area shall have~~] a minimum stocking density of 300 [450] trees or trees and shrubs per acre determined with a statistical confidence of ninety (90) percent, with tree (not shrub) species comprising at least seventy-five (75) [~~fifty (50)~~] percent of the total stock, shall be achieved on at least seventy (70) percent of the area stocked. [~~woody plant species;~~]

(a) For noncommercial (unmanaged) forest land, [~~(b)~~] at least four (4) species of trees or trees and shrubs shall be planted in a mixed distribution pattern [~~for noncommercial (unmanaged) forest land~~] with each of the four (4) species comprising at least ten (10) percent of the total stock; however, none of the species shall comprise more than fifty (50) percent of the total stock.

(b) [~~; and~~

~~(c)~~] For [~~areas to be used as~~] commercial (managed) forest land, at least seventy-five (75) percent of the total stock [~~woody plant stocking~~] shall be [~~with~~] tree (not shrub) species providing good to excellent commercial value. The species shall be selected from those listed in TRM #21 [~~20~~], except the cabinet may approve other species on a case-by-case basis.

(2) For other postmining land uses:

(a) If fish and wildlife is the postmining land use, at least thirty (30) percent of the area shall be planted in [~~comprised of~~] multiple rows or plots of trees or shrubs [~~if fish and wildlife is the postmining land use~~].

(b) For subareas within the permit boundary where trees or shrubs will be planted for the purpose of creating wildlife habitat (either for a fish and wildlife postmining land use or for fish and wildlife enhancement of other postmining land uses):

1. **The stocking density of woody plants shall be at least 300 plants per acre, including volunteers. At least four (4) species of trees or shrubs listed in Appendix A of TRM #21, including at least one (1) hard mast species, one (1) conifer species, and two (2) soft mast or shrub species, shall be present and the stocking densities of these species shall be at least ninety (90) hard mast plants per acre, thirty (30) conifer plants per acre, and thirty (30) plants per acre for each of the two (2) soft mast or shrub species. Stocking densities shall be determined with a statistical confidence of ninety (90) percent.** [~~The minimum stocking density [rate] shall be 300 [450] woody plants per acre, except the cabinet may approve a lesser stocking density if the specific stocking density and species are recommended by the Kentucky Department of Fish and Wildlife Resources for the permit area based upon site specific considerations and consist of at least 150 trees or shrubs per acre of recommended species, determined with a statistical confidence of ninety (90) percent;~~]

2. **In place of the requirements of subparagraph 1 of this paragraph the cabinet may, if requested by the applicant, approve stocking densities and woody plant species that are recommended by the Kentucky Department of Fish and Wildlife Resources for the permit area based upon site-specific considerations, except the stocking density of recommended species shall be at least 150 woody plants per acre, including volunteers. Stocking densities shall be determined with a statistical confidence of ninety (90) percent.** [~~At least six (6) [four (4)] species of trees or shrubs listed in Appendix A of TRM #21 or recommended by the Kentucky Department of Fish and Wildlife Resources for the permit area based upon site specific considerations shall be planted, including at least three (3) hard mast species, one (1) conifer species, and two (2) soft mast or shrub species, with each of the six (6) [four (4)] species comprising at least ten (10) percent of the total stock; however, none of the species shall comprise more than thirty (30) [fifty (50)] percent of the total stock; and~~]

3. Tree and shrub species shall be selected, grouped, and distributed in a manner which optimizes edge effect, cover, and food for wildlife.

4. This amendment to this paragraph shall apply to original applications for permits and applications for permit amendments submitted after the effective date of this amendment. Permits issued or applications submitted prior to the effective date of this amendment may be revised to comply fully with this paragraph.

(c) For subareas within the permit boundary where trees and shrubs will be planted for the purposes of creating recreation areas, green belts, fence rows, woodlots, or shelter belts for wildlife, or otherwise facilitating the postmining land use, the minimum stocking density [~~rate~~] shall be 300 [~~450~~] woody plants per acre, unless a lesser density is approved by the cabinet based on site-specific considerations.

(3) For determining tree or shrub stocking success for areas within the permit boundary to be stocked with woody plants, the following criteria shall apply:

(a) At Phase II bond release, each tree or shrub counted shall be alive and healthy and shall have been in place for not less than one (1) growing season. At Phase III bond release, each tree or shrub counted shall be alive and healthy and shall have been in place for not less than two (2) growing seasons:

(b) At Phase III bond release each tree or shrub counted shall have at least one-third (1/3) of its height in live crown;

(c) At Phase III bond release, only woody plants over one (1) foot in height shall be counted, and if multiple stems occur on the same plant, only the tallest stem shall be counted;

(d) Up to a cumulative twenty (20) percent of the woody plants needed to meet the approved stocking [~~standard of 450 per acre~~] may be replanted during the liability period without restarting the liability period;

(e) At Phase III bond release, at least eighty (80) percent of the trees and shrubs used to determine success shall have been in place for three (3) years or more; [~~and~~]

(f) Volunteer plants that meet all applicable requirements of this administrative regulation may be counted; and

(g) [~~(f)~~] Portions of the site occupied by approved rock areas, brush piles, permanent impoundments, permanent roads, and surface drainageways shall be excluded from the stocking success determinations.

Section 7. Use of Reference Areas. (1) Access.

(a) If the reference area is not under the control of the permittee, there shall be a written agreement between the permittee and the landowner specifying that the area may be used for the purposes of a reference area;

(b) The agreement shall also specify that representatives of the cabinet and OSM have right of entry for the purpose of observing and measuring vegetation; and

(c) The agreement shall be effective until final bond release on the permit area, and a copy of the agreement shall be submitted in the permit application.

(2) Selection and management.

(a) Reference areas shall be:

1. Located in unmined areas;

2. Of sufficient area to allow meaningful vegetation measurements and comparisons with the permit area;

3. As close to the permit area as practicable;

4. Representative of the geology, soil, and slope of the permit area, and have the same vegetative type or crops proposed for the postmining land use; and

5. Delineated on the vegetation map pursuant to 405 KAR 8:030, Section 19 or on another appropriate map.

(b) Management of the reference area shall be comparable to that which is required for the approved land use of the permit area.

Section 8. Planting Report. (1) Prior to or simultaneously with the submittal of an application for Phase I bond release on an area, the permittee shall file a certified planting report with the cabinet, on a form prescribed and furnished by the cabinet, giving the following information:

(a) Identification of the operation;

(b) The type of planting or seeding, including mixtures and amounts;

(c) The date of planting or seeding;

(d) The area of land planted or seeded; and

(e) Any other relevant information that the cabinet requires.

(2) A planting report as described in subsection (1) of this section shall also be submitted to the cabinet if any augmentive reseeding or replanting, or other augmentive work, is performed within the permit area.

Section 9. Measurement of Vegetation Success. (1) "TRM #19, Field Sampling Techniques for Determining Ground Cover, Productivity, and Stocking Success of Reclaimed Surface Mined Lands", Department for Surface Mining Reclamation and Enforcement, June 28, 1991, is hereby incorporated by reference. This document may be reviewed or obtained at the Department for Surface Mining Reclamation and Enforcement, #2 Hudson Hollow, Frankfort, Kentucky, 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(2) Ground cover and tree and shrub stocking shall be measured using the techniques outlined in TRM #19.

(3) Productivity for pastureland and cropland shall be measured by either:

(a) The techniques established in TRM #19 or alternatives approved under subsection (4) of this section; or

(b) Harvesting and weighing the entire crop or forage by the permittee to determine total yield from the entire permit area or the entire portion designated as cropland (including prime farmland) or pastureland. Representative samples shall be taken to determine moisture content. Procedures for determining total yields under this option shall be approved in advance by the cabinet[~~; or~~

~~(c) For cropland where hay is grown that is not prime farmland and for pastureland, harvesting and weighing by the permittee of the forage from a productivity test area that is an approved representative subarea of the area designated as pastureland or cropland, under subsection (6) of this section~~].

(4) The cabinet may approve alternative sampling and measurement techniques for productivity determinations in addition to those established by TRM #19 if:

(a) A complete description and justification of the methodology is submitted to the cabinet;

(b) The cabinet determines that use of the methodology would provide substantial benefit to the user in terms of cost, efficiency, or accuracy of measuring productivity;

(c) The methodology is determined by the cabinet to be procedurally and statistically valid and in compliance with this administrative regulation;

(d) Methodologies used for prime farmland shall be approved in consultation with SCS; and

(e) Alternative methodologies shall not be used unless they are approved by OSM.

(5) Measurements of ground cover, tree and shrub stocking, and productivity for Phase II and Phase III bond release shall be made by the cabinet, except the permittee may measure productivity.

(a) If the permittee intends to measure productivity, he shall notify the department's appropriate regional office of the measurement dates in order to provide the opportunity for cabinet personnel to observe the measurements. This notification shall be provided in writing at least thirty (30) days prior to the anticipated measurement dates and shall be provided by telephone or in person within two (2) days prior to the measurement dates.

(b) If the permittee measures productivity, he shall ensure that the measurements are made by qualified persons.

(c) The cabinet may make measurements or take other appropriate action as deemed necessary to verify measurements made by the permittee.

(6) [~~Productivity test area for cropland where hay is grown that is not prime farmland and for pastureland. If approved by the cabinet a permittee may determine productivity by mowing, baling and weighing the forage on a test area that is a representative subarea of the area designated as pastureland or cropland.~~

~~(a) The test area shall be one (1) contiguous subarea of the larger area to be represented; shall include ten (10) percent or more of the larger area but shall not be less than one (1) acre; shall be representative of the soil types, slopes and aspect of the larger area; and at the time of harvesting shall be representative of the vegetative species, ground cover, and extent of vegetative growth on the larger area.~~

~~(b) Prior to submitting an application for Phase II bond release the permittee shall submit a copy of the MRP map marked to show the proposed test area. The cabinet shall evaluate the proposed test area and shall notify the permittee in writing whether the proposed test area is approved. The approval shall be conditioned that fertilization and other management of the test area shall be the same as that of the larger area, and that at the time of harvesting the test area shall be representative of the vegetative species, ground cover, and extent of vegetative growth on the larger area. If the cabinet approves the test area the permittee shall physically mark the location of the test area with appropriate markers. The cabinet in its approval may specify the type of markers required.~~

~~(c) Within ten (10) working days of receipt of the written notice of anticipated measurement dates under subsection (5)(a) of this section, the cabinet shall inspect the area to determine if species composition, ground cover, and extent of vegetative growth on the test area are representative of the larger area. If the cabinet determines that the test area does not meet the applicable criteria, it shall promptly notify the permittee in writing and set forth the reasons for its determination. If the cabinet determines that the test area meets the applicable criteria, it shall promptly notify the permittee in writing that the test area may be harvested to determine productivity.~~

~~(d) The permittee shall mow, bale and weigh the yield from the test area, and shall ensure that the yield from the test area is kept separate from the yield from surrounding areas. Representative samples shall be taken to determine moisture content. Personnel of the cabinet may observe the mowing, baling and weighing and may take any reasonable actions necessary to verify the validity of those activities.~~

~~(e) The permittee shall submit the results of the yield measurements to the cabinet. The cabinet shall have the right to reject the results, in whole or in part, for good cause. The cabinet shall evaluate the results and shall notify the permittee in writing of the extent to which the results fulfill the requirement to demonstrate productivity for the larger area.~~

~~(7)~~] All crop and forage yields shall be adjusted to standard moisture content: fifteen (15) percent for pasture and hay, fifteen and

five-tenths (15.5) percent for corn, and twelve and five-tenths (12.5) percent for soybeans and wheat.

(7) [~~(8)~~] Whether measured by the cabinet or the permittee, vegetation success shall be measured prior to the submittal of an application for a Phase II or Phase III bond release.

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 18:200. Revegetation.

RELATES TO: KRS 350.093, 350.095, 350.100, 350.151, 350.405, 350.410, 350.420, 350.435, 350.465, 30 CFR Parts 730-733, 735, 817.111-.116, 917, 30 USC 1253, 1255, 1266

STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.100, 350.151, 350.465, 30 CFR Parts 730-733, 735, 817.111-.116, 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 sets forth requirements for revegetation of areas affected by surface operations and facilities of underground mining activities, including requirements for temporary and permanent vegetative cover, use of introduced species, timing of revegetation, mulching and other soil stabilizing practices, standards for measuring revegetation success, and reporting requirements.

Section 1. General Requirements. (1)(a) Each permittee shall establish on all areas affected by surface operations and facilities a diverse, effective, and permanent vegetative cover that meets the requirements of this administrative regulation and the revegetation provisions of 405 KAR 18:180, and that supports the approved postmining land use.

(b) For prime farmland areas, the requirements of 405 KAR 20:040 shall apply in lieu of the productivity standards of this administrative regulation unless those areas are exempted by 405 KAR 8:050, Section 3, in which case the productivity standards of this administrative regulation shall apply.

(2) All revegetation shall be in compliance with the plan submitted under 405 KAR 8:040, Sections 24(4) and 37, as approved by the cabinet, and shall be carried out in a manner that encourages a prompt vegetative cover and recovery of productivity levels compatible with the approved postmining land use.

(3) If the approved postmining land use is not cropland or pastureland, all disturbed land except water areas, rock areas such as those used for drainage control and wildlife enhancement, and surface areas of roads that are approved as a part of the postmining land use or uses shall be seeded or planted to achieve a permanent vegetative cover of the same seasonal variety native to the region that is capable of soil stabilization, self-regeneration, and plant succession. The vegetative cover shall be considered of the same seasonal variety if it consists of a mixture of species of equal or superior utility for the approved postmining land use, when compared with the utility of naturally occurring vegetation during each season of the year.

(4) If the postmining land use is cropland or pastureland, establishment of crops or pasture species normally grown in the mine vicinity and normal husbandry practices, and compliance with 405 KAR 18:180, Section 3(2) for cropland, will meet the requirements of subsection (1)(a) of this section.

(5)(a) Plant species used for revegetation shall be compatible with the plant and animal species of the area, and shall meet the requirements of applicable state and federal laws or regulations for seeds, poisonous and noxious plants, and introduced species.

(b) Except for cropland, selection of species, distribution patterns, seeding rates, and planting arrangements shall be approved case-by-case by the cabinet based upon this administrative regulation and TRM #21, "Plant Species, Distribution Patterns, Seeding Rates, and Planting Arrangements for Revegetation of Mined Lands", Kentucky Department of Fish and Wildlife Resources, Kentucky Department of Natural Resources, Division of Forestry, and Kentucky Department for Surface Mining Reclamation and Enforcement (**January 6, 1995** [~~July 12, 1994~~]). [~~TRM #20, "Methodologies for the Evaluation, Protection, and Enhancement of Fish and Wildlife Resources for Coal Mining and Reclamation Operations", Kentucky Department for Fish and Wildlife Resources and Kentucky Department for Surface Mining Reclamation and Enforcement (December 6, 1991).~~] This document is incorporated by reference. It may be reviewed, copied, or obtained at the Department for Surface Mining Reclamation and Enforcement, #2 Hudson Hollow, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Two (2) or more permanent legume species and two (2) or more permanent grasses shall be established on pastureland unless fewer species are approved by the cabinet based on a pasture management plan specifically tailored to the species mix.

(6) Subject to the approval of the cabinet, small incidental areas related to the fulfillment of the postmining land use may be exempted from the revegetation standards if no adverse environmental impact will occur if the exemption is granted.

(7) The extended liability period under the performance bond requirements of 405 KAR Chapter 10 shall begin after the last time of augmented seeding, fertilizing, irrigating, or other related work, and shall continue for not less than five (5) years; except:

(a) Discrete areas of 0.25 acre or less needing reseeding due to circumstances specified in subparagraphs 1 through 5 of this paragraph may be reseeded (including reliming, refertilizing, and remulching) without restarting the five (5) year liability period. The total acreage of these areas reseeded during the liability period shall not exceed three (3) percent of the acreage affected by surface operations and facilities. This paragraph shall only apply to:

1. Reseeding associated with repair of rills and gullies;

2. Reseeding areas where vegetation was disturbed by vehicular traffic not under the control of the permittee;

3. Reseeding areas where vegetation was disturbed by the installation or removal of oil and gas wells or utility lines;

4. Reseeding areas where there was poor seed germination of the initial seeding; and

5. Reseeding areas where vegetation was unavoidably disturbed in the course of conducting some other necessary reclamation activity.

(b) Liming, fertilizing, mulching, seeding, or stocking of haul roads, locations where sedimentation ponds and off-site temporary diversions that divert water to or away from sedimentation ponds have been removed, and locations where collected sediment and embankment material from sedimentation pond removal have been disposed shall not restart the five (5) year liability period. Vegetation established in these areas shall be in place for at least two (2) years before Phase III bond release;

(c) For cropland, the five (5) year liability period shall commence at the date of initial planting for the long-term intensive agricultural postmining land use;

(d) Irrigating, reliming, and refertilizing cropland and pastureland; reseeding cropland; and renovating pastureland by overseeding with

legumes after Phase II bond release and after three (3) years from the initial seeding shall be considered normal husbandry practices and shall not restart the liability period, if the amount and frequency of these practices do not exceed normal agricultural practices used on unmined land within the region; and

(e) Other normal husbandry practices that may be conducted without restarting the liability period are disease, pest, and vermin control; pruning; and transplanting and replanting of trees and shrubs in accordance with Section 6 of this administrative regulation.

(8) For pastureland, and for cropland except prime farmland subject to 405 KAR 20:040, ground cover and productivity success standards shall be met during the growing seasons of any two (2) years of the liability period except the first year; and areas approved for other uses shall equal or exceed the applicable success standards during the growing season of the last year of the liability period.

Section 2. Use of Introduced Species. Introduced species may be substituted for native species only if approved by the cabinet under the following conditions:

(1) The species shall meet the applicable requirements of Section 1(2), (3), (4), and (5) of this administrative regulation.

(2)(a) Appropriate field trials or other studies shall be conducted or published literature shall be submitted to demonstrate to the satisfaction of the cabinet that proposed, unproven, introduced species are desirable and are necessary for achieving the postmining land use; or

(b) The species are necessary to achieve a quick, temporary, and stabilizing cover that aids in controlling erosion; and measures to establish permanent vegetation are included in the approved plans submitted under 405 KAR 8:040, Sections 24(4)(e) and 37.

Section 3. Timing. Seeding and planting of disturbed areas with permanent species shall be conducted no later than during the first normal period for favorable planting conditions after final preparation. The normal period for favorable planting shall be that planting time generally accepted locally, or as approved by the cabinet in the permit, for the type of plant materials selected. In accordance with Section 4 of this administrative regulation and 405 KAR 18:020, a disturbed area shall be seeded and mulched, as contemporaneously as practicable with the completion of backfilling and grading, to establish a temporary cover of small grains, grasses, or legumes until a permanent cover is established.

Section 4. Soil Amendments and Stabilization. (1) Nutrients and soil amendments shall be applied to regraded areas in accordance with 405 KAR 18:050, Section 5.

(2) Suitable mulch or other soil stabilizing practices shall be used in addition to temporary cover on all regraded and topsoiled areas to control erosion, promote germination of seeds, and increase the moisture retention capacity of the soil. The cabinet may, on a case-by-case basis, waive the requirement for mulch if the cabinet finds, based on seasonal, soil, and slope factors, that the temporary vegetative cover will achieve proper erosion control until a permanent cover is established, except that no waiver shall be granted for any area having a slope greater than ten (10) percent.

(3) For areas within the area affected by surface operations and facilities to be used as cropland, the area shall be seeded or planted in order to maintain a vegetative cover effective in controlling erosion until the permittee chooses to grow crops.

Section 5. Success Standards for Ground Cover and Productivity. (1) Determination of success of ground cover and productivity may be made on the basis of reference areas from unmined lands in the vicinity of the operation, where applicable, or by application of the specific ground cover and productivity standards of this section (tree and shrub stocking standards are set forth in Section 6 of this administrative regulation).

(2)(a) For an approved postmining land use of pastureland or cropland used for the production of hay (except prime farmland subject to 405 KAR 20:040);

1. Ground cover (percent) and productivity (tons of forage per acre) shall be at least ninety (90) percent of that of an approved reference area with a statistical confidence of ninety (90) percent; or

2. Ground cover shall be at least ninety (90) percent, and productivity shall be at least ninety (90) percent of the average yield for that hay in the county in the three (3) years prior to the year of measurement, as determined from "Kentucky Agricultural Statistics 1989-1990", "Kentucky Agricultural Statistics 1990-1991", "Kentucky Agricultural Statistics 1991-1992", [~~and~~] "Kentucky Agricultural Statistics 1992-1993", **and "Kentucky Agricultural Statistics 1993-1994",** [~~yield data available from the Kentucky Department of Agriculture,~~] with a statistical confidence of ninety (90) percent.

3. "Kentucky Agricultural Statistics 1989-1990", "Kentucky Agricultural Statistics 1990-1991", "Kentucky Agricultural Statistics 1991-1992", [~~and~~] "Kentucky Agricultural Statistics 1992-1993", **and "Kentucky Agricultural Statistics 1993-1994",** Kentucky Agricultural Statistics Service, Kentucky Department of Agriculture, and National Agricultural Statistics Service, United States Department of Agriculture, are incorporated by reference. These documents may be reviewed, copied, or obtained at the Department for Surface Mining Reclamation and Enforcement, #2 Hudson Hollow, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. through 4:30 p.m.

(b) For areas within the area affected by surface operations and facilities where row crops will be planted (except prime farmland subject to 405 KAR 20:040):

1. Ground cover on any area not planted in row crops shall be at least ninety (90) percent with a statistical confidence of ninety (90) percent; and

2. Crop production shall be at least ninety (90) percent of that of an approved reference area or at least ninety (90) percent of the average yield for the crop in the county in the three (3) years prior to the year of measurement, as determined from "Kentucky Agricultural Statistics 1989-1990", "Kentucky Agricultural Statistics 1990-1991", "Kentucky Agricultural Statistics 1991-1992", [~~and~~] "Kentucky Agricultural Statistics 1992-1993", **and "Kentucky Agricultural Statistics 1993-1994",** [~~yield data available from the Kentucky Department of Agriculture,~~] with a statistical confidence of ninety (90) percent.

(c) Forest land, or other areas within the area affected by surface operations and facilities where woody plants are stocked, shall have at least eighty (80) percent ground cover with a statistical confidence of ninety (90) percent, with no sign of significant erosion as set forth in 405 KAR 18:190, Section 4.

(d) For all other land uses, ground cover shall be at least eighty (80) percent with a statistical confidence of ninety (90) percent, with no sign of significant erosion as set forth in 405 KAR 18:190, Section 4.

(e) For all land uses other than cropland planted in row crops, at Phase III bond release there shall be no discrete bare area or sparsely covered (less than fifty (50) percent ground cover) area greater than 0.25 acre in size.

(3) For previously mined areas that were not reclaimed to the requirements of 405 KAR Chapters 16 through 20, the ground cover of living plants shall not be less than the ground cover existing before the redisturbance and shall be at least eighty (80) percent with a statistical confidence of ninety (90) percent, with no sign of significant erosion as set forth in 405 KAR 18:190, Section 4.

Section 6. Tree and Shrub Stocking. This section sets forth stocking standards and criteria for counting woody plants for measuring stocking success, and shall apply [~~applies~~] in addition to Section 5 of this administrative regulation, where the approved postmining land use or the approved fish and wildlife protection and enhancement plan requires the planting of trees or shrubs.

(1) If forest land is the [an] approved postmining land use, [:

~~(a) The forested area shall have~~] a minimum stocking density of 300 [450] trees or trees and shrubs per acre determined with a statistical confidence of ninety (90) percent, with tree (not shrub) species comprising at least seventy-five (75) [~~fifty (50)~~] percent of the total stock, shall be achieved on at least seventy (70) percent of the area stocked. [~~woody plant species;~~]

(a) For noncommercial (unmanaged) forest land, [~~(b)~~] at least four (4) species of trees or trees and shrubs shall be planted in a mixed distribution pattern [~~for noncommercial (unmanaged) forest land~~] with each of the four (4) species comprising at least ten (10) percent of the total stock; however, none of the species shall comprise more than fifty (50) percent of the total stock. [~~; and~~]

(b) [~~(c)~~] For [~~areas to be used as~~] commercial (managed) forest land, at least seventy-five (75) percent of the total stock [~~woody plant stocking~~] shall be [~~with~~] tree (not shrub) species providing good to excellent commercial value. The species shall be selected from those listed in TRM #21 [~~20~~], except the cabinet may approve other species on a case-by-case basis.

(2) For other postmining land uses:

(a) If fish and wildlife is the postmining land use, at least thirty (30) percent of the area shall be planted in [~~comprised of~~] multiple rows or plots of trees or shrubs [~~if fish and wildlife is the postmining land use~~].

(b) For subareas within the area affected by surface operations and facilities where trees or shrubs will be planted for the purpose of creating wildlife habitat (either for a fish and wildlife postmining land use or for fish and wildlife enhancement of other postmining land uses):

1. **The stocking density of woody plants shall be at least 300 plants per acre, including volunteers. At least four (4) species of trees or shrubs listed in Appendix A of TRM #21, including at least one (1) hard mast species, one (1) conifer species, and two (2) soft mast or shrub species, shall be present and the stocking densities of these species shall be at least ninety (90) hard mast plants per acre, thirty (30) conifer plants per acre, and thirty (30) plants per acre for each of the two (2) soft mast or shrub species. Stocking densities shall be determined with a statistical confidence of ninety (90) percent.** [~~The minimum stocking density [rate] shall be 300 [450] woody plants per acre, except the cabinet may approve a lesser stocking density if the specific stocking density and species are recommended by the Kentucky Department of Fish and Wildlife Resources for the permit area based upon site specific considerations and consist of at least 150 trees or shrubs per acre of recommended species, determined with a statistical confidence of ninety (90) percent;~~]

2. **In place of the requirements of subparagraph 1 of this paragraph the cabinet may, if requested by the applicant, approve stocking densities and woody plant species that are recommended by the Kentucky Department of Fish and Wildlife Resources for the permit area based upon site-specific considerations, except the stocking density of recommended species shall be at least 150 woody plants per acre, including volunteers. Stocking densities shall be determined with a statistical confidence of ninety (90) percent.** [~~At least six (6) [four (4)] species of trees or shrubs listed in Appendix A of TRM #21 or recommended by the Kentucky Department of Fish and Wildlife resources for the permit area based upon site specific considerations shall be planted, including at least three (3) hard mast species, one (1) conifer species, and two (2) soft mast or shrub species, with each of the six (6) [four (4)] species comprising at least ten (10) percent of the total stock; however, none of the species shall comprise more than thirty (30) [fifty (50)] percent of the total stock; and~~]

3. Tree and shrub species shall be selected, grouped, and distributed in a manner which optimizes edge effect, cover, and food for wildlife.

4. This amendment to this paragraph shall apply to original applications for permits and applications for permit amendments submitted after the effective date of this amendment. Permits issued or applications submitted prior to the effective date of this amendment may be revised to comply fully with this paragraph.

(c) For subareas within the area affected by surface operations and facilities where trees and shrubs will be planted for the purposes of creating recreation areas, green belts, fence rows, woodlots, or shelter belts for wildlife, or otherwise facilitating the postmining land use, the minimum stocking density [~~rate~~] shall be 300 [450] woody plants per acre, unless a lesser density is approved by the cabinet based on site-specific considerations.

(3) For determining tree or shrub stocking success for areas within the area affected by surface operations and facilities to be stocked with woody plants, the following criteria shall apply:

(a) At Phase II bond release, each tree or shrub counted shall be alive and healthy and shall have been in place for not less than one (1) growing season. At Phase III bond release, each tree or shrub counted shall be alive and healthy and shall have been in place for not less than two (2) growing seasons:

(b) At Phase III bond release each tree or shrub counted shall have at least one-third (1/3) of its height in live crown;

(c) At Phase III bond release, only woody plants over one (1) foot in height shall be counted, and if multiple stems occur on the same plant, only the tallest stem shall be counted;

(d) Up to a cumulative twenty (20) percent of the woody plants needed to meet the approved stocking [~~standard of 450 per acre~~] may be replanted during the liability period without restarting the liability period;

(e) At Phase III bond release, at least eighty (80) percent of the trees and shrubs used to determine success shall have been in place for three (3) years or more; [~~and~~]

(f) Volunteer plants that meet all applicable requirements of this administrative regulation may be counted; and

(g) [~~(f)~~] Portions of the site occupied by approved rock areas, brush piles, permanent impoundments, permanent roads, and surface drainageways shall be excluded from the stocking success determinations.

Section 7. Use of Reference Areas. (1) Access.

(a) If the reference area is not under the control of the permittee, there shall be a written agreement between the permittee and the landowner specifying that the area may be used for the purposes of a reference area;

(b) The agreement shall also specify that representatives of the cabinet and OSM have right of entry for the purpose of observing and measuring vegetation; and

(c) The agreement shall be effective until final bond release on the permit area, and a copy of the agreement shall be submitted in the permit application.

(2) Selection and management.

(a) Reference areas shall be:

1. Located in unmined areas;

2. Of sufficient area to allow meaningful vegetation measurements and comparisons with the area affected by surface operations and facilities;

3. As close to the area affected by surface operations and facilities as practicable;

4. Representative of the geology, soil, and slope of the area affected by surface operations and facilities, and have the same vegetative type or crops proposed for the postmining land use; and

5. Delineated on the vegetation map pursuant to 405 KAR 8:040, Section 19 or on another appropriate map.

(b) Management of the reference area shall be comparable to that which is required for the approved land use of the area affected by surface operations and facilities.

Section 8. Planting Report. (1) Prior to or simultaneously with the

submittal of an application for Phase I bond release on an area, the permittee shall file a certified planting report with the cabinet, on a form prescribed and furnished by the cabinet, giving the following information:

(a) Identification of the operation;

(b) The type of planting or seeding, including mixtures and amounts;

(c) The date of planting or seeding;

(d) The area of land planted or seeded; and

(e) Any other relevant information that the cabinet requires.

(2) A planting report as described in subsection (1) of this section shall also be submitted to the cabinet if any augmentive reseeding or replanting, or other augmentive work, is performed within the area affected by surface operations and facilities.

Section 9. Measurement of Vegetation Success. (1) Ground cover and tree and shrub stocking shall be measured using the techniques outlined in TRM #19. TRM #19, "Field Sampling Techniques for Determining Ground Cover, Productivity, and Stocking Success of Reclaimed Surface Mined Lands", Department for Surface Mining Reclamation and Enforcement, June 28, 1991, is incorporated by reference. It may be reviewed, copied, or obtained at the Department for Surface Mining Reclamation and Enforcement, #2 Hudson Hollow, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(2) Productivity for pastureland and cropland shall be measured by either:

(a) The techniques established in TRM #19 or alternatives approved under subsection (3) of this section;

(b) Harvesting and weighing the entire crop or forage by the permittee to determine total yield from the entire surface operations and facilities area or the entire portion designated as cropland (including prime farmland) or pastureland. Representative samples shall be taken to determine moisture content. Procedures for determining total yields under this option shall be approved in advance by the cabinet[~~; or~~

~~(c) For cropland where hay is grown that is not prime farmland and for pastureland, harvesting and weighing by the permittee of the forage from a productivity test area that is an approved representative subarea of the area designated as pastureland or cropland, under subsection (5) of this section~~].

(3) The cabinet may approve alternative sampling and measurement techniques for productivity determinations in addition to those established by TRM #19 if:

(a) A complete description and justification of the methodology is submitted to the cabinet;

(b) The cabinet determines that use of the methodology would provide substantial benefit to the user in terms of cost, efficiency, or accuracy of measuring productivity;

(c) The methodology is determined by the cabinet to be procedurally and statistically valid and in compliance with this administrative regulation;

(d) Methodologies used for prime farmland shall be approved in consultation with SCS; and

(e) Alternative methodologies shall not be used unless they are approved by OSM.

(4) Measurements of ground cover, tree and shrub stocking, and productivity for Phase II and Phase III bond release shall be made by the cabinet, except the permittee may measure productivity.

(a) If the permittee intends to measure productivity, he shall notify the department's appropriate regional office of the measurement dates in order to provide the opportunity for cabinet personnel to observe the measurements. This notification shall be provided in writing at least thirty (30) days prior to the anticipated measurement dates and shall be provided by telephone or in person within two (2) days prior to the measurement dates.

(b) If the permittee measures productivity, he shall ensure that the measurements are made by qualified persons.

(c) The cabinet may make measurements or take other appropriate action as deemed necessary to verify measurements made by the permittee.

(5) [~~Productivity test area for cropland where hay is grown that is not prime farmland and for pastureland. If approved by the cabinet a permittee may determine productivity by mowing, baling and weighing the forage on a test area that is a representative subarea of the area designated as pastureland or cropland.~~

~~(a) The test area shall be one (1) contiguous subarea of the larger area to be represented; shall include ten (10) percent or more of the larger area but shall not be less than one (1) acre; shall be representative of the soil types, slopes and aspect of the larger area; and at the time of harvesting shall be representative of the vegetative species, ground cover, and extent of vegetative growth on the larger area.~~

~~(b) Prior to submitting an application for Phase II bond release the permittee shall submit a copy of the MRP map marked to show the proposed test area. The cabinet shall evaluate the proposed test area and shall notify the permittee in writing whether the proposed test area is approved. The approval shall be conditioned that fertilization and other management of the test area shall be the same as that of the larger area, and that at the time of harvesting the test area shall be representative of the vegetative species, ground cover, and extent of vegetative growth on the larger area. If the cabinet approves the test area the permittee shall physically mark the location of the test area with appropriate markers. The cabinet in its approval may specify the type of markers required.~~

~~(c) Within ten (10) working days of receipt of the written notice of anticipated measurement dates under subsection (4)(a) of this section, the cabinet shall inspect the area to determine if species composition, ground cover, and extent of vegetative growth on the test area are representative of the larger area. If the cabinet determines that the test area does not meet the applicable criteria, it shall promptly notify the permittee in writing and set forth the reasons for its determination. If the cabinet determines that the test area meets the applicable criteria, it shall promptly notify the permittee in writing that the test area may be harvested to determine productivity.~~

~~(d) The permittee shall mow, bale and weigh the yield from the test area, and shall ensure that the yield from the test area is kept separate from the yield from surrounding areas. Representative samples shall be taken to determine moisture content. Personnel of the cabinet may observe the mowing, baling and weighing and may take any reasonable actions necessary to verify the validity of these activities.~~

~~(e) The permittee shall submit the results of the yield measurements to the cabinet. The cabinet shall have the right to reject the results, in whole or in part, for good cause. The cabinet shall evaluate the results and shall notify the permittee in writing of the extent to which the results fulfill the requirement to demonstrate productivity for the larger area.~~

~~(6)~~] All crop and forage yields shall be adjusted to standard moisture content: fifteen (15) percent for pasture and hay, fifteen and five-tenths (15.5) percent for corn, and twelve and five- tenths (12.5) percent for soybeans and wheat.

(6) [~~(7)~~] Whether measured by the cabinet or the permittee, vegetation success shall be measured prior to the submittal of an application for a Phase II or Phase III bond release.

PHILLIP J. SHEPHERD, Secretary
APPROVED BY AGENCY: October 14, 1994
FILED WITH LRC: October 14, 1994 at noon

EDUCATION, ARTS, AND HUMANITIES CABINET
Kentucky Authority for Educational Television
(As Amended)

700 KAR 2:010. Gubernatorial forums or debates.

RELATES TO: KRS 121A.100
STATUTORY AUTHORITY: KRS 121A.100
NECESSITY AND FUNCTION: KRS 121A.100 provides that a qualifying slate of candidates that receives public funds shall participate in a reasonable number of televised debates or forums and requires KET to promulgate administrative regulations to establish the procedures to manage the debates or forums.

Section 1. Definitions. "Candidate" means a person seeking either a political party's gubernatorial or Lieutenant Governor nomination in a primary or runoff election or the office of Governor or Lieutenant Governor in a general election and who:

(1) Is required by KRS 121A.100(1) to participate in a televised forum or debate;

(2) Has satisfied the requirements under KRS Chapter 121A to obtain public financing but has declined to receive any public funding; or

(3) Has qualified to have his name appear on an election ballot and is actively conducting a substantial statewide campaign to obtain a political party's nomination in a primary election or be elected in a general election.

Section 2. Primary, Runoffs and General Elections. (1) The Kentucky Authority for Educational Television (KET) shall notify gubernatorial and Lieutenant Governor candidates, in writing, of the number of forums or debates to be held at the KET studio, no less than sixty (60) days prior to the:

(a) May primary elections; and

(b) November general election.

(2) The number of forums or debates shall be based on the number of slates of candidates seeking nomination or election to the offices of Governor and Lieutenant Governor and the limitations contained in KRS 121A.100(1).

(3) Formats for each of the democratic and republican primary election programs shall be designed according to the number of candidates participating in the forum or debate.

(4) If there is a runoff primary election, KET shall schedule one (1) gubernatorial forum or debate to be held two (2) weeks prior to the runoff primary date.

Section 3. (1) Prior to the primaries, runoff and general elections, KET shall schedule separate forums or debates for the candidates for Lieutenant Governor.

(2) The forums or debates for candidates for Lieutenant Governor shall follow the guidelines established by the provisions of this administrative regulation.

Section 4. (1) No less than thirty (30) days prior to the primary and general elections, and fifteen (15) days prior to a runoff primary election, KET shall notify each candidate in writing prior to the broadcast of the:

(a) Date, location and time of the live scheduled broadcast;

(b) Length of the broadcast;

(c) Format of the broadcast; and

(d) That the candidate shall submit accurate and thorough biographical information from which introductions may be made by the program host.

(2) No less than one (1) week prior to the broadcast, KET shall notify the candidates in writing of the:

(a) Names of candidates participating in the KET program;

(b) Location of each candidate on the studio set;

(c) Details describing how the studio set will be arranged; and

(d) If applicable, the names of the journalists scheduled to participate in the forum or debate.

(3) Participating journalists shall be:

(a) Selected by KET; and

(b) Representative of the Kentucky print and electronic media.

(4) If a journalist is unable to participate in the scheduled program, KET shall select a substitute journalist.

Section 5. (1) On the day of the broadcast:

(a) KET may elect to inform or brief candidates about issues or topics to be discussed in advance of the scheduled air time. If KET designates a format which includes briefing candidates in advance of the air time, it shall:

1. Notify each candidate in writing of the topics or issues to be discussed; and

2. Designate the initial round, or subsequent rounds, to which the issue or topic relates.

(b) The candidates shall be instructed how studio time cues shall be given by KET technical personnel during the broadcast. A timekeeper and visual warning device shall be provided.

(c) On the afternoon of the broadcast, each candidate or a representative shall be allowed fifteen (15) minutes to inspect the studio set.

(2) During the broadcast candidates shall not:

(a) Hold, wear, or use any props such as visual materials, charts, photographs, articles or similar items.

(b) Wear campaign pins or name identification pins; or

(c) Bring prepared notes for use during the program. Paper and pen shall be available for note-taking during the program.

(3)(a) The KET studio shall not be open during the program broadcast to members of the general public who are not participating in the debate or forum.

(b) A limited number of guests of the candidates, as determined by KET, shall be provided seating in the KET Visitor's Center to view the program on television monitors.

(c) The number of participating candidates and availability of seating space shall determine how many guests each candidate may request to be present.

(4) Members of the electronic and print media shall:

(a) Not be allotted time while the candidates are in the KET studio prior to the broadcast to conduct interviews with the candidates;

(b) Be allowed in the studio during the program contingent upon availability of space;

(c) Have access to the KET Network Center where audio and video feeds are available; and

(d) Be permitted to question candidates who agree to an interview after the broadcast.

(5) The televised candidate forum or debate shall air live from the KET studios in Lexington at a time specified in the notice required in Section **4(1)** ~~[1(1)]~~ of this administrative regulation.

(a) Candidates shall be notified in writing of their requested arrival time at the KET Network Center.

(b) The total number of participating candidates shall determine the amount of time needed for prebroadcast activities.

(c) Designated prebroadcast time shall be used for:

1. Candidate make-up;

2. Review of format and guidelines; and

3. Random drawing to determine the order in which candidates shall speak.

(d) A KET makeup artist shall be available for forum or debate participants.

(e) If a forum or debate participant does not wish to use a KET makeup artist, he shall notify KET at least twenty-four (24) hours prior to the broadcast.

(6)(a) **Upon written request, one (1) VHS video tape copy of the** KET televised candidate forums or debates shall be **provided,**

free of charge, [offered] to each [the electronic] media organization across the Commonwealth for simulcast or rebroadcast. **All other requests shall be submitted and processed under the provisions of KRS 61.870 through 61.884.**

(b) A delayed broadcast shall be aired:

1. Within seven (7) days of the original broadcast; and

2. As an uninterrupted program without commercial sponsorship.

(7) The program shall be broadcast with closed captioning for the deaf and hearing impaired.

(8) KET shall make all necessary accommodations for candidates with disabilities.

(9) KET shall select the location if remote site viewing is utilized by KET for citizen participation in the program via satellite or microwave transmission.

[(10) VHS tapes of the broadcast may be purchased from KET.]

Section 6. The forum or debate host or moderator shall:

(1) Be selected by KET fifteen (15) days prior to the program;

(2) Impartially insure that the candidates follow the program guidelines and format;

(3) Open and close the program;

(4) Introduce the participants and briefly explain the rules; and

(5) Insure that candidates' answers and statements are made within the allotted times.

Section 7. Format for Debates or Forums. (1) Formats for the debates or forums may include a combination of the following elements:

(a) Opening statements delivered by the candidates;

(b) Questions posed directly to the candidates by representatives of the electronic and print media;

(c) Questions posed directly to the candidates by members of the audience;

(d) Questions submitted by members of the general public and posed by the program host;

(e) Questions posed by opposing candidates;

(f) Informal cross talk between opposing candidates about an issue introduced by the program host;

(g) Timed statements and rebuttals between opposing candidates; and

(h) Closing statements delivered by the candidates.

(2)(a) Candidates shall be initially introduced by their title, if any.

(b) Thereafter, candidates shall be addressed as Mr., Mrs., Miss, or Ms., according to the candidate's preference.

(3) Duration of program elements and time allotted each candidate for statements or responses shall be based on the number of participating candidates.

(4) Members of the general public may participate in the forum or debate through any one (1) of the following:

(a) Live presence in the KET studios;

(b) Live presence at a remote location transmitted to the candidates by satellite or microwave;

(c) Videotaped questions recorded by KET earlier and presented to the candidates during the forum or debate;

(d) Recorded questions phoned in to KET in advance of the forum or debate and played back on air or relayed by the program host; or

(e) Written questions received by KET in advance of the forum or debate and read by the program host.

W. TERRY MCBRAYER, Chairman

APPROVED BY AGENCY: December 6, 1994

FILED WITH LRC: December 12, 1994 at 11 a.m.

COMPILER'S NOTE: The following iadministrative regulation, 803 KAR 25:091, was amended by the Interim Joint Committee on Labor and Industry and the promulgating agency, and became effective on February 9, 1995.

LABOR CABINET
Department of Workers' Claims
(As Amended)

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 and who is paid by the hospital.

(3) "Independent practitioner" means any physician or other practitioner who performs services that are covered by the Workers' Compensation Medical Fee Schedule for Physicians on a contract basis and who is not a regular employee of the hospital. [[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 base cost-to-charge ratio is determined by dividing [The calculation for cost shall

~~be~~] the net expenses for allocation as reflected on Worksheet A, Column 7, Line 95, **plus the costs of hospital-based physicians and nonphysician anesthetists reflected on lines 12, 13, and 35 of Worksheet A-8,** [~~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 obligors 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 commissioner [~~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 who does not receive direct compensation from the contracting hospital 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~~]. An independent practitioner who is directly compensated for services by the contracting hospital shall not bill for the service, but shall be compensated pursuant to the practitioner's agreement with the hospital. The hospital may bill for the professional component of the service under the Workers' Compensation Medical Fee Schedule for Physicians in these circumstances.

(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 PROTECTION AND REGULATION CABINET
Kentucky Racing Commission
(As Amended)

810 KAR 1:032. Breeders' Award Program.

RELATES TO: KRS 230.217
STATUTORY AUTHORITY: KRS 230.260(3), (6)
NECESSITY AND FUNCTION: KRS 230.217 requires the Commission to establish a Breeders' Award Program with criteria suitable to disburse the receipts from the Breeders' Award Fund as generated by the funding mechanism created by KRS 230.380.

Section 1. Definitions. (1) "Breeder" means the owner of the dam of a runner at the time the runner was foaled in Kentucky unless the dam was under a lease or foal-sharing agreement at the time of foaling. If there was a lease or foal-sharing agreement, the person that is specified by the lease or agreement shall be considered the breeder. For implementation of this subsection, the records of the Jockey Club shall be used as the official records.

(2) "Purse" means a prize awarded on race day as a result of competing in a live race in Kentucky:

(a) Including:

1. Winnings paid by the track;
2. Entry fees;
3. Kentucky Thoroughbred Development supplements;
4. Corporate supplements; and
5. Breeders' Cup supplements, excluding purses won in Breeders' Cup championship races; and

(b) Excluding bonus supplements that are awarded as a result of multirace winnings.

(3) "Runner" means a thoroughbred horse who is both foaled in Kentucky and sired by a Kentucky Thoroughbred Development Fund registered stallion which was registered with the Kentucky Thoroughbred Development Fund by December 31 of the year the runner was bred and which competes in races conducted in Kentucky. For implementation of this subsection relating to sires, the records of the Kentucky thoroughbred owners and breeders shall be official.

(4) "Stallion" for the purposes of determining the recipient of stallion awards means the sire of a runner provided the stallion is registered no later than December 31 in the year the runner was bred with the Kentucky Thoroughbred Development Fund pursuant to the provisions of KRS 230.400(5)(a). Additionally, the stallion shall be in Kentucky on December 31 and have covered mares in Kentucky during the year the awards were earned unless the stallion was retired, dead, or moved temporarily to the Southern Hemisphere after covering mares in Kentucky during the regular Northern Hemisphere breeding season, in which case he shall be returned to Kentucky for the following year's breeding season no later than March 1st. In the case of a retired or a deceased stallion, he shall have stood in Kentucky and covered mares in his last active year of breeding.

(5) "Stallion owner" means the owner of the sire of a runner when the breeding of the runner on December 31 in the year the awards were earned based on purse money in Kentucky. ~~[took place according to the records of the Jockey Club.]~~

Section 2. Stallion and Dam Awards. The available Breeders' Award Funds shall be apportioned with eighty (80) percent being allocated to the breeders and twenty (20) percent being allocated to the owners of the stallions.

Section 3. Timing of Awards. (1) Disbursements from the Breeders' Award Fund shall be made as soon as is practicable after the end of each calendar year.

(2) Awards made in 1994 shall be based on purses according to Section 1 of this administrative regulation in the 1993 calendar year.

(3) For awards earned in 1993 and distributed in 1994, the calculation shall be restricted to purses of runners from the foal crop of 1991 who ran as two (2) year olds in 1993.

(4) For awards earned in 1994 and distributed in 1995, the calculation shall be restricted to purses of runners from the foal crops of 1991 and 1992.

(5) For awards distributed each year after 1995, the calculation shall include one (1) additional year's foal crop and allow for awards to one (1) additional age group of runners.

Section 4. Calculation. (1) Funds available in the state account as of December 31 in each year preceding the actual awards shall be apportioned according to the provisions of Section 2 of this administrative regulation.

(2) Records of purse winnings for all runners shall be obtained from the Jockey Club restricted to the runners' age groups scheduled to benefit from the awards according to Section 3 of this administrative regulation.

(3) The funds apportioned to breeders shall be awarded by:

(a) Assigning the individual runner's purses to the breeder if the runner was foaled in Kentucky and sired by a registered Kentucky stallion;

(b) Dividing the individual breeder's assigned winnings from each runner by the total of all assigned winnings to breeders from all runners; then

(c) Multiplying the ratio from paragraph (b) of this subsection times the total to be awarded to breeders pursuant to the split in Section 2 of this administrative regulation. This product shall be awarded to the breeder.

(4) The funds apportioned to stallion owners shall be awarded by:

(a) Assigning the individual runner's purses to the stallion if the runner was sired by a registered Kentucky stallion and foaled in Kentucky;

(b) Dividing the individual stallion's assigned winnings by the total of all assigned winnings to registered Kentucky stallions; then

(c) Multiplying the ratio from subsection (3)(b) of this section times

the total to be awarded to stallion owners pursuant to the split in Section 2 of this administrative regulation. This product shall be awarded to the stallion owner.

(5) All awards shall be given to the breeder or stallion owner as defined in Section 1 of this administrative regulation.

(6) Each individual award as a result of each calculation required by subsections (3)(c) and (4)(c) of this section shall be reduced by five (5) dollars to cover postage and processing.

Section 5. Application Requirements. (1)(a) After the awards are calculated, the recipients of the awards shall be notified according to last known addresses on file with the Jockey Club, Kentucky Thoroughbred Owners and Breeders, or the Kentucky Racing Commission.

(b) Each potential recipient shall be required to return an application for the award that certifies **he is** **[~~they are~~]** the rightful beneficiary to the award and certifies **his** **[~~their~~]** taxpayer ID number or Social Security number.

(2) Awards due recipients that cannot be located shall lapse to the Breeders' Award Fund for distribution in the following year. Failure to return the application required by subsection (1) of this section within thirty (30) days of the mailing date shall result in forfeiting any award.

(3) Any contested awards shall be decided by the Breeders' Award Committee. Any appeal from the committee's ruling shall be heard by the hearing officer who shall present findings of fact, conclusions of law, and a recommended order to the Kentucky Racing Commission. If the commission determines a correctable error has occurred, the commission may use available funds in the Breeders' Award Fund to correct an error.

Section 6. Material Incorporated by Reference. (1) "Application for an Award from the Breeders' Award Fund (Rev 12/1/93)" is incorporated by reference.

(2) This form may be inspected, copied, or obtained from the Kentucky Racing Commission, 4063 Iron Works Pike, Building B, Lexington, Kentucky 40511, 8 a.m. to 4:30 p.m., Monday through Friday.

WAYNE G. LYSTER III, Chairman
APPROVED BY AGENCY: December 13, 1994
FILED WITH LRC: December 14, 1994 at 11 a.m.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING OR RECEIPT OF WRITTEN COMMENTS

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

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

RELATES TO: KRS 224.01-010, 224.01-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR Chapter I, Appendices A through K to 50, 51.100(s), 53, 60, Appendices A and B to 60, Appendix B to 61, 42 USC 7410, 7411(a)(8)

STATUTORY AUTHORITY: KRS ~~[13A.222(4)(e),]~~ 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation provides for the defining of terms to be used in Title 401, Chapters 50 to 65.

Section 1. Definitions. All terms not defined in this administrative regulation or in subsequent administrative regulations, shall have the meaning given them in KRS 224.01-010 or by commonly accepted usage. As used in the administrative regulations of the Division for Air Quality, unless the content clearly indicates otherwise, the following words shall have the following meanings:

(1) "Affected facility" means an apparatus, building, operation, road, or other entity or series of entities which emits or may emit an air contaminant into the outdoor atmosphere.

(2) "Air contaminant" has the meaning given it in KRS 224.01-010.

(3) "Air pollutant" means an air contaminant.

(4) "Air pollution" has the meaning given it in KRS 224.01-010.

(5) "Air pollution control equipment" means a mechanism, device or contrivance used to control or prevent air pollution, which is not, aside from air pollution control laws and administrative regulations, vital to production of the normal product of the source or to its normal operation.

(6) "Alteration" means:

(a) The installation or replacement of air pollution control equipment at a source;

(b) A physical change in or change in the method of operation of an affected facility which increases the potential to emit of a pollutant (to which a standard applies) emitted by the facility or which results in the emission of an air pollutant (to which a standard applies) not previously emitted.

(7) "Alternative method" means a method of sampling and analyzing for an air pollutant which is not a reference or equivalent method but which has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to, in specific cases, produce results adequate for its determination of compliance.

(8) "Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.

(9) "Ambient air quality standard" means a numerical expression of a specified concentration level for a particular air contaminant and the time averaging interval over which that concentration level is measured and is a goal to be achieved in a stated time through the application of appropriate preventive or control measures.

(10) "Cabinet" has the meaning given it in KRS 224.01-010.

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

(12) "Commence" means that an owner or operator has undertaken a continuous program of construction, modification, or reconstruction of an affected facility, or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction, modification, or reconstruction of an affected facility.

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

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

(15) "Continuous monitoring system" means the total equipment, required under the applicable administrative regulations used to sample, to condition (if applicable), to analyze and to provide a permanent record of emissions or process parameters.

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

(17) "District" has the meaning given it in KRS 224.01-010.

(18) "Emission standard" means that numerical limit which fixes the amount of an air contaminant or air contaminants that may be vented into the atmosphere (open air) from an affected facility or from air pollution control equipment installed in an affected facility.

(19) "Equivalent method" means a method of sampling and analyzing for an air pollutant which has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to have a consistent and quantitatively known relationship to the reference method, under specified conditions.

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

(21) "Existing source" means a source which is not a new source.

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

(23) "Fixed capital cost" means the capital needed to provide all the depreciable components.

(24) "Fuel" means natural gas, petroleum, coal, wood, and any form of solid, liquid, or gaseous fuel derived from these materials for the purpose of creating useful heat.

(25) "Fugitive emissions" means the emissions of an air contaminant into the open air other than from a stack or air pollution control equipment exhaust.

(26) "Hydrocarbon" means an organic compound consisting predominantly of carbon and hydrogen.

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

(28) "Intermittent emissions" means emissions of particulate matter into the open air from a process which operates for less than any six (6) consecutive minutes.

(29) "Major source" means a source of which the potential emission rate is equal to or greater than 100 tons per year of any one (1) of the following pollutants: particulate matter, sulfur oxides, nitrogen oxides, volatile organic compounds or carbon monoxide.

(30) "Malfunction" means a failure of air pollution control equip-

ment, or process equipment, or of a process to operate in a normal or usual manner. Failures that are caused entirely or in part by poor maintenance, careless operation, or any other preventable upset condition or preventable equipment breakdown shall not be considered malfunctions.

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

(32) "Moderate nonattainment county" or "moderate nonattainment area" means a county or portion of a county designated moderate nonattainment in 401 KAR 51:010.

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

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

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

(c) An increase in the hours of operation;

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

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

(f) The relocation or change in ownership of an existing facility.

(34) "Monitoring device" means the total equipment, required in applicable administrative regulations, used to measure and record (if applicable) process parameters.

(35) "New source" means a source, the construction, reconstruction, or modification of which commenced on or after the classification date as defined in the applicable administrative regulation. A source, upon reconstruction, becomes a new source, irrespective of a change in emission rate.

(36) "Nitrogen oxides" means all oxides of nitrogen except nitrous oxide, as measured by test methods specified by the cabinet.

(37) "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

(38) "Owner or operator" means a person who owns, leases, operates, controls, or supervises an affected facility or a source to which an affected facility is a part.

(39) "Particulate matter" means a material, except uncombined water, which exists in a finely divided form as a liquid or a solid as measured by the appropriate approved test method.

(40) "Particulate matter emissions" means, except as used in 40 CFR 60, all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method specified in 40 CFR Chapter I, or by a test method specified in the approved state implementation plan.

(41) "Person" means an individual, public or private corporation, political subdivision, government agency, municipality, industry, copartnership, association, firm, trust, estate, or other entity.

(42) "PM_{10}" means particulate matter with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers as measured by a reference method based on Appendix J to 40 CFR 50, which has been incorporated by reference in 401 KAR 50:015, and designated in accordance with 40 CFR 53, or by an equivalent method designated in accordance with 40 CFR 53.

(43) "PM_{10} emissions" means finely divided solid or liquid material, with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method, specified in 40 CFR Chapter I, or by a test method specified in the approved state implementation plan.

(44) "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. A physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions shall not count in determining the potential to emit of a stationary source.

(45) "Reconstruction" means the replacement of components of an existing affected facility to the extent that the fixed capital cost of the new components exceeds fifty (50) percent of the fixed capital cost that would be required to construct a comparable entirely new affected facility, and it is technologically and economically feasible to meet the applicable new source standards. Individual sections of these administrative regulations may include specific provisions which refine and delimit the concept of reconstruction set forth in this subsection. The cabinet's determination as to whether the proposed replacement constitutes reconstruction shall be based on:

(a) The fixed capital cost of the replacements in comparison to the fixed capital cost that would be required to construct a comparable entirely new facility;

(b) The estimated life of the affected facility after the replacements compared to the life of a comparable entirely new affected facility;

(c) The extent to which the components being replaced cause or contribute to the emissions from the affected facility; and

(d) Economic or technical limitations on compliance with applicable standards of performance which are inherent in the proposed replacements.

(46) "Reference method" means a method of sampling and analyzing for an air pollutant as prescribed by Appendices A through K to 40 CFR 50, Appendices A and B to 40 CFR 60, and Appendix B to 40 CFR 61, which have been incorporated by reference in 401 KAR 50:015. This term may be more narrowly defined within a specific administrative regulation or chapter.

(47) "Run" means the net period of time during which an emission sample is collected. Unless otherwise specified, a run may be either intermittent or continuous within the limits of good engineering practice.

(48) "Secondary emissions" means emissions which occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. Secondary emissions shall be specific, well defined, quantifiable, and shall impact the same general area as does the stationary source modification which causes the secondary emissions. Secondary emissions may include, but are not limited to emissions from an off-site support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include emissions which come directly from a mobile source, such as the emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

(49) "Serious nonattainment county" or "serious nonattainment area" means a county or portion of a county designated serious nonattainment in 401 KAR 51:010.

(50) "Severe nonattainment county" or "severe nonattainment

area" means a county or portion of a county designated severe nonattainment in 401 KAR 51:010.

(51) "Shutdown" means the cessation of an operation.

(52) "Source" means one (1) or more affected facilities contained within a given contiguous property line. The property shall be considered contiguous if separated only by a public thoroughfare, stream, or other right of way.

(53) "Stack or chimney" means a flue, conduit, or duct arranged to conduct emissions to the atmosphere.

(54) "Standard" means an emission standard, a standard of performance, or an ambient air quality standard as promulgated under the administrative regulations of the Division for Air Quality or the emission control requirements necessary to comply with Title 401, Chapter 51, of the administrative regulations of the Division for Air Quality.

(55) "Standard conditions:"

(a) For source measurements means twenty (20) degrees Celsius (sixty-eight (68)) degrees Fahrenheit) and a pressure of 760 mm Hg (29.92 in. of Hg);

(b) For the purpose of air quality determinations means twenty-five (25) degrees Celsius and a reference pressure of 760 mm Hg.

(56) "Start-up" means the setting in operation of an affected facility.

(57)"State implementation plan" means the most recently prepared plan or revision required by 42 USC 7410 which has been approved by the U.S. EPA.

(58) "Total suspended particulate" means particulate matter as measured by the method described in Appendix B of 40 CFR 50, which has been incorporated by reference in 401 KAR 50:015.

(59) "Uncombined water" means water which can be separated from a compound by ordinary physical means and which is not bound to a compound by internal molecular forces.

(60) "Urban county" means a county which is a part of an urbanized area with a population of greater than 200,000 based upon the 1980 census. If a portion of a county is a part of an urbanized area, then the entire county shall be classified as urban with respect to the administrative regulations of the Division for Air Quality.

(61) "Urbanized area" means an area defined as such by the U.S. Department of Commerce, Bureau of Census.

(62) "Volatile organic compound" or "VOC" means an organic compound which participates in atmospheric photochemical reactions. This includes an organic compound other than the following compounds: methane; ethane; carbon monoxide; carbon dioxide; carbonic acid; metallic carbides or carbonates; ammonium carbonate; methylene chloride; 1,1,1,-trichloroethane (methyl chloroform); trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (HCFC-22); trifluoromethane (HFC-23); 1,1,2-trichloro-1,2,2-trifluoroethane [~~trichlorotrifluoroethane~~] (CFC-113); dichlorotetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); dichlorotrifluoroethane (HCFC-123); tetrafluoroethane (HFC-134a); dichlorofluoroethane (HCFC-141b); chlorodifluoroethane (HCFC-142b); 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); [~~acetone;~~] parachlorobenzotrifluoride (PCBTF); cyclic, branched, or linear completely methylated siloxanes; and perfluorocarbon compounds which fall into these classes:

(a) Cyclic, branched, or linear, completely fluorinated alkanes;

(b) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;

(c) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and

(d) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine. These compounds have been determined to have negligible photochemical reactivity. For purposes of determining compliance with emission limits, VOCs shall be measured by test methods that have been approved by the cabinet and the U.S. EPA. [~~Approval by the cabinet shall not constitute or imply approval by the U.S. EPA. The cabinet will not approve a test method that has been disapproved for use by the U.S. EPA.~~] If a method used also inadvertently measures compounds with negligible photochemical reactivity, an owner or operator may exclude these negligibly reactive compounds when determining compliance with an emissions standard.

Section 2. Abbreviations. The abbreviations used in the administrative regulations of Title 401, Chapters 50 to 65, shall have the following meanings:

AOAC - Association of Official Analytical Chemists
ANSI - American National Standards Institute
ASTM - American Society for Testing and Materials
BOD - Biochemical oxidant demand
BTU - British Thermal Unit
oC - Degree Celsius (centigrade)
Cal - calorie
cfm - Cubic feet per minute
CFR - Code of Federal Regulations
CH_4 - methane
CO - Carbon monoxide
CO_2 - Carbon dioxide
COD - Chemical oxidant demand
dscf - dry cubic feet at standard conditions
dscm - dry cubic meter at standard conditions
oF - Degree Fahrenheit
ft - feet
g - gram
gal - gallon
gr - grain
hr - hour
HCl - Hydrochloric acid
Hg - mercury
HF - Hydrogen fluoride
H_2O - water
H_2S - Hydrogen sulfide
H_2SO_4 - Sulfuric acid
in - inch
J - joule
KAR - Kentucky Administrative Regulations
kg - kilogram
KRS - Kentucky Revised Statutes
l - liter
lb - pound
m - meter
m^3 - cubic meter
min - minute
mg - milligram
MJ - megajoules
MM - million
mm - millimeter
mo - month
Ng - nanograms
N_2 - Nitrogen
NO - Nitric oxide
NO_2 - Nitrogen dioxide
NO_x - Nitrogen oxides
oz - ounce
O_2 - oxygen
O_3 - ozone
ppb - parts per billion
ppm - parts per million
ppm (w/w) - parts per million (weight by weight)
ug - microgram
psia - pounds per square inch absolute
psig - pounds per square inch gage

S - at standard conditions
sec - second
SIP - State implementation plan
SO_2 - Sulfur dioxide
sq - square
TAPPI - Technical Association of the Pulp and Paper Industry
TSP - Total suspended particulates
TSS - Total suspended solids
U.S. EPA - United States Environmental Protection Agency
UTM - Universal Transverse Mercator
VOC - Volatile organic compound
yd - yard.

Section 3. 401 KAR 50:047 Definitions. As used in 401 KAR 50:047, unless the content clearly indicates otherwise, the following terms shall have the following meanings:

(1) "Capture" means the containment or recovery of emissions from a process for direction into a duct which may be exhausted through a stack or sent to a control device.

(2) "Capture system" means all equipment (including, but not limited to, hoods, ducts, fans, booths, ovens, dryers, etc.) that contains, collects, and transports an air pollutant to a control device.

(3) "Capture efficiency" means the weight per unit time of volatile organic compounds (VOCs) entering a capture system and delivered to a control device divided by the weight per unit time of total VOCs generated by a source of VOCs, expressed as a percentage.

(4) "Control device" means equipment such as an incinerator or carbon adsorber used to reduce, by destruction or removal, the amount of air pollutants in an air stream prior to discharge to the ambient air.

(5) "Control system" means a combination of one (1) or more capture systems and control devices working in concert to reduce discharges of pollutants to the ambient air.

(6) "Destruction or removal efficiency" means the efficiency, expressed as a decimal fraction, of a control device in destroying or removing contaminants. It is calculated as one (1) minus the quotient of the amount of VOCs exiting the control device divided by the amount of VOCs entering the control device, i.e., 1-{(VOC exiting)/(VOC entering)}.

(7) "Gas-gas method" means either of two (2) methods for determining capture of emissions which rely on only gas phase measurements. One (1) method requires construction of a total temporary enclosure to assure all would-be fugitive emissions are measured; the other method uses the room or building which houses the emission source as an enclosure.

(8) "Hood" means a partial enclosure or canopy for capturing and exhausting, by means of a draft, the organic vapors or other fumes rising from a coating process or other source.

(9) "Liquid-gas method" means either of two (2) methods for determining capture of emissions which require both gas phase and liquid phase measurements and analysis. One (1) liquid-gas method requires construction of a temporary enclosure; the other uses the building or room which houses the facility as an enclosure.

(10) "Overall emission reduction efficiency" means the weight per unit time of VOC removed by a control device divided by the weight per unit time of VOC emitted by an emission source, expressed as a percentage. With the efficiencies expressed as decimal fractions, the overall emission reduction efficiency is the product of the capture efficiency and the control equipment destruction or removal efficiency.

Section 4. Reference Material. (1) Incorporation by Reference. The following documents are incorporated by reference:

(a) Depreciation, IRS Publication 534, catalog number 150640, Department of the Treasury, Internal Revenue Service; and

(b) Section 1012, Basis of Property Cost, Income Tax-Basic Rules, Internal Revenue Code.

(2) The documents incorporated by reference in subsection (1) of this section are available for public inspection and copying, subject to copyright law, at the following main and regional offices of the Kentucky Division for Air Quality during the normal working hours of 8 a.m. to 4:30 p.m., local time.

(a) Kentucky Division for Air Quality, 803 Schenkel Lane [~~316 St. Clair Mall~~], Frankfort, Kentucky 40601 (502) 573 [~~564~~]-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky 41105 [~~41101~~], (606) 325-8569;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky 42104, (502) 843-5475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky 41701, (606) 439-2391;

(f) Owensboro Regional Office, 3032 Alvey Park Drive, W. [~~311 West Second Street~~], Owensboro, Kentucky 42303 [~~42301~~], (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: February 13, 1995
FILED WITH LRC: February 13, 1995 at 1 p.m.

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

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

RELATES TO: KRS 224.01-010, 224.20-100, 224.20-110, 224.20-120, 40 CFR Chapter I, Appendices A through K to 50, 51.100(s), 53, 60, Appendices A and B to 60, Appendix B to 61, 42 USC 7410, 7411(a)(8)

STATUTORY AUTHORITY: KRS [~~13A.222(4)(e),~~] 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation provides for the defining of terms used in 401 KAR Chapter 51.

Section 1. General Definitions. As used in the Division for Air Quality administrative regulations of 401 KAR Chapter 51, unless the content clearly indicates otherwise in a specific administrative regulation, the following terms shall have the following meanings:

(1) "Affected facility" means an apparatus, building, operation, road, or other entity or series of entities which emits or may emit an air contaminant into the outdoor atmosphere.

(2) "Air contaminant" has the meaning given it in KRS 224.01-010.

(3) "Air pollutant" means an air contaminant.

(4) "Air pollution" has the meaning given it in KRS 224.01-010.

(5) "Air pollution control equipment" means a mechanism, device or contrivance used to control or prevent air pollution, which is not, aside from air pollution control laws and administrative regulations, vital to production of the normal product of the source or to its normal operation.

(6) "Alteration" means:

(a) The installation or replacement of air pollution control equipment at a source;

(b) A physical change in or change in the method of operation of an affected facility which increases the potential to emit of a pollutant (to which a standard applies) emitted by the facility or which results

in the emission of an air pollutant (to which a standard applies) not previously emitted.

(7) "Alternative method" means a method of sampling and analyzing for an air pollutant which is not a reference or equivalent method but which has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to, in specific cases, produce results adequate for its determination of compliance.

(8) "Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.

(9) "Ambient air quality standard" means a numerical expression of a specified concentration level for a particular air contaminant and the time averaging interval over which that concentration level is measured and is a goal to be achieved in a stated time through the application of appropriate preventive or control measures.

(10) "Cabinet" has the meaning given it in KRS 224.01-010.

(11) "Capital expenditure" means an expenditure for a physical or operational change to an affected facility which exceeds the product of the applicable "Annual asset guideline repair allowance percentage" specified in the Internal Revenue Service (IRS) Publication 534 which has been incorporated by reference in 401 KAR 50:010, and the affected facility's basis, as defined by section 1012 of the Internal Revenue Code which has been incorporated by reference in 401 KAR 50:010. However, the total expenditure for a physical or operational change to an affected facility shall not be reduced by any "excluded additions" as defined in IRS Publication 534, as would be done for tax purposes.

(12) "Commence" means that an owner or operator has undertaken a continuous program of construction, modification, or reconstruction of an affected facility, or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction, modification, or reconstruction of an affected facility.

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

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

(15) "Continuous monitoring system" means the total equipment, required under the applicable administrative regulations used to sample, to condition (if applicable), to analyze and to provide a permanent record of emissions or process parameters.

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

(17) "District" has the meaning given it in KRS 224.01-010.

(18) "Emission standard" means that numerical limit which fixes the amount of an air contaminant or air contaminants that may be vented into the atmosphere (open air) from an affected facility or from air pollution control equipment installed in an affected facility.

(19) "Equivalent method" means a method of sampling and analyzing for an air pollutant which has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to have a consistent and quantitatively known relationship to the reference method, under specified conditions.

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

(21) "Existing source" means a source which is not a new source.

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

(23) "Fixed capital cost" means the capital needed to provide all the depreciable components.

(24) "Fuel" means natural gas, petroleum, coal, wood, and any form of solid, liquid, or gaseous fuel derived from these materials for the purpose of creating useful heat.

(25) "Fugitive emissions" means the emissions of an air contaminant into the open air other than from a stack or air pollution control equipment exhaust.

(26) "Hydrocarbon" means an organic compound consisting predominantly of carbon and hydrogen.

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

(28) "Intermittent emissions" means emissions of particulate matter into the open air from a process which operates for less than any six (6) consecutive minutes.

(29) "Major source" means a source of which the potential emission rate is equal to or greater than 100 tons per year of any one (1) of the following pollutants: particulate matter, sulfur oxides, nitrogen oxides, volatile organic compounds or carbon monoxide.

(30) "Malfunction" means a failure of air pollution control equipment, or process equipment, or of a process to operate in a normal or usual manner. Failures that are caused entirely or in part by poor maintenance, careless operation, or any other preventable upset condition or preventable equipment breakdown shall not be considered malfunctions.

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

(32) "Moderate nonattainment county" or "moderate nonattainment area" means a county or portion of a county designated moderate nonattainment in 401 KAR 51:010.

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

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

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

(c) An increase in the hours of operation;

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

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

(f) The relocation or change in ownership of an existing facility.

(34) "Monitoring device" means the total equipment, required in applicable administrative regulations, used to measure and record (if applicable) process parameters.

(35) "New source" means a source, the construction, reconstruction, or modification of which commenced on or after the classification date as defined in the applicable administrative regulation. A source, upon reconstruction, becomes a new source, irrespective of a change in emission rate.

(36) "Nitrogen oxides" means all oxides of nitrogen except nitrous oxide, as measured by test methods specified by the cabinet.

(37) "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

(38) "Owner or operator" means a person who owns, leases, operates, controls, or supervises an affected facility or a source to which an affected facility is a part.

(39) "Particulate matter" means a material, except uncombined

water, which exists in a finely divided form as a liquid or a solid as measured by the appropriate approved test method.

(40) "Particulate matter emissions" means, except as used in 40 CFR 60, all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method specified in 40 CFR Chapter I, or by a test method specified in the approved state implementation plan.

(41) "Person" means an individual, public or private corporation, political subdivision, government agency, municipality, industry, copartnership, association, firm, trust, estate, or other entity.

(42) "PM_{10}" means particulate matter with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers as measured by a reference method based on Appendix J to 40 CFR 50, which has been incorporated by reference in 401 KAR 50:015, and designated in accordance with 40 CFR 53, or by an equivalent method designated in accordance with 40 CFR 53.

(43) "PM_{10} emissions" means finely divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method, specified in 40 CFR Chapter I, or by a test method specified in the approved state implementation plan.

(44) "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. A physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions shall not count in determining the potential to emit of a stationary source.

(45) "Reconstruction" means the replacement of components of an existing affected facility to the extent that the fixed capital cost of the new components exceeds fifty (50) percent of the fixed capital cost that would be required to construct a comparable entirely new affected facility, and it is technologically and economically feasible to meet the applicable new source standards. Individual sections of these administrative regulations may include specific provisions which refine and delimit the concept of reconstruction set forth in this subsection. The cabinet's determination as to whether the proposed replacement constitutes reconstruction shall be based on:

(a) The fixed capital cost of the replacements in comparison to the fixed capital cost that would be required to construct a comparable entirely new facility;

(b) The estimated life of the affected facility after the replacements compared to the life of a comparable entirely new affected facility;

(c) The extent to which the components being replaced cause or contribute to the emissions from the affected facility; and

(d) Economic or technical limitations on compliance with applicable standards of performance which are inherent in the proposed replacements.

(46) "Reference method" means a method of sampling and analyzing for an air pollutant as prescribed by Appendices A through K to 40 CFR 50, Appendices A and B to 40 CFR 60, and Appendix B to 40 CFR 61, which have been incorporated by reference in 401 KAR 50:015. This term may be more narrowly defined within a specific administrative regulation.

(47) "Run" means the net period of time during which an emission sample is collected. Unless otherwise specified, a run may be either intermittent or continuous within the limits of good engineering practice.

(48) "Secondary emissions" means emissions which occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. Secondary emissions shall be specific, well defined, quantifiable, and shall impact the same general area as does the stationary source modification which causes the secondary emissions. Secondary emissions may include, but are not limited to emissions from an off-site support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include emissions which come directly from a mobile source, such as the emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

(49) "Serious nonattainment county" or "serious nonattainment area" means a county or portion of a county designated serious nonattainment in 401 KAR 51:010.

(50) "Severe nonattainment county" or "severe nonattainment area" means a county or portion of a county designated severe nonattainment in 401 KAR 51:010.

(51) "Shutdown" means the cessation of an operation.

(52) "Source" means one (1) or more affected facilities contained within a given contiguous property line. The property shall be considered contiguous if separated only by a public thoroughfare, stream, or other right of way.

(53) "Stack or chimney" means a flue, conduit, or duct arranged to conduct emissions to the atmosphere.

(54) "Standard" means an emission standard, a standard of performance, or an ambient air quality standard as promulgated under the administrative regulations of the Division for Air Quality or the emission control requirements necessary to comply with 401 KAR Chapter 51, of the administrative regulations of the Division for Air Quality.

(55) "Standard conditions":

(a) For source measurements means twenty (20) degrees Celsius (sixty-eight (68) degrees Fahrenheit) and a pressure of 760 mm Hg (29.92 in. of Hg);

(b) For the purpose of air quality determinations means twenty-five (25) degrees Celsius and a reference pressure of 760 mm Hg.

(56) "Start-up" means the setting in operation of an affected facility.

(57) "State implementation plan" means the most recently prepared plan or revision required by 42 USC 7410 which has been approved by the U.S. EPA.

(58) "Total suspended particulate" means particulate matter as measured by the method described in Appendix B of 40 CFR 50, which has been incorporated by reference in 401 KAR 50:015.

(59) "Uncombined water" means water which can be separated from a compound by ordinary physical means and which is not bound to a compound by internal molecular forces.

(60) "Urban county" means a county which is a part of an urbanized area with a population of greater than 200,000 based upon the 1980 census. If a portion of a county is a part of an urbanized area, then the entire county shall be classified as urban with respect to the administrative regulations of the Division for Air Quality.

(61) "Urbanized area" means an area defined as such by the U.S. Department of Commerce, Bureau of Census.

(62) "Volatile organic compound" or "VOC" means an organic compound which participates in atmospheric photochemical reactions. This includes an organic compound other than the following compounds: methane; ethane; carbon monoxide; carbon dioxide; carbonic acid; metallic carbides or carbonates; ammonium carbonate; methylene chloride; 1,1,1-trichloroethane (methyl chloroform) trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12) chlorodifluoromethane (HCFC-22); trifluoromethane (HFC-23); 1,1,2-trichloro-1,2,2-trifluoroethane [~~trichlorotrifluoroethane~~] (CFC-113); dichlorotetrafluoroethane (CFC-114); chloropentafluoroethane (CFC- 115); dichlorotrifluoroethane (HCFC-123); tetrafluoroethane (HFC134a); dichlorofluoroethane (HCFC-141b); chlorodifluoroethane (HCFC-142b); 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); [~~acetone;~~] parachlorobenzotrifluoride

(PCBTF); cyclic, branched, or linear completely methylated siloxanes; and perfluorocarbon compounds which fall into these classes:

(a) Cyclic, branched, or linear, completely fluorinated alkanes;

(b) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;

(c) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and

(d) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine. These compounds have been determined to have negligible photochemical reactivity. For purposes of determining compliance with emission limits, VOCs shall be measured by test methods that have been approved by the cabinet and the U.S. EPA. [~~Approval by the cabinet shall not constitute or imply approval by the U.S. EPA. The cabinet will not approve a test method that has been disapproved for use by the U.S. EPA.~~] If a method used also inadvertently measures compounds with negligible photochemical reactivity, an owner or operator may exclude these negligibly reactive compounds when determining compliance with an emissions standard.

Section 2. Abbreviations. The abbreviations used in the administrative regulations of 401 KAR Chapter 51 shall have the following meanings:

AOAC - Association of Official Analytical Chemists
ANSI - American National Standards Institute
ASTM - American Society for Testing and Materials
BOD - Biochemical oxidant demand
BTU - British Thermal Unit
oC - Degree Celsius (centigrade)
Cal - calorie
cfm - cubic feet per minute
CFR - Code of Federal Regulations
CH_4 - methane
CO - Carbon monoxide
CO_2 - Carbon dioxide
COD - Chemical oxidant demand
dscf - dry cubic feet at standard conditions
dscm - dry cubic meter at standard conditions
oF - Degree Fahrenheit
ft - feet
g - gram
gal - gallon
gr - grain
hr - hour
HCl - Hydrochloric acid
Hg - mercury
HF - Hydrogen fluoride
H_2O - water
H_2S - Hydrogen sulfide
H_2SO_4 - Sulfuric acid
in - inch
J - joule
KAR - Kentucky Administrative Regulations
kg - kilogram
KRS - Kentucky Revised Statutes
l - liter
lb - pound
m - meter
m^3 - cubic meter
min - minute
mg - milligram
MJ - megajoules
MM - million
mm - millimeter
mo - month
Ng - nanograms
N_2 - Nitrogen
NO - Nitric oxide
NO_2 - Nitrogen dioxide
NO_x - Nitrogen oxides
oz - ounce
O_2 - oxygen
O_3 - ozone
ppb - parts per billion
ppm - parts per million
ppm (w/w) - parts per million (weight by weight)
ug - microgram
psia - pounds per square inch absolute
psig - pounds per square inch gage
S - at standard conditions
sec - second
SIP - State implementation plan
SO_2 - Sulfur dioxide
sq - square
TAPPI - Technical Association of the Pulp and Paper Industry
TSP - Total suspended particulates
TSS - Total suspended solids
U.S. EPA - United States Environmental Protection Agency
UTM - Universal Transverse Mercator
VOC - Volatile organic compound
yd - yard

PHILLIP J. SHEPHERD, Secretary
APPROVED BY AGENCY: February 13, 1995
FILED WITH LRC: February 13, 1995 at 1 p.m.

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

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

RELATES TO: KRS 224.01-010, 224.20-100, 224.20-110, 224.20-120, 40 CFR Chapter I, Appendices A through K to 50, 51.100(s), 53, 60, Appendices A and B to 60, Appendix B to 61, 42 USC 7410, 7411(a)(8)

STATUTORY AUTHORITY: KRS [~~13A.222(4)(e),~~] 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation provides for the defining of terms used in 401 KAR Chapter 59.

Section 1. General Definitions. As used in the Division for Air Quality administrative regulations of 401 KAR Chapter 59, unless the content clearly indicates otherwise in a specific administrative regulation, the following terms shall have the following meanings:

(1) "Affected facility" means an apparatus, building, operation, road, or other entity or series of entities which emits or may emit an air contaminant into the outdoor atmosphere.

(2) "Air contaminant" has the meaning given it in KRS 224.01-010.

(3) "Air pollutant" means an air contaminant.

(4) "Air pollution" has the meaning given it in KRS 224.01-010.

(5) "Air pollution control equipment" means a mechanism, device or contrivance used to control or prevent air pollution, which is not, aside from air pollution control laws and administrative regulations, vital to production of the normal product of the source or to its normal operation.

(6) "Alteration" means:

(a) The installation or replacement of air pollution control equipment at a source;

(b) A physical change in or change in the method of operation of an affected facility which increases the potential to emit of a pollutant (to which a standard applies) emitted by the facility or which results in the emission of an air pollutant (to which a standard applies) not previously emitted.

(7) "Alternative method" means a method of sampling and analyzing for an air pollutant which is not a reference or equivalent method but which has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to, in specific cases, produce results adequate for its determination of compliance.

(8) "Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.

(9) "Ambient air quality standard" means a numerical expression of a specified concentration level for a particular air contaminant and the time averaging interval over which that concentration level is measured and is a goal to be achieved in a stated time through the application of appropriate preventive or control measures.

(10) "Cabinet" has the meaning given it in KRS 224.01-010.

(11) "Capital expenditure" means an expenditure for a physical or operational change to an affected facility which exceeds the product of the applicable "Annual asset guideline repair allowance percentage" specified in the Internal Revenue Service (IRS) Publication 534 which has been incorporated by reference in 401 KAR 50:010, and the affected facility's basis, as defined by section 1012 of the Internal Revenue Code which has been incorporated by reference in 401 KAR 50:010. However, the total expenditure for a physical or operational change to an affected facility shall not be reduced by any "excluded additions" as defined in IRS Publication 534, as would be done for tax purposes.

(12) "Commence" means that an owner or operator has undertaken a continuous program of construction, modification, or reconstruction of an affected facility, or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction, modification, or reconstruction of an affected facility.

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

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

(15) "Continuous monitoring system" means the total equipment, required under the applicable administrative regulations used to sample, to condition (if applicable), to analyze and to provide a permanent record of emissions or process parameters.

(16) "Design capacity" means the maximum rate at which a unit was designed to operate.

(17) "Director" means Director of the Division for Air Quality of the Natural Resources and Environmental Protection Cabinet.

(18) "District" has the meaning given it in KRS 224.01-010.

(19) "Emission standard" means that numerical limit which fixes the amount of an air contaminant or air contaminants that may be vented into the atmosphere (open air) from an affected facility or from air pollution control equipment installed in an affected facility.

(20) "Equivalent method" means a method of sampling and analyzing for an air pollutant which has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to have a consistent and quantitatively known relationship to the reference method, under specified conditions.

(21) "Exempt solvent" means an organic compound listed in the definition of volatile organic compound as not participating in atmospheric photochemical reactions.

(22) "Existing source" means a source which is not a new source.

(23) "Extreme nonattainment county" or "extreme nonattainment area" means a county or portion of a county designated extreme nonattainment in 401 KAR 51:010.

(24) "Fixed capital cost" means the capital needed to provide all the depreciable components.

(25) "Fuel" means natural gas, petroleum, coal, wood, and any form of solid, liquid, or gaseous fuel derived from these materials for the purpose of creating useful heat.

(26) "Fugitive emissions" means the emissions of an air contaminant into the open air other than from a stack or air pollution control equipment exhaust.

(27) "Hydrocarbon" means an organic compound consisting predominantly of carbon and hydrogen.

(28) "Incineration" means the process of igniting and burning solid, semisolid, liquid, or gaseous combustible wastes.

(29) "Intermittent emissions" means emissions of particulate matter into the open air from a process which operates for less than any six (6) consecutive minutes.

(30) "Major source" means a source of which the potential emission rate is equal to or greater than 100 tons per year of any one (1) of the following pollutants: particulate matter, sulfur oxides, nitrogen oxides, volatile organic compounds or carbon monoxide.

(31) "Malfunction" means a failure of air pollution control equipment, or process equipment, or of a process to operate in a normal or usual manner. Failures that are caused entirely or in part by poor maintenance, careless operation, or any other preventable upset condition or preventable equipment breakdown shall not be considered malfunctions.

(32) "Marginal nonattainment county" or "marginal nonattainment area" means a county or portion of a county designated marginal nonattainment in 401 KAR 51:010.

(33) "Moderate nonattainment county" or "moderate nonattainment area" means a county or portion of a county designated moderate nonattainment in 401 KAR 51:010.

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

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

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

(c) An increase in the hours of operation;

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

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

(f) The relocation or change in ownership of an existing facility.

(35) "Monitoring device" means the total equipment, required in applicable administrative regulations, used to measure and record (if applicable) process parameters.

(36) "New source" means a source, the construction, reconstruction, or modification of which commenced on or after the classification date as defined in the applicable administrative regulation. A source, upon reconstruction, becomes a new source, irrespective of a change in emission rate.

(37) "Nitrogen oxides" means all oxides of nitrogen except nitrous oxide, as measured by test methods specified by the cabinet.

(38) "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

(39) "Owner or operator" means a person who owns, leases, operates, controls, or supervises an affected facility or a source to which an affected facility is a part.

(40) "Particulate matter" means a material, except uncombined water, which exists in a finely divided form as a liquid or a solid as measured by the appropriate approved test method.

(41) "Particulate matter emissions" means, except as used in 40 CFR 60, all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method specified in 40 CFR Chapter I, or by a test method specified in the approved state implementation plan.

(42) "Person" means an individual, public or private corporation, political subdivision, government agency, municipality, industry, copartnership, association, firm, trust, estate, or other entity.

(43) "PM_{10}" means particulate matter with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers as measured by a reference method based on Appendix J to 40 CFR 50, which has been incorporated by reference in 401 KAR 50:015, and designated in accordance with 40 CFR 53, or by an equivalent method designated in accordance with 40 CFR 53.

(44) "PM_{10} emissions" means finely divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method, specified in 40 CFR Chapter I, or by a test method specified in the approved state implementation plan.

(45) "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. A physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions shall not count in determining the potential to emit of a stationary source.

(46) "Reconstruction" means the replacement of components of an existing affected facility to the extent that the fixed capital cost of the new components exceeds fifty (50) percent of the fixed capital cost that would be required to construct a comparable entirely new affected facility, and it is technologically and economically feasible to meet the applicable new source standards. Individual sections of these administrative regulations may include specific provisions which refine and delimit the concept of reconstruction set forth in this subsection. The cabinet's determination as to whether the proposed replacement constitutes reconstruction shall be based on:

(a) The fixed capital cost of the replacements in comparison to the fixed capital cost that would be required to construct a comparable entirely new facility;

(b) The estimated life of the affected facility after the replacements compared to the life of a comparable entirely new affected facility;

(c) The extent to which the components being replaced cause or contribute to the emissions from the affected facility; and

(d) Economic or technical limitations on compliance with applicable standards of performance which are inherent in the proposed replacements.

(47) "Reference method" means a method of sampling and analyzing for an air pollutant as prescribed by Appendices A through K to 40 CFR 50, Appendices A and B to 40 CFR 60, and Appendix B to 40 CFR 61, which have been incorporated by reference in 401 KAR 50:015. This term may be more narrowly defined within a specific administrative regulation.

(48) "Run" means the net period of time during which an emission sample is collected. Unless otherwise specified, a run may be either intermittent or continuous within the limits of good engineering practice.

(49) "Secondary emissions" means emissions which occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. Secondary emissions shall be specific, well defined, quantifiable, and shall impact the same general area as does the stationary source modification which causes the secondary emissions. Secondary emissions may include, but are not limited to emissions from an off-site support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include emissions which come directly from a mobile source, such as the emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

(50) "Serious nonattainment county" or "serious nonattainment area" means a county or portion of a county designated serious nonattainment in 401 KAR 51:010.

(51) "Severe nonattainment county" or "severe nonattainment area" means a county or portion of a county designated severe nonattainment in 401 KAR 51:010.

(52) "Shutdown" means the cessation of an operation.

(53) "Source" means one (1) or more affected facilities contained within a given contiguous property line. The property shall be considered contiguous if separated only by a public thoroughfare, stream, or other right of way.

(54) "Stack or chimney" means a flue, conduit, or duct arranged to conduct emissions to the atmosphere.

(55) "Standard" means an emission standard, a standard of performance, or an ambient air quality standard as promulgated under the administrative regulations of the Division for Air Quality or the emission control requirements necessary to comply with Title 401, Chapter 51, of the administrative regulations of the Division for Air Quality.

(56) "Standard conditions:"

(a) For source measurements means twenty (20) degrees Celsius (sixty-eight (68) degrees Fahrenheit) and a pressure of 760 mm Hg (29.92 in. of Hg);

(b) For the purpose of air quality determinations means twenty-five (25) degrees Celsius and a reference pressure of 760 mm Hg.

(57) "Start-up" means the setting in operation of an affected facility.

(58) "State implementation plan" means the most recently prepared plan or revision required by 42 USC 7410 which has been approved by the U.S. EPA.

(59) "Total suspended particulate" means particulate matter as measured by the method described in Appendix B of 40 CFR 50, which has been incorporated by reference in 401 KAR 50:015.

(60) "Uncombined water" means water which can be separated from a compound by ordinary physical means and which is not bound to a compound by internal molecular forces.

(61) "Urban county" means a county which is a part of an urbanized area with a population of greater than 200,000 based upon the 1980 census. If a portion of a county is a part of an urbanized area, then the entire county shall be classified as urban with respect to the administrative regulations of the Division for Air Quality.

(62) "Urbanized area" means an area defined as such by the U.S. Department of Commerce, Bureau of Census.

(63) "Volatile organic compound" or "VOC" means an organic compound which participates in atmospheric photochemical reactions. This includes an organic compound other than the following compounds: methane; ethane; carbon monoxide; carbon dioxide; carbonic acid; metallic carbides or carbonates; ammonium carbonate; methylene chloride; 1,1,1-trichloroethane (methyl chloroform) trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12) chlorodifluoromethane (HCFC-22); trifluoromethane (HFC-23); 1,1,2-trichloro-1,2,2-

trifluoroethane [~~trichlorotrifluoroethane~~] (CFC-113); dichlorotetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); dichlorotrifluoroethane (HCFC-123); tetrafluoroethane (HFC-134a); dichlorofluoroethane (HCFC-141b); chlorodifluoroethane (HCFC-142b); 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); [~~acetone;~~] parachlorobenzotrifluoride (PCBTF); cyclic, branched, or linear completely methylated siloxanes; and perfluorocarbon compounds which fall into these classes:

(a) Cyclic, branched, or linear, completely fluorinated alkanes;

(b) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;

(c) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and

(d) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine. These compounds have been determined to have negligible photochemical reactivity. For purposes of determining compliance with emission limits, VOCs shall be measured by test methods that have been approved by the cabinet and the U.S. EPA. [~~Approval by the cabinet shall not constitute or imply approval by the U.S. EPA. The cabinet will not approve a test method that has been disapproved for use by the U.S. EPA.~~] If a method used also inadvertently measures compounds with negligible photochemical reactivity, an owner or operator may exclude these negligibly reactive compounds when determining compliance with an emissions standard.

Section 2. Abbreviations. The abbreviations used in the administrative regulations of Title 401, Chapter 59, shall have the following meanings:

AOAC - Association of Official Analytical Chemists
ANSI - American National Standards Institute
ASTM - American Society for Testing and Materials
BOD - Biochemical oxidant demand
BTU - British Thermal Unit
°C - Degree Celsius (centigrade)
Cal - calorie
cfm - cubic feet per minute
CFR - Code of Federal Regulations
CH_4 - methane
CO - Carbon monoxide
CO_2 - Carbon dioxide
COD - Chemical oxidant demand
dscf - dry cubic feet at standard conditions
dscm - dry cubic meter at standard conditions
°F - Degree Fahrenheit
ft - feet
g - gram
gal - gallon
gr - grain
hr - hour
HCl - Hydrochloric acid
Hg - mercury
HF - Hydrogen fluoride
H_2O - water
H_2S - Hydrogen sulfide
H_2SO_4 - Sulfuric acid
in - inch
J - joule
KAR - Kentucky Administrative Regulations
kg - kilogram
KRS - Kentucky Revised Statutes
l - liter
lb - pound
m - meter
m^3 - cubic meter
min - minute
mg - milligram
MJ - megajoules
MM - million
mm - millimeter
mo - month
Ng - nanograms
N_2 - Nitrogen
NO - Nitric oxide
NO_2 - Nitrogen dioxide
NO_x - Nitrogen oxides
oz - ounce
O_2 - oxygen
O_3 - ozone
ppb - parts per billion
ppm - parts per million
ppm (w/w) - parts per million (weight by weight)
mg - microgram
psia - pounds per square inch absolute
psig - pounds per square inch gage
S - at standard conditions
sec - second
SIP - State implementation plan
SO_2 - Sulfur dioxide
sq - square
TAPPI - Technical Association of the Pulp and Paper Industry
TSP - Total suspended particulates
TSS - Total suspended solids
U.S. EPA - United States Environmental Protection Agency
UTM - Universal Transverse Mercator
VOC - Volatile organic compound
yd - yard

PHILLIP J. SHEPHERD, Secretary
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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Amended After Hearing)

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

RELATES TO: KRS 224.01-010, 224.20-100, 224.20-110, 224.20-120, 40 CFR Chapter I, Appendices A through K to 50, 51.100(s), 53, 60, Appendices A and B to 60, Appendix B to 61, 42 USC 7410, 7411(a)(8)

STATUTORY AUTHORITY: KRS [~~13A.222(4)(e)~~] 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation provides for the defining of terms used in 401 KAR Chapter 61.

Section 1. General definitions. As used in the Division for Air Quality administrative regulations of 401 KAR Chapter 61, unless the content clearly indicates otherwise in a specific administrative regulation, the following words shall have the following meanings:

(1) "Affected facility" means an apparatus, building, operation, road, or other entity or series of entities which emits or may emit an air contaminant into the outdoor atmosphere.

(2) "Air contaminant" has the meaning given it in KRS 224.01-010.

(3) "Air pollutant" means an air contaminant.

(4) "Air pollution" has the meaning given it in KRS 224.01-010.

(5) "Air pollution control equipment" means a mechanism, device or contrivance used to control or prevent air pollution, which is not, aside from air pollution control laws and administrative regulations, vital to production of the normal product of the source or to its normal operation.

(6) "Alteration" means:

(a) The installation or replacement of air pollution control equipment at a source;

(b) A physical change in or change in the method of operation of an affected facility which increases the potential to emit of a pollutant (to which a standard applies) emitted by the facility or which results in the emission of an air pollutant (to which a standard applies) not previously emitted.

(7) "Alternative method" means a method of sampling and analyzing for an air pollutant which is not a reference or equivalent method but which has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to, in specific cases, produce results adequate for its determination of compliance.

(8) "Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.

(9) "Ambient air quality standard" means a numerical expression of a specified concentration level for a particular air contaminant and the time averaging interval over which that concentration level is measured and is a goal to be achieved in a stated time through the application of appropriate preventive or control measures.

(10) "Cabinet" has the meaning given it in KRS 224.01-010.

(11) "Capital expenditure" means an expenditure for a physical or operational change to an affected facility which exceeds the product of the applicable "Annual asset guideline repair allowance percentage" specified in the Internal Revenue Service (IRS) Publication 534 which has been incorporated by reference in 401 KAR 50:010, and the affected facility's basis, as defined by section 1012 of the Internal Revenue Code which has been incorporated by reference in 401 KAR 50:010. However, the total expenditure for a physical or operational change to an affected facility shall not be reduced by any "excluded additions" as defined in IRS Publication 534, as would be done for tax purposes.

(12) "Commence" means that an owner or operator has undertaken a continuous program of construction, modification, or reconstruction of an affected facility, or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction, modification, or reconstruction of an affected facility.

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

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

(15) "Continuous monitoring system" means the total equipment, required under the applicable administrative regulations used to sample, to condition (if applicable), to analyze and to provide a permanent record of emissions or process parameters.

(16) "Design capacity" means the maximum rate at which a unit was designed to operated.

(17) "Director" means Director of the Division for Air Quality of the Natural Resources and Environmental Protection Cabinet.

(18) "District" has the meaning given it in KRS 224.01-100.

(19) "Emission standard" means that numerical limit which fixes the amount of an air contaminant or air contaminants that may be vented into the atmosphere (open air) from an affected facility or from air pollution control equipment installed in an affected facility.

(20) "Equivalent method" means a method of sampling and analyzing for an air pollutant which has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to have a consistent and quantitatively known relationship to the reference method, under specified conditions.

(21) "Exempt solvent" means an organic compound listed in the definition of volatile organic compound as not participating in atmospheric photochemical reactions.

(22) "Existing source" means a source which is not a new source.

(23) "Extreme nonattainment county" or "extreme nonattainment area" means a county or portion of a county designated extreme nonattainment in 401 KAR 51:010.

(24) "Fixed capital cost" means the capital needed to provide all the depreciable components.

(25) "Fuel" means natural gas, petroleum, coal, wood, and any form of solid, liquid, or gaseous fuel derived from these materials for the purpose of creating useful heat.

(26) "Fugitive emissions" means the emissions of an air contaminant into the open air other than from a stack or air pollution control equipment exhaust.

(27) "Hydrocarbon" means an organic compound consisting predominantly of carbon and hydrogen.

(28) "Incineration" means the process of igniting and burning solid, semisolid, liquid, or gaseous combustible wastes.

(29) "Intermittent emissions" means emissions of particulate matter into the open air from a process which operates for less than any six (6) consecutive minutes.

(30) "Major source" means a source of which the potential emission rate is equal to or greater than 100 tons per year of any one (1) of the following pollutants: particulate matter, sulfur oxides, nitrogen oxides, volatile organic compounds or carbon monoxide.

(31) "Malfunction" means a failure of air pollution control equipment, or process equipment, or of a process to operate in a normal or usual manner. Failures that are caused entirely or in part by poor maintenance, careless operation, or any other preventable upset condition or preventable equipment breakdown shall not be considered malfunctions.

(32) "Marginal nonattainment county" or "marginal nonattainment area" means a county or portion of a county designated marginal nonattainment in 401 KAR 51:010.

(33) "Moderate nonattainment county" or "moderate nonattainment area" means a county or portion of a county designated moderate nonattainment in 401 KAR 51:010.

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

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

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

(c) An increase in the hours of operation;

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

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

(f) The relocation or change in ownership of an existing facility.

(35) "Monitoring device" means the total equipment, required in applicable administrative regulations, used to measure and record (if applicable) process parameters.

(36) "New source" means a source, the construction, reconstruction, or modification of which commenced on or after the classification date as defined in the applicable administrative regulation. A source, upon reconstruction, becomes a new source, irrespective of a change in emission rate.

(37) "Nitrogen oxides" means all oxides of nitrogen except nitrous oxide, as measured by test methods specified by the cabinet.

(38) "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

(39) "Owner or operator" means a person who owns, leases, operates, controls, or supervises an affected facility or a source to which an affected facility is a part.

(40) "Particulate matter" means a material, except uncombined water, which exists in a finely divided form as a liquid or a solid as measured by the appropriate approved test method.

(41) "Particulate matter emissions" means, except as used in 40 CFR 60, all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method specified in 40 CFR Chapter I, or by a test method specified in the approved state implementation plan.

(42) "Person" means an individual, public or private corporation, political subdivision, government agency, municipality, industry, copartnership, association, firm, trust, estate, or other entity.

(43) "PM_{10}" means particulate matter with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers as measured by a reference method based on Appendix J to 40 CFR 50, which has been incorporated by reference in 401 KAR 50:015, and designated in accordance with 40 CFR 53, or by an equivalent method designated in accordance with 40 CFR 53.

(44) "PM_{10} emissions" means finely divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method, specified in 40 CFR Chapter I, or by a test method specified in the approved state implementation plan.

(45) "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. A physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions shall not count in determining the potential to emit of a stationary source.

(46) "Reconstruction" means the replacement of components of an existing affected facility to the extent that the fixed capital cost of the new components exceeds fifty (50) percent of the fixed capital cost that would be required to construct a comparable entirely new affected facility, and it is technologically and economically feasible to meet the applicable new source standards. Individual sections of these administrative regulations may include specific provisions which refine and delimit the concept of reconstruction set forth in this subsection. The cabinet's determination as to whether the proposed replacement constitutes reconstruction shall be based on:

(a) The fixed capital cost of the replacements in comparison to the fixed capital cost that would be required to construct a comparable entirely new facility;

(b) The estimated life of the affected facility after the replacements compared to the life of a comparable entirely new affected facility;

(c) The extent to which the components being replaced cause or contribute to the emissions from the affected facility; and

(d) Economic or technical limitations on compliance with applicable standards of performance which are inherent in the proposed replacements.

(47) "Reference method" means a method of sampling and analyzing for an air pollutant as prescribed by Appendices A through K to 40 CFR 50, Appendices A and B to 40 CFR 60, and Appendix B to 40 CFR 61, which have been incorporated by reference in 401 KAR 50:015. This term may be more narrowly defined within a specific administrative regulation.

(48) "Run" means the net period of time during which an emission sample is collected. Unless otherwise specified, a run may be either intermittent or continuous within the limits of good engineering practice.

(49) "Secondary emissions" means emissions which occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. Secondary emissions shall be specific, well defined, quantifiable, and shall impact the same general area as does the stationary source modification which causes the secondary emissions. Secondary emissions may include, but are not limited to emissions from an off-site support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include emissions which come directly from a mobile source, such as the emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

(50) "Serious nonattainment county" or "serious nonattainment area" means a county or portion of a county designated serious nonattainment in 401 KAR 51:010.

(51) "Severe nonattainment county" or "severe nonattainment area" means a county or portion of a county designated severe nonattainment in 401 KAR 51:010.

(52) "Shutdown" means the cessation of an operation.

(53) "Source" means one (1) or more affected facilities contained within a given contiguous property line. The property shall be considered contiguous if separated only by a public thoroughfare, stream, or other right of way.

(54) "Stack or chimney" means a flue, conduit, or duct arranged to conduct emissions to the atmosphere.

(55) "Standard" means an emission standard, a standard of performance, or an ambient air quality standard as promulgated under the administrative regulations of the Division for Air Quality or the emission control requirements necessary to comply with 401 KAR Chapter 51, of the administrative regulations of the Division for Air Quality.

(56) "Standard conditions:"

(a) For source measurements means twenty (20) degrees Celsius (sixty-eight (68) degrees Fahrenheit) and a pressure of 760 mm Hg (29.92 in. of Hg);

(b) For the purpose of air quality determinations means twenty-five (25) degrees Celsius and a reference pressure of 760 mm Hg.

(57) "Start-up" means the setting in operation of an affected facility.

(58) "State implementation plan" means the most recently prepared plan or revision required by 42 USC 7410 which has been approved by the U.S. EPA.

(59) "Total suspended particulate" means particulate matter as measured by the method described in Appendix B of 40 CFR 50, which has been incorporated by reference in 401 KAR 50:015.

(60) "Uncombined water" means water which can be separated from a compound by ordinary physical means and which is not bound to a compound by internal molecular forces.

(61) "Urban county" means a county which is a part of an urbanized area with a population of greater than 200,000 based upon the 1980 census. If a portion of a county is a part of an urbanized area, then the entire county shall be classified as urban with respect to the administrative regulations of the Division for Air Quality.

(62) "Urbanized area" means an area defined as such by the U.S. Department of Commerce, Bureau of Census.

(63) "Volatile organic compound" or "VOC" means an organic

compound which participates in atmospheric photochemical reactions. This includes an organic compound other than the following compounds: methane; ethane; carbon monoxide; carbon dioxide; carbonic acid; metallic carbides or carbonates; ammonium carbonate; methylene chloride; 1,1,1-trichloroethane (methyl chloroform) trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12) chlorodifluoromethane (HCFC-22); trifluoromethane (HFC-23); 1,1,2-trichloro-1,2,2-trifluoroethane [~~trichlorotrifluoroethane~~] (CFC-113); dichlorotetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); dichlorotrifluoroethane (HCFC-123); tetrafluoroethane (HFC-134a); dichlorofluoroethane (HCFC-141b); chlorodifluoroethane (HCFC-142b); 2-chloro-1,1,1, 2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); [~~acetone;~~] parachlorobenzotrifluoride (PCBTF); cyclic, branched, or linear completely methylated siloxanes; and perfluorocarbon compounds which fall into these classes:

(a) Cyclic, branched, or linear, completely fluorinated alkanes;

(b) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;

(c) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and

(d) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine. These compounds have been determined to have negligible photochemical reactivity. For purposes of determining compliance with emission limits, VOCs shall be measured by test methods that have been approved by the cabinet and the U.S. EPA. [~~Approval by the cabinet shall not constitute or imply approval by the U.S. EPA. The cabinet will not approve a test method that has been disapproved for use by the U.S. EPA.~~] If a method used also inadvertently measures compounds with negligible photochemical reactivity, an owner or operator may exclude these negligibly reactive compounds when determining compliance with an emissions standard.

Section 2. Abbreviations. The abbreviations used in the administrative regulations of 401 KAR Chapter 61, shall have the following meanings:

AC - Association of Official Analytical Chemists
ANSI - American National Standards Institute
ASTM - American Society for Testing and Materials
BOD - Biochemical oxidant demand
BTU - British Thermal Unit
°C - Degree Celsius (centigrade)
Cal - calorie
cfm - cubic feet per minute
CFR - Code of Federal Regulations
CH_4 - methane
CO - Carbon monoxide
CO_2 - Carbon dioxide
COD - Chemical oxidant demand
dscf - dry cubic feet at standard conditions
dscm - dry cubic meter at standard conditions
°F - Degree Fahrenheit
ft - feet
g - gram
gal - gallon
gr - grain
hr - hour
HCl - Hydrochloric acid
Hg - mercury
HF - Hydrogen fluoride
H_2O - water
H_2S - Hydrogen sulfide
H_2SO_4 - Sulfuric acid
in - inch
J - joule
KAR - Kentucky Administrative Regulations
kg - kilogram
KRS - Kentucky Revised Statutes
l - liter
lb - pound
m - meter
m^3 - cubic meter
min - minute
mg - milligram
MJ - megajoules
MM - million
mm - millimeter
mo - month
Ng - nanograms
N_2 - Nitrogen
NO - Nitric oxide
NO_2 - Nitrogen dioxide
NO_x - Nitrogen oxides
oz - ounce
O_2 - oxygen
O_3 - ozone
ppb - parts per billion
ppm - parts per million
ppm (w/w) - parts per million (weight by weight)
mg - microgram
psia - pounds per square inch absolute
psig - pounds per square inch gage
S - at standard conditions
sec - second
SIP - State implementation plan
SO_2 - Sulfur dioxide
sq - square
TAPPI - Technical Association of the Pulp and Paper Industry
TSP - Total suspended particulates
TSS - Total suspended solids
U.S. EPA - United States Environmental Protection Agency
UTM - Universal Transverse Mercator
VOC - Volatile organic compound
yd - yard

PHILLIP J. SHEPHERD, Secretary
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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Amended After Hearing)

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

RELATES TO: KRS 224.01-010, 224.20-100, 224.20-110, 224.20-120, 40 CFR Chapter I, Appendices A through K to 50, 51.100(s), 53, 60, Appendices A and B to 60, Appendix B to 61, 42 USC 7410, 7411(a)(8)

STATUTORY AUTHORITY: KRS [~~13A.222(4)(e),~~] 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation provides for the definition of terms used in 401 KAR Chapter 63.

Section 1. General Definitions. As used in the Division for Air Quality administrative regulations of 401 KAR Chapter 63, unless the

content clearly indicates otherwise in a specific administrative regulation, the following words shall have the following meanings:

(1) "Affected facility" means an apparatus, building, operation, road, or other entity or series of entities which emits or may emit an air contaminant into the outdoor atmosphere.

(2) "Air contaminant" has the meaning given it in KRS 224.01-010.

(3) "Air pollutant" means an air contaminant.

(4) "Air pollution" has the meaning given it in KRS 224.01-010.

(5) "Air pollution control equipment" means a mechanism, device or contrivance used to control or prevent air pollution, which is not, aside from air pollution control laws and administrative regulations, vital to production of the normal product of the source or to its normal operation.

(6) "Alteration" means:

(a) The installation or replacement of air pollution control equipment at a source;

(b) A physical change in or change in the method of operation of an affected facility which increases the potential to emit of a pollutant (to which a standard applies) emitted by the facility or which results in the emission of an air pollutant (to which a standard applies) not previously emitted.

(7) "Alternative method" means a method of sampling and analyzing for an air pollutant which is not a reference or equivalent method but which has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to, in specific cases, produce results adequate for its determination of compliance.

(8) "Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.

(9) "Ambient air quality standard" means a numerical expression of a specified concentration level for a particular air contaminant and the time averaging interval over which that concentration level is measured and is a goal to be achieved in a stated time through the application of appropriate preventive or control measures.

(10) "Cabinet" has the meaning given it in KRS 224.01-010.

(11) "Capital expenditure" means an expenditure for a physical or operational change to an affected facility which exceeds the product of the applicable "Annual asset guideline repair allowance percentage" specified in the Internal Revenue Service (IRS) Publication 534 which has been incorporated by reference in 401 KAR 50:010, and the affected facility's basis, as defined by section 1012 of the Internal Revenue Code which has been incorporated by reference in 401 KAR 50:010. However, the total expenditure for a physical or operational change to an affected facility shall not be reduced by any "excluded additions" as defined in IRS Publication 534, as would be done for tax purposes.

(12) "Commence" means that an owner or operator has undertaken a continuous program of construction, modification, or reconstruction of an affected facility, or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction, modification, or reconstruction of an affected facility.

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

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

(15) "Continuous monitoring system" means the total equipment, required under the applicable administrative regulations used to sample, to condition (if applicable), to analyze and to provide a permanent record of emissions or process parameters.

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

(17) "District" has the meaning given it in KRS 224.01-010.

(18) "Emission standard" means that numerical limit which fixes the amount of an air contaminant or air contaminants that may be vented into the atmosphere (open air) from an affected facility or from air pollution control equipment installed in an affected facility.

(19) "Equivalent method" means a method of sampling and analyzing for an air pollutant which has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to have a consistent and quantitatively known relationship to the reference method, under specified conditions.

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

(21) "Existing source" means a source which is not a new source.

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

(23) "Fixed capital cost" means the capital needed to provide all the depreciable components.

(24) "Fuel" means natural gas, petroleum, coal, wood, and any form of solid, liquid, or gaseous fuel derived from these materials for the purpose of creating useful heat.

(25) "Fugitive emissions" means the emissions of an air contaminant into the open air other than from a stack or air pollution control equipment exhaust.

(26) "Hydrocarbon" means an organic compound consisting predominantly of carbon and hydrogen.

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

(28) "Intermittent emissions" means emissions of particulate matter into the open air from a process which operates for less than any six (6) consecutive minutes.

(29) "Major source" means a source of which the potential emission rate is equal to or greater than 100 tons per year of any one (1) of the following pollutants: particulate matter, sulfur oxides, nitrogen oxides, volatile organic compounds or carbon monoxide.

(30) "Malfunction" means a failure of air pollution control equipment, or process equipment, or of a process to operate in a normal or usual manner. Failures that are caused entirely or in part by poor maintenance, careless operation, or any other preventable upset condition or preventable equipment breakdown shall not be considered malfunctions.

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

(32) "Moderate nonattainment county" or "moderate nonattainment area" means a county or portion of a county designated moderate nonattainment in 401 KAR 51:010.

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

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

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

(c) An increase in the hours of operation;

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

(e) The addition or use of any system or device whose primary function is the reduction of air pollutants, except when an emission

control system is removed or is replaced by a system which the cabinet determines to be less environmentally beneficial;

(f) The relocation or change in ownership of an existing facility.

(34) "Monitoring device" means the total equipment, required in applicable administrative regulations, used to measure and record (if applicable) process parameters.

(35) "New source" means a source, the construction, reconstruction, or modification of which commenced on or after the classification date as defined in the applicable administrative regulation. A source, upon reconstruction, becomes a new source, irrespective of a change in emission rate.

(36) "Nitrogen oxides" means all oxides of nitrogen except nitrous oxide, as measured by test methods specified by the cabinet.

(37) "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

(38) "Owner or operator" means a person who owns, leases, operates, controls, or supervises an affected facility or a source to which an affected facility is a part.

(39) "Particulate matter" means a material, except uncombined water, which exists in a finely divided form as a liquid or a solid as measured by the appropriate approved test method.

(40) "Particulate matter emissions" means, except as used in 40 CFR 60, all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method specified in 40 CFR Chapter I, or by a test method specified in the approved state implementation plan.

(41) "Person" means an individual, public or private corporation, political subdivision, government agency, municipality, industry, copartnership, association, firm, trust, estate, or other entity.

(42) "PM_{10}" means particulate matter with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers as measured by a reference method based on Appendix J to 40 CFR 50, which has been incorporated by reference in 401 KAR 50:015, and designated in accordance with 40 CFR 53, or by an equivalent method designated in accordance with 40 CFR 53.

(43) "PM_{10} emissions" means finely divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method, specified in 40 CFR Chapter I, or by a test method specified in the approved state implementation plan.

(44) "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. A physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions shall not count in determining the potential to emit of a stationary source.

(45) "Reconstruction" means the replacement of components of an existing affected facility to the extent that the fixed capital cost of the new components exceeds fifty (50) percent of the fixed capital cost that would be required to construct a comparable entirely new affected facility, and it is technologically and economically feasible to meet the applicable new source standards. Individual sections of these administrative regulations may include specific provisions which refine and delimit the concept of reconstruction set forth in this subsection. The cabinet's determination as to whether the proposed replacement constitutes reconstruction shall be based on:

(a) The fixed capital cost of the replacements in comparison to the fixed capital cost that would be required to construct a comparable entirely new facility;

(b) The estimated life of the affected facility after the replacements compared to the life of a comparable entirely new affected facility;

(c) The extent to which the components being replaced cause or contribute to the emissions from the affected facility; and

(d) Economic or technical limitations on compliance with applicable standards of performance which are inherent in the proposed replacements.

(46) "Reference method" means a method of sampling and analyzing for an air pollutant as prescribed by Appendices A through K to 40 CFR 50, Appendices A and B to 40 CFR 60, and Appendix B to 40 CFR 61, which have been incorporated by reference in 401 KAR 50:015. This term may be more narrowly defined within a specific administrative regulation.

(47) "Run" means the net period of time during which an emission sample is collected. Unless otherwise specified, a run may be either intermittent or continuous within the limits of good engineering practice.

(48) "Secondary emissions" means emissions which occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. Secondary emissions shall be specific, well defined, quantifiable, and shall impact the same general area as does the stationary source modification which causes the secondary emissions. Secondary emissions may include, but are not limited to emissions from an off-site support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include emissions which come directly from a mobile source, such as the emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

(49) "Serious nonattainment county" or "serious nonattainment area" means a county or portion of a county designated serious nonattainment in 401 KAR 51:010.

(50) "Severe nonattainment county" or "severe nonattainment area" means a county or portion of a county designated severe nonattainment in 401 KAR 51:010.

(51) "Shutdown" means the cessation of an operation.

(52) "Source" means one (1) or more affected facilities contained within a given contiguous property line. The property shall be considered contiguous if separated only by a public thoroughfare, stream, or other right of way.

(53) "Stack or chimney" means a flue, conduit, or duct arranged to conduct emissions to the atmosphere.

(54) "Standard" means an emission standard, a standard of performance, or an ambient air quality standard as promulgated under the administrative regulations of the Division for Air Quality or the emission control requirements necessary to comply with 401 KAR Chapter 51, of the administrative regulations of the Division for Air Quality.

(55) "Standard conditions:"

(a) For source measurements means twenty (20) degrees Celsius (sixty-eight (68) degrees Fahrenheit) and a pressure of 760 mm Hg (29.92 in. of Hg);

(b) For the purpose of air quality determinations means twenty-five (25) degrees Celsius and a reference pressure of 760 mm Hg.

(56) "Start-up" means the setting in operation of an affected facility.

(57) "State implementation plan" means the most recently prepared plan or revision required by 42 USC 7410 which has been approved by the U.S. EPA.

(58) "Total suspended particulate" means particulate matter as measured by the method described in Appendix B of 40 CFR 50, which has been incorporated by reference in 401 KAR 50:015.

(59) "Uncombined water" means water which can be separated from a compound by ordinary physical means and which is not bound to a compound by internal molecular forces.

(60) "Urban county" means a county which is a part of an urbanized area with a population of greater than 200,000 based upon

the 1980 census. If a portion of a county is a part of an urbanized area, then the entire county shall be classified as urban with respect to the administrative regulations of the Division for Air Quality.

(61) "Urbanized area" means an area defined as such by the U.S. Department of Commerce, Bureau of Census.

(62) "Volatile organic compound" or "VOC" means an organic compound which participates in atmospheric photochemical reactions. This includes an organic compound other than the following compounds: methane; ethane; carbon monoxide; carbon dioxide; carbonic acid; metallic carbides or carbonates; ammonium carbonate; methylene chloride; 1,1,1-trichloroethane (methyl chloroform) trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12) chlorodifluoromethane (HCFC-22); trifluoromethane (HFC-23); 1,1,2-trichloro-1,2,2-trifluoroethane [~~trichlorotrifluoroethane~~] (CFC-113); dichlorotetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); dichlorotrifluoroethane (HCFC-123); tetrafluoroethane (HFC-134a); dichlorofluoroethane (HCFC-141b); chlorodifluoroethane (HCFC-142b); 2-chloro-1,1,1, 2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); [~~acetone;~~] parachlorobenzotrifluoride (PCBTF); cyclic, branched, or linear completely methylated siloxanes; and perfluorocarbon compounds which fall into these classes:

(a) Cyclic, branched, or linear, completely fluorinated alkanes;

(b) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;

(c) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and

(d) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine. These compounds have been determined to have negligible photochemical reactivity. For purposes of determining compliance with emission limits, VOCs shall be measured by test methods that have been approved by the cabinet and the U.S. EPA. [~~Approval by the cabinet shall not constitute or imply approval by the U.S. EPA. The cabinet will not approve a test method that has been disapproved for use by the U.S. EPA.~~] If a method used also inadvertently measures compounds with negligible photochemical reactivity, an owner or operator may exclude these negligibly reactive compounds when determining compliance with an emissions standard.

Section 2. Abbreviations. The abbreviations used in the administrative regulations of 401 KAR Chapter 63, shall have the following meanings:

AOAC - Association of Official Analytical Chemists
ANSI - American National Standards Institute
ASTM - American Society for Testing and Materials
BOD - Biochemical oxidant demand
BTU - British Thermal Unit
°C - Degree Celsius (centigrade)
Cal - calorie
cfm - cubic feet per minute
CFR - Code of Federal Regulations
CH_4 - methane
CO - Carbon monoxide
CO_2 - Carbon dioxide
COD - Chemical oxidant demand
dscf - dry cubic feet at standard conditions
dscm - dry cubic meter at standard conditions
°F - Degree Fahrenheit
ft - feet
g - gram
gal - gallon
gr - grain
hr - hour
HCl - Hydrochloric acid
Hg - mercury
HF - Hydrogen fluoride
H_2O - water
H_2S - Hydrogen sulfide
H_2SO_4 - Sulfuric acid
in - inch
J - joule
KAR - Kentucky Administrative Regulations
kg - kilogram
KRS - Kentucky Revised Statutes
l - liter
lb - pound
m - meter
m^3 - cubic meter
min - minute
mg - milligram
MJ - megajoules
MM - million
mm - millimeter
mo - month
Ng - nanograms
N_2 - Nitrogen
NO - Nitric oxide
NO_2 - Nitrogen dioxide
NO_x - Nitrogen oxides
oz - ounce
O_2 - oxygen
O_3 - ozone
ppb - parts per billion
ppm - parts per million
ppm (w/w) - parts per million (weight by weight)
mg - microgram
psia - pounds per square inch absolute
psig - pounds per square inch gauge
S - at standard conditions
sec - second
SIP - State implementation plan
SO_2 - Sulfur dioxide
sq - square
TAPPI - Technical Association of the Pulp and Paper Industry
TSP - Total suspended particulates
TSS - Total suspended solids
U.S. EPA - United States Environmental Protection Agency
UTM - Universal Transverse Mercator
VOC - Volatile organic compound
yd - yard

PHILLIP J. SHEPHERD, Secretary
APPROVED BY AGENCY: February 13, 1995
FILED WITH LRC: February 13, 1995 at 1 p.m.

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

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

RELATES TO: KRS 224.01-010, 224.10-100, 40 CFR ch. I, Appendices B and A to 40 CFR 50, 40 CFR 53, [~~55~~], 60, 42 USC 7410

STATUTORY AUTHORITY: KRS [~~13A.222(4)(e),~~] 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control

of air pollution. This administrative regulation provides for the defining of terms to be used in 401 KAR Chapter 65.

Section 1. General definitions. As used in the Division for Air Quality administrative regulations of 401 KAR Chapter 65, unless the content clearly indicates otherwise in a specific administrative regulation, the following terms shall have the following meanings:

(1) "Air contaminant" has the meaning given it in KRS 224.01-010.

(2) "Air pollutant" means an air contaminant.

(3) "Air pollution" has the meaning given it in KRS 224.01-010.

(4) "Alternative method" means a method of sampling and analyzing for an air pollutant which is not a reference or equivalent method but which has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to, in specific cases, produce results adequate for its determination of compliance.

(5) "Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.

(6) "Ambient air quality standard" means a numerical expression of a specified concentration level for a particular air contaminant and the time averaging interval over which that concentration level is measured and is a goal to be achieved in a stated time through the application of appropriate preventive or control measures.

(7) "Cabinet" has the meaning given it in KRS 224.01-010.

(8) "Director" means Director of the Division for Air Quality of the Natural Resources and Environmental Protection Cabinet.

(9) "District" has the meaning given it in KRS 224.01-010.

(10) "Equivalent method" means a method of sampling and analyzing for an air pollutant which has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to have a consistent and quantitatively known relationship to the reference method, under specified conditions.

(11) "Exempt solvent" means an organic compound listed in the definition of volatile organic compound as not participating in atmospheric photochemical reactions.

(12) "Extreme nonattainment county" or "extreme nonattainment area" means a county or portion of a county designated extreme nonattainment in 401 KAR 51:010.

(13) "Hydrocarbon" means an organic compound consisting predominantly of carbon and hydrogen.

(14) "Marginal nonattainment county" or "marginal nonattainment area" means a county or portion of a county designated marginal nonattainment in 401 KAR 51:010.

(15) "Moderate nonattainment county" or "moderate nonattainment area" means a county or portion of a county designated moderate nonattainment in 401 KAR 51:010.

(16) "Nitrogen oxides" means all oxides of nitrogen except nitrous oxide, as measured by test methods specified by the cabinet.

(17) "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

(18) "Particulate matter" means a material, except uncombined water, which exists in a finely divided form as a liquid or a solid as measured by the appropriate approved test method.

(19) "Particulate matter emissions" means, except as used in 40 CFR 60, all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method specified in 40 CFR Chapter 1, or by a test method specified in the approved state implementation plan.

(20) "PM_{10}" means particulate matter with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers as measured by a reference method based on Appendix J to 40 CFR 50, which has been incorporated by reference in 401 KAR 50:015, and designated in accordance with 40 CFR 53, or by an equivalent method designated in accordance with 40 CFR 53.

(21) "PM_{10} emissions" means finely divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method, specified in 40 CFR Chapter 1, or by a test method specified in the approved state implementation plan.

(22) "Serious nonattainment county" or "serious nonattainment area" means a county or portion of a county designated serious nonattainment in 401 KAR 51:010.

(23) "Severe nonattainment county" or "severe nonattainment area" means a county or portion of a county designated severe nonattainment in 401 KAR 51:010.

(24) "Standard" means an emission standard, a standard of performance, or an ambient air quality standard as promulgated under the administrative regulations of the Division for Air Quality or the emission control requirements necessary to comply with 401 KAR Chapter 51, of the administrative regulations of the Division for Air Quality.

(25) "Standard conditions."

(a) For source measurements means twenty (20) degrees Celsius (sixty- eight (68) degrees Fahrenheit) and a pressure of 760 mm Hg (29.92 in. of Hg);

(b) For the purpose of air quality determinations means twenty-five (25) degrees Celsius and a reference pressure of 760 mm Hg.

(26) "State implementation plan" means the most recently prepared plan or revision required by 42 USC 7410 which has been approved by the U.S. EPA.

(27) "Total suspended particulate" means particulate matter as measured by the method described in Appendix B of 40 CFR 50, which has been incorporated by reference in 401 KAR 50:015.

(28) "Uncombined water" means water which can be separated from a compound by ordinary physical means and which is not bound to a compound by internal molecular forces.

(29) "Urban county" means a county which is a part of an urbanized area with a population of greater than 200,000 based upon the 1980 census. If a portion of a county is a part of an urbanized area, then the entire county shall be classified as urban with respect to the administrative regulations of the Division for Air Quality.

(30) "Urbanized area" means an area defined as such by the U.S. Department of Commerce, Bureau of Census.

(31) "Volatile organic compound" or "VOC" means an organic compound which participates in atmospheric photochemical reactions. This includes an organic compound other than the following compounds: methane; ethane; carbon monoxide; carbon dioxide; carbonic acid; metallic carbides or carbonates; ammonium carbonate[~~s~~]; methylene chloride; 1,1,1-trichloroethane (methyl chloroform); trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (HCFC-22); trifluoromethane (HFC-23); 1,1,2-trichloro-1,2,2-trifluoroethane [~~trichlorotrifluoroethane~~] (CFC-113); dichlorotetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); dichlorotrifluoroethane (HCFC-123); tetrafluoroethane (HFC-134a); dichlorofluoroethane (HCFC-141b); chlorodifluoroethane (HCFC-142b); 2-chloro-1,1,1, 2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); [~~acetone;~~] parachlorobenzotrifluoride (PCBTF); cyclic, branched, or linear completely methylated siloxanes; and perfluorocarbon compounds which fall into these classes:

(a) Cyclic, branched, or linear, completely fluorinated alkanes;

(b) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;

(c) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and

(d) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine. These compounds have been determined to have negligible photochemical reactivity. For purposes of determining compliance with emission limits, VOCs shall be measured by test methods that have been approved by the

cabinet and the U.S. EPA. ~~[Approval by the cabinet shall not constitute or imply approval by the U.S. EPA. The cabinet will not approve a test method that has been disapproved for use by the U.S. EPA.]~~ If a method used also inadvertently measures compounds with negligible photochemical reactivity, an owner or operator may exclude these negligibly reactive compounds when determining compliance with an emissions standard.

Section 2. Abbreviations. The abbreviations used in the administrative regulations of 401 KAR Chapter 65 shall have the following meanings:

~~[(32)]~~ "AOAC" means Association of Official Analytical Chemists
~~[(33)]~~ "ANSI" means American National Standards Institute.
~~[(34)]~~ "ASTM" means American Society for Testing and Materials.
~~[(35)]~~ "BOD" means Biochemical oxidant demand.
~~[(36)]~~ "BTU" means British Thermal Unit.
~~[(37)]~~ "°C" means Degree Celsius (centigrade).
~~[(38)]~~ "Cal" means calorie.
~~[(39)]~~ "cfm" means cubic feet per minute.
~~[(40)]~~ "CFR" means Code of Federal Regulations.
~~[(41)]~~ "CH_4" means methane.
~~[(42)]~~ "CO" means Carbon monoxide.
~~[(43)]~~ "CO_2" means Carbon dioxide.
~~[(44)]~~ "COD" means Chemical oxidant demand.
~~[(45)]~~ "dscf" means dry cubic feet at standard conditions.
~~[(46)]~~ "dscm" means dry cubic meter at standard conditions.
~~[(47)]~~ "°F" means Degree Fahrenheit.
~~[(48)]~~ "ft" means feet.
~~[(49)]~~ "g" means gram.
~~[(50)]~~ "gal" means gallon.
~~[(51)]~~ "gr" means grain.
~~[(52)]~~ "hr" means hour.
~~[(53)]~~ "HCl" means Hydrochloric acid.
~~[(54)]~~ "Hg" means mercury.
~~[(55)]~~ "HF" means Hydrogen fluoride.
~~[(56)]~~ "H_2O" means water.
~~[(57)]~~ "H_2S" means Hydrogen sulfide.
~~[(58)]~~ "H_2SO_4" means Sulfuric acid.
~~[(59)]~~ "in" means inch.
~~[(60)]~~ "J" means joule.
~~[(61)]~~ "KAR" means Kentucky Administrative Regulations.
~~[(62)]~~ "kg" means kilogram.
~~[(63)]~~ "KRS" means Kentucky Revised Statutes.
~~[(64)]~~ "l" means liter.
~~[(65)]~~ "lb" means pound.
~~[(66)]~~ "m" means meter.
~~[(67)]~~ "m^3" means cubic meter.
~~[(68)]~~ "min" means minute.
~~[(69)]~~ "mg" means milligram.
~~[(70)]~~ "MJ" means megajoules.
~~[(71)]~~ "MM" means million.
~~[(72)]~~ "mm" means millimeter.
~~[(73)]~~ "mo" means month.
~~[(74)]~~ "Ng" means nanograms.
~~[(75)]~~ "N_2" means Nitrogen.
~~[(76)]~~ "NO" means Nitric oxide.
~~[(77)]~~ "NO_2" means Nitrogen dioxide.
~~[(78)]~~ "NO_x" means Nitrogen oxides.
~~[(79)]~~ "oz" means ounce.
~~[(80)]~~ "O_2" means oxygen.
~~[(81)]~~ "O_3" means ozone.
~~[(82)]~~ "ppb" means parts per billion.
~~[(83)]~~ "ppm" means parts per million.
~~[(84)]~~ "ppm (w/w)" means parts per million (weight by weight).
~~[(85)]~~ "µg" means microgram.
~~[(86)]~~ "psia" means pounds per square inch absolute.
~~[(87)]~~ "psig" means pounds per square inch gage.
~~[(88)]~~ "S" means at standard conditions.
~~[(89)]~~ "sec" means second.
~~[(90)]~~ "SIP" means State implementation plan.
~~[(91)]~~ "SO_2" means Sulfur dioxide.
~~[(92)]~~ "sq" means square.
~~[(93)]~~ "TAPPI" means Technical Association of the Pulp and Paper Industry.
~~[(94)]~~ "TSP" means Total suspended particulates.
~~[(95)]~~ "TSS" means Total suspended solids.
~~[(96)]~~ "U.S. EPA" means United States Environmental Protection Agency.
~~[(97)]~~ "UTM" means Universal Transverse Mercator.
~~[(98)]~~ "VOC" means Volatile organic compound.
~~[(99)]~~ "yd" means yard.

PHILLIP J. SHEPHERD, Secretary
APPROVED BY AGENCY: February 13, 1995
FILED WITH LRC: February 13, 1995 at 1 p.m.

PROPOSED AMENDMENTS RECEIVED THROUGH NOON, FEBRUARY 15, 1995

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY (Proposed Amendment)

11 KAR 5:130. Student application.

RELATES TO: KRS 164.744(2) to 164.753(4), 164.780, 164.785
STATUTORY AUTHORITY: KRS 13A.100, 164.748(4)
NECESSITY AND FUNCTION: The Kentucky Higher Education Assistance Authority administers grant programs to provide financial assistance to students to attend Kentucky educational institutions. This administrative regulation prescribes the form to be used by students to apply for and establish financial need for KHEAA grant programs. This amendment is necessary to reflect the application form for KHEAA grants for use in 1995-96 [~~1994-95~~].

Section 1. In order to receive KHEAA grants, the 1995-96 [~~1994-95~~] Free Application for Federal Student Aid (FAFSA), incorporated herein by reference, for the pertinent academic year, shall be completed and submitted in accordance with the instructions provided on the FAFSA. The application and instructions are available from the authority at its office at 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m. An applicant shall indicate the choice of an educational institution on the application to be considered for the KHEAA grant. The educational institution listed first shall be used in the determination of a KHEAA grant program award. An individual who completes and files a FAFSA shall not have applied for a KHEAA grant for an academic year in which he indicates on the application a choice of educational institutions, none of which participate in the KHEAA grant programs; or that he is not a United States citizen, eligible noncitizen, or resident of Kentucky; or that he is a graduate student or will obtain a first baccalaureate degree before July 1 of the academic year for which he is seeking student financial assistance.

Section 2. If the student provides written notification of change of first choice educational institution, on or before August 1 or December 1, prior to the commencement of the respective fall or spring semester for which a KHEAA grant is sought, grant program eligibility shall be redetermined and award determination shall be recomputed by the authority based upon the new choice of educational institution. If the student changes his or her choice of educational institution after those dates, any KHEAA grant award for the succeeding academic term shall be revoked, and grant program eligibility shall be recomputed and depend upon the availability of funds.

MARY JO YOUNG, Chairman
APPROVED BY AGENCY: December 6, 1994
FILED WITH LRC: February 15, 1995 at 8 a.m.
PUBLIC HEARING A public hearing on this administrative regulation shall be held on Friday, March 31, 1995 at 10 a.m. at 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Monday, March 27, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Paul P. Borden, Executive Director, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky 40601, (502) 564-7990.

REGULATORY IMPACT ANALYSIS

Agency Contact: Paul P. Borden
(1) Type and number of entities affected: A total of 79 Kentucky schools are eligible for attendance by recipients of KHEAA grants. In the school year ending June 30, 1994, there were 84,650 applicants and 20,789 students received KHEAA grants.
(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: Neither cost of living nor employment will be affected.
(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: Cost of doing business will not be affected.
(c) Compliance, reporting and paperwork requirements, including factors increasing or decreasing cost (note any effects upon competition for the:
1. First year following implementation: There will be no increase in reporting or paperwork, nor any increase or decrease in cost. There is no effect upon competition.
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: There will be no significant direct or indirect costs or savings.
2. Continuing costs or savings: Same as (3)(a)(1) above.
3. Additional factors increasing or decreasing costs: None. The application is processed free of charge for the student, and the information is provided to the promulgating administrative body free of charge, electronically from the central processor.
(b) Reporting and paperwork requirements: There will be no change in reporting and paperwork requirements.
(4) Assessment of anticipated effect on state and local revenues: No effect on state and local revenue is anticipated.
(5) Source of revenue to be used for implementation and enforcement of administrative regulation. N/A
(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 economic impact is anticipated. No comments were received.
(b) Kentucky. Same as (6)(a) above.
(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative method was considered. This amendment to the administrative regulation 11 KAR 5:130 would identify the appropriate application form that is revised merely to reflect the 1995-96 academic year.
(8) Assessment of expected benefits:
(a) Identify effects on public health and environmental welfare of the geographical are in which implemented and on Kentucky: None
(b) State whether a detrimental effect on the environment or 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: KHEAA uses the Free Application for Federal Student Assistance (FAFSA) as the application for KHEAA grants. Use of that form provides a uniform application process for students at no cost and makes administration of student aid more efficient for KHEAA and participating schools. The form is therefore incorporated by reference into this administrative regulation. Each year the form is revised to reflect the new academic year. Amendment of the administrative regulation is necessary to incorporate the revised form. There are no substantive changes in the new form.

(11) Tiering: Was tiering applied? No. The concept of tiering is not applicable to this amendment of this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities or address a particular problem to which certain regulated entities do not contribute. Disparate treatment of any person or entity affected by this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U. S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
(Proposed Amendment)

11 KAR 5:140. KTG award determination procedure.

RELATES TO: KRS 164.744(2) to 164.753(4), 164.780, 164.785
STATUTORY AUTHORITY: KRS 13A.100, 164.748(4)
NECESSITY AND FUNCTION: The Kentucky Higher Education Assistance Authority administers the Kentucky tuition grant program to provide financial assistance to students to attend Kentucky educational institutions. This administrative regulation sets forth the award determination procedures for the Kentucky tuition grant program. This amendment is necessary to increase the KTG award amount. [~~delete a section regarding the minimum KHEAA grant award that appears to be inconsistent with the minimum CAP grant award.~~]

Section 1. Definitions. For purposes of this administrative regulation, the terms listed below shall have the following meanings: "Pell grant" means an award under the Pell Grant Program operated by the secretary under the provisions of Title IV Part A, subpart 1 of the federal act.

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

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

(1) Expected Pell grant;
(2) Expected family contribution; and
(3) CAP grant.

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

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

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

(4) A KTG shall not exceed $1,500 [~~1,200~~] for an academic year.

Section 5. A KHEAA grant shall not exceed the cost of tuition and fees charged to the student during the academic year of the award. A KHEAA grant awarded to an incarcerated individual shall be considered an overaward to the extent that the KHEAA grant, in combination with financial assistance received from other sources, exceeds the student's actual cost for tuition, fees, and books. A semester award shall not exceed tuition and fee charges for that semester. No KHEAA grant award shall be made for a summer academic term.

Section 6. In no event shall the KHEAA grant award exceed the applicant's total cost of education less expected family contribution and other anticipated student financial assistance. The authority shall reduce or revoke a KHEAA grant upon receipt of documentation that financial assistance from other sources in combination with the KHEAA grant exceeds the educational institution's determination of financial need for that student. The KHEAA grant program officer (KGPO) and the grant recipient shall make every reasonable effort to provide the authority the information needed to prevent an overaward.

Section 7. If the authority receives revised data that, upon recomputation, results in the student becoming ineligible for a KHEAA grant that has already been offered, but not disbursed, the grant shall be revoked. If the student is determined to be ineligible after the KHEAA grant has been disbursed, the student shall repay to the authority the entire amount of the KHEAA grant for which the student was ineligible.

Section 8. If the authority receives revised data that, upon recomputation, necessitates reduction of the KHEAA grant and the grant has not yet been disbursed, the reduction shall be made to both the fall and spring disbursements, and the student shall be notified of the reduction. If the grant for the fall academic term has already been disbursed, then the reduction shall be made to the spring disbursement. If both the fall and spring disbursements have been made, the student shall repay the overaward to the authority.

Section 9. Students requested by the institution to provide verification of data for any financial assistance program shall provide the verification before receiving disbursement of a KHEAA grant. Any student who is awarded a KHEAA grant who fails to provide verification requested by the educational institution shall be deemed ineligible, and the grant shall be revoked.

MARY JO YOUNG, Chairman
APPROVED BY AGENCY: December 6, 1994
FILED WITH LRC: February 15, 1995 at 8 a.m.
PUBLIC HEARING A public hearing on this administrative regulation shall be held on Friday, March 31, 1995 at 10 a.m. at 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Monday, March 27, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you

may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Paul P. Borden, Executive Director, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky 40601, (502) 564-7990.

REGULATORY IMPACT ANALYSIS

Agency Contact: Paul P. Borden

(1) Type and number of entities affected: The proposed amendment will increase the maximum award from $1,200 to $1,500 in the Kentucky Tuition Grant (KTG) program, which enables financially-needy students to attend a private college. In the academic year ending June 30, 1994, 13,774 applications were processed, and 6,363 recipients were approved. An increased maximum award size may result in fewer awards to eligible students.

(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: Neither cost of living nor employment will be affected.

(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: Cost of doing business will not be affected.

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

1. First year following implementation: There will be no increase or decrease in reporting and paperwork, and there will be no impact upon costs or competition.

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: There will be no significant direct or indirect costs or savings. Kentucky tuition grants are made from funds appropriated by the General Assembly. Every dollar appropriated for this program is distributed as a student grant. Therefore, increasing the maximum grant award is expected to have an effect on the total number of awards made, but will not effect a cost or savings to the promulgating administrative body.

2. Continuing costs or savings: Same as (3)(a)(1) above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There will be no change in reporting and paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: No effect on state and local revenue is anticipated. See (3)(a)(1).

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Funds for awards in the Kentucky Tuition Grant Program are appropriated from the state general fund.

(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 economic impact is anticipated. No public comments were received.

(b) Kentucky. Same as (6)(a) above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative method was considered. This amendment to the administrative regulation 11 KAR 5:140 would provide for additional level of student financial assistance to bring the Kentucky Tuition Grant Awards in line with increases in tuition rates at eligible colleges in recent years.

(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 the environment or 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: Was tiering applied? No. The concept of tiering is not applicable to this amendment of this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities or address a particular problem to which certain regulated entities do not contribute. Disparate treatment of any person or entity affected by this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U. S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
(Proposed Amendment)

11 KAR 5:160. Disbursement procedures.

RELATES TO: KRS 164.740 to 164.764, 164.780, 164.785

STATUTORY AUTHORITY: KRS 13A.100, 164.748(4)

NECESSITY AND FUNCTION: The Kentucky Higher Education Assistance Authority administers grant programs to provide financial assistance to students to attend Kentucky educational institutions. This administrative regulation sets forth the disbursement procedures for KHEAA grant programs. This amendment is necessary to change the method of disbursement at educational institutions that use the academic quarter system.

Section 1. Eligibility Verification. (1) The KHEAA grant program eligibility verification roster shall be forwarded to the KGPO at each educational institution prior to the beginning of each semester.

(2) The KGPO shall certify the eligibility of KHEAA grant recipients and return the roster to the authority according to instructions attached to the roster.

Section 2. Disbursement of Funds. (1) KHEAA grant funds shall be disbursed by the authority twice during an academic year to educational institutions for subsequent delivery to eligible students. The first disbursement of KHEAA grant funds by the authority to educational institutions shall be made in August for subsequent delivery by the institution to eligible students enrolled for a semester or quarters beginning not earlier than June [~~July~~] 1 and not later than December 31. The second disbursement of KHEAA grant funds by the authority to educational institutions shall be made in January for subsequent delivery by the institution to eligible students enrolled for a semester or quarters beginning not earlier than January 1 and not later than June 30. Upon receipt of the properly certified eligibility verification roster, the authority shall transfer additional funds, if necessary, to the KGPO. The KGPO shall return to the authority, according to instructions attached to the roster, all funds advanced that remain undisbursed to eligible students.

(2) The instructions accompanying the eligibility verification roster shall specify:

(a) Conditions under which a KHEAA grant shall be disbursed to the benefit of the KHEAA grant recipient;

(b) Conditions under which KHEAA grant funds shall be returned to the authority; and

(c) The date by which the roster and any undisbursed funds shall be returned to the authority.

(3) An institution which has not returned an eligibility verification roster or completed it according to instructions shall not receive additional KHEAA grant funds until it has satisfied the requirements in subsection (2) of this section. Furthermore, the authority, in its sole discretion, may withhold any services and funds from the educational institution from the due date until the roster and all funds advanced, that remain undisbursed to eligible students, are received by the authority.

Section 3. Alternative Disbursement. In lieu of the processes respecting the disbursement of KHEAA grant funds pursuant to Section 2 of this administrative regulation, the authority, in its sole discretion, may enter agreements on such terms as the authority deems appropriate to provide alternative methods for economical and efficient disbursement of KHEAA grants.

Section 4. If the student submits to the authority a written request to receive the maximum KTG for which he is eligible during the fall semester and that request is received by the authority not later than August 1 preceding the fall academic term for which a KTG is awarded, the entire amount of the KTG, up to the amount of tuition and fees charged for the fall academic term, may be disbursed for that academic term. Otherwise, a KTG shall be disbursed in the amount of one-half (1/2) for the fall academic term and one-half (1/2) for the spring academic term. A CAP grant shall always be disbursed in the amount of one-half (1/2) for the fall academic term and one-half (1/2) for the spring academic term.

Section 5. KHEAA grants shall be disbursed to eligible students enrolled at an educational institution that uses a short winter term in combination with longer fall and winter terms so that the first disbursement shall be in the fall academic term and the second disbursement shall be in the spring academic term. Enrollment during the shorter winter academic term shall not qualify a student for KHEAA grant assistance.

Section 6. The educational institution shall be responsible for proper disbursement of KHEAA grants. The educational institution shall not make KHEAA grant funds available to the grant recipient nor apply such funds to the recipient's account prior to the date that the recipient has completed the registration requirements (except for the payment of tuition and fees) at the institution for each academic semester or quarter for which the KHEAA grant is awarded. The maximum CAP grant amount that can be disbursed in one (1) quarter to recipients attending business schools, schools of nursing, or vocational schools cannot exceed the tuition charges for one (1) quarter at publicly operated vocational-technical schools in the Commonwealth. The institution shall be liable for disbursement to the wrong individual or to an ineligible student, and shall make restitution to the authority of any amount improperly disbursed. Failure of the institution to make restitution when required shall, without precluding other remedies, be deemed cause for limitation, suspension or termination of the participation of the institution in accordance with 11 KAR 4:020.

MARY JO YOUNG, Chairman

APPROVED BY AGENCY: December 6, 1994

FILED WITH LRC: February 15, 1995 at 8 a.m.

PUBLIC HEARING A public hearing on this administrative regulation shall be held on Friday, March 31, 1995 at 10 a.m. at 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Monday, March 27, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Paul P. Borden, Executive Director, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky 40601, (502) 564-7990.

REGULATORY IMPACT ANALYSIS

Agency Contact: Paul P. Borden

(1) Type and number of entities affected: A total of nine (9) proprietary schools participated in the CAP grant program during the school year ending June 30, 1994. With 3,173 applicants for CAP grants attending those nine (9) proprietary schools, there were 224 recipients during that same time frame.

(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: Neither cost of living nor employment will be affected.

(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: Cost of doing business will not be affected.

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

1. First year following implementation: Disbursements of CAP grants are made to students at the participating schools to cover particular periods of enrollment. The proposed amendment merely provides for disbursement at schools having quarters that begin in late June to provide more equitable treatment of those students. A minimal increase in paperwork requirements will be evident among the nine (9) proprietary schools in the CAP grant program to the extent that they will need to process the disbursements for students who would not have otherwise received disbursements for academic quarters commencing in June.

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: There will be no significant direct or indirect costs or savings.

2. Continuing costs or savings: Same as (3)(a)(1) above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There are no additional paperwork or reporting requirements.

(4) Assessment of anticipated effect on state and local revenues: No effect on state and local revenue is anticipated. All funds appropriated for this program are disbursed to students as grants. The same monies will be disbursed in two (2) segments during the fall semester instead of one (1).

(5) Source of revenue to be used for implementation and enforcement of administrative regulation. Funds for KHEAA grant programs are appropriated from the general fund. All funds appropriated for this program are disbursed to students as grants.

(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 economic impact is anticipated. No public comments were received.

(b) Kentucky. Same as (6)(a) above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative method was considered. This amendment to the administrative regulation 11 KAR 5:160 would provide for equitable treatment of all eligible recipients.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical are in which implemented and on Kentucky: None

(b) State whether a detrimental effect on the environment or 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: Was tiering applied? No. The concept of tiering is not applicable to this amendment of this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities or address a particular problem to which certain regulated entities do not contribute. Disparate treatment of any person or entity affected by this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U. S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

GENERAL GOVERNMENT CABINET
Kentucky Real Estate Appraisers Board
(Proposed Amendment)

201 KAR 30:030. Types of appraisers required in federally related transactions; certification and licensure.

RELATES TO: KRS 324A.010, 324A.030, 324A.035, 324A.045, 324A.065

STATUTORY AUTHORITY: KRS 324A.030, 324A.035

NECESSITY AND FUNCTION: This administrative regulation is necessary to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 USC 3331 through 12 USC 3351), KRS Chapter 324A to establish policies and procedures, and to protect the public. The function of this administrative regulation is to establish the: (1) types of appraisers required in federally related transactions; (2) scope of the practice; and (3) general requirements for certification or licensure.

Section 1. Types of Appraisers. An appraiser for a federally related transaction shall be a:

(1) Certified general real property appraiser;

(2) Certified residential real property appraiser;

(3) Licensed real property appraiser; or

(4) Trainee real property appraiser.

Section 2. Scope of Practice. (1) A certified general real property appraiser may perform appraisals of all types of real property regardless of transaction complexity or value.

(2) A certified residential real property appraiser may perform residential appraisals of one (1) to four (4) units regardless of transaction complexity or value.

(3) A licensed real property appraiser may perform appraisals of:

(a) Noncomplex, one (1) to four (4) residential units that have a transaction value of less then $1,000,000;

(b) Complex, one (1) to (4) residential units that have a transaction value of less than $250,000; and

(c) Nonresidential real property that has a transaction value of less than $250,000.

(4)(a) A trainee real property appraiser may perform appraisals of those properties which the supervising appraiser of the trainee is permitted to appraise and shall be subject to the Uniform Standards of Professional Appraisal Practice, incorporated by reference in 201 KAR 30:040.

(b) Separate appraisal logs shall be maintained for each supervising appraiser.

(c) The trainee real property appraiser shall record in the log for each appraisal the following:

1. Type of property;
2. Client name and address;
3. Address of appraised property;
4. Description of work performed;
5. Number of hours worked; and
6. Signature and state license or certification number of the supervising appraiser.

(d) The trainee real property appraiser shall be entitled to obtain copies of the appraisal reports he or she prepared. The supervising appraiser shall keep copies of appraisal reports for a period of at least five (5) years or at least two (2) years after final disposition of any judicial proceeding in which testimony was given, whichever period expires last.

(e) The supervising appraiser shall be licensed or certified by the board and in good standing and shall be responsible for the training and supervision of the trainee real property appraiser by:

1. Accepting responsibility for appraisal reports by the trainee real property appraiser by signing and certifying that the report is in compliance with the Uniform Standards of Professional Appraisal Practice, incorporated by reference in 201 KAR 30:040;
2. Reviewing reports by the trainee real property appraiser; and
3. Personally inspecting each appraised property with the trainee real property appraiser until the supervising appraiser determines that the trainee real property appraiser is competent in accordance with the competency provision of the Uniform Standards of Professional Appraisal Practice, incorporated by reference in 201 KAR 30:040 for the property type.

Section 3. General Requirements for Certification or Licensure. Certification or licensure, as appropriate, of the types of appraisers specified in Section 1 of this administrative regulation, shall be granted if an applicant:

(1) Has met the examination, education, experience, and fee requirements established by the provisions of 201 KAR 30:050 and 201 KAR 30:060; and

(2) Applies to the board on the "Appraiser License/Certification Application Form."

Section 4. Incorporation by Reference. (1) "Appraiser License/Certification Application" (July, 1992) is incorporated by reference.

(2) It may be inspected, copied, or obtained at the Kentucky Real Estate Appraisers Board, 3572 Iron Works Pike, Room 308, Lexington, KY 40511, 8 a.m. to 4:30 p.m., Monday through Friday.

JED DETERS, Chairman

APPROVED BY AGENCY: December 29, 1994

FILED WITH LRC: February 10, 1995 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held the 24th day of March, 1995, at 10 a.m., in Room 308, 3572 Iron Works Pike, Lexington, Kentucky 40511. Indi-

viduals interested in attending this hearing shall notify this agency in writing by the 20th day of March, 1995, 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: James P. Daniels, Executive Director, Kentucky Real Estate Appraisers Board, 3572 Iron Works Pike, Room 308, Lexington, Kentucky 40511, (606) 255-0144.

REGULATORY IMPACT ANALYSIS

Agency Contact: James P. Daniels

(1) Type and number of entities affected: Approximately 1200 licensed or certified appraisers 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 administrative regulation was amended to update the standards of practice for licensed and certified appraisers. 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? (Explain why tiering was or was not used) Tiering was not applied because all licensed and certified appraisers are treated uniformly under the law.

GENERAL GOVERNMENT CABINET
Kentucky Real Estate Appraisers Board
(Proposed Amendment)

201 KAR 30:040. Standards of practice administrative regulation.

RELATES TO: KRS 324A.035, 324A.050(10)
STATUTORY AUTHORITY: KRS 324A.035
NECESSITY AND FUNCTION: This administrative regulation is necessary to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 USC 3331 through 12 USC 3351), KRS Chapter 324A to insure that appraisers follow standards, and to protect the public. The function of this administrative regulation is to establish the standards of professional practice.

Section 1. A licensed nonfederal real property appraiser shall be exempted from the provisions of KRS 324A.050(10), requiring compliance with the "Standards of Professional Appraisal Practice."

Section 2. A certified general real property appraiser, a certified residential real property appraiser, a licensed real property appraiser, and a trainee real property appraiser shall comply with the "Uniform Standards of Professional Appraisal Practice."

Section 3. An appraisal report that is made with regard to a federally related transaction shall be in writing.

Section 4. If an applicant, certificant, or licensee fails to comply with the reporting or documentation requirements established in administrative regulations promulgated by the board, his certificate or license shall be denied or suspended by the board. 201 KAR 30:070, Section 10, provides for the administrative process dealing with denial and suspension by the board.

Section 5. (1) "Uniform Standards of Professional Appraisal Practice (1995 edition) [~~(January, 1993)~~]," Appraisal Standards Board of the Appraisal Foundation, is incorporated by reference, as the standards of professional appraisal practice established by the board pursuant to KRS 324A.035.

(2) It may be inspected, at the Kentucky Real Estate Appraisers Board, 3572 Iron Works Pike, Room 308, Lexington, KY 40511, Monday through Friday, 8 a.m. to 4:30 p.m.

JED DETERS, Chairman
APPROVED BY AGENCY: December 29, 1994
FILED WITH LRC: February 10, 1995 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held the 24th day of March, 1995, at 10 a.m., in Room 308, 3572 Iron Works Pike, Lexington, Kentucky 40511. Individuals interested in attending this hearing shall notify this agency in writing by the 20th day of March, 1995, 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: James P. Daniels, Executive Director, Kentucky Real Estate Appraisers Board, 3572 Iron Works Pike, Room 308, Lexington, Kentucky 40511, (606) 255-0144.

REGULATORY IMPACT ANALYSIS

Agency Contact: James P. Daniels

(1) Type and number of entities affected: Approximately 1200 licensed or certified appraisers 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 administrative regulation was amended to update the standards of practice for licensed and certified appraisers. 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? (Explain why tiering was or was not used) Tiering was not applied because all licensed and certified appraisers are treated uniformly under the law.

GENERAL GOVERNMENT CABINET
Kentucky Real Estate Appraisers Board
(Proposed Amendment)

201 KAR 30:130. Standards for education approval - fees.

RELATES TO: KRS 324A.015, 324A.020, 324A.030, 324A.035, 324A.040, 324A.045, 324A.050, 324A.070, 324A.075, 12 USC 3331-3351

STATUTORY AUTHORITY: KRS 324A.020

NECESSITY AND FUNCTION: This administrative regulation is necessary to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, (12 USC 3331 through 12 USC 3351), to set standards, and to protect the public.

Section 1. (1) All real estate appraisal education courses, offered after July 1, 1991, in order to qualify for education credit, or continuing education credit, shall be approved by the board in advance.

(2) Each education provider shall apply for approval on the "Application for Course Approval" revised May 1991. This application form is hereby incorporated by reference and may be obtained at the Kentucky Real Estate Appraisers Board, 3572 Iron Works Pike, Room 308, Lexington, Kentucky 40511 [~~10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223~~], Monday through Friday from 8 a.m. to 4:30 p.m.

(3) Board approval shall be given to those education courses which the board finds will provide competent instruction in real estate appraisal so as to establish, maintain and increase the student's skill, knowledge and competency in real estate appraising.

(4) The board shall collect an annual fee from each education provider applying for board approval. The fee shall be $100 for each sixteen (16) hour or less education course and fifty (50) dollars for each two (2) hour continuing education course, and the fee shall be nonrefundable.

JED DETERS, Chairman

APPROVED BY AGENCY: January 27, 1995

FILED WITH LRC: February 10, 1995 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held the 24th day of March, 1995, at 10 a.m., in Room 308, 3572 Iron Works Pike, Lexington, Kentucky 40511. Individuals interested in attending this hearing shall notify this agency in writing by the 20th day of March, 1995, 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: James P. Daniels, Executive Director, Kentucky Real Estate Appraisers Board, 3572 Iron Works Pike, Room 308, Lexington, Kentucky 40511, (606) 255-0144.

REGULATORY IMPACT ANALYSIS

Agency Contact: James P. Daniels

(1) Type and number of entities affected: Approximately 1200 licensed or certified appraisers 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 administrative regulation was amended to correct the address for 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? (Explain why tiering was or was not used) Tiering was not applied because all licensed and certified appraisers are treated uniformly under the law.

GENERAL GOVERNMENT CABINET
Department of Agriculture
Division of Pesticides
(Proposed Amendment)

302 KAR 31:015. Certification.

RELATES TO: KRS Chapter 217B

STATUTORY AUTHORITY: KRS 217B.050

NECESSITY AND FUNCTION: KRS 217B.050 authorizes the Department of Agriculture to adopt rules and administrative regulations relating to the use and application of pesticides. This administrative regulation establishes a system of certification for persons who purchase, use, or apply restricted-use pesticides pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act of 1972, as amended.

Section 1. Applicability. No person may purchase, use or apply restricted-use pesticides unless that person is certified in a category consistent with such purchase, use, or application, as provided in this administrative regulation or is acting under the direct supervision of a person so certified.

Section 2. Certification. Certification under this administrative regulation may be obtained from the department as a private applicator pursuant to 302 KAR 31:005, Section 9, or in the following categories of restricted-use pesticide use or application:

(1) Agricultural pest control. This category includes:

(a) Plant. This category includes persons using or supervising the use of restricted-use pesticides in production of agricultural crops including but not limited to tobacco, peanuts, cotton, feed grains, soybeans and forage, vegetables, small fruits, tree fruits and nuts, as well as on grasslands and noncrop agricultural lands.

(b) Animal. This category includes persons using or supervising the use of restricted-use pesticides on animals, including but not limited to beef cattle, dairy cattle, swine, sheep, horses, goats, poultry, and livestock, and to places on or in which animals are confined. Doctors of veterinary medicine engaged in the business of applying pesticides for hire, publicly holding themselves out as pesticide applicators, or engaged in large- scale use of pesticides are included in this category.

(2) Forest pest control. This category includes persons using or supervising the use of restricted-use pesticides in forests, forest nurseries, and forest seed-producing areas.

(3) Ornamental and turf pest control. This category includes persons using or supervising the use of restricted-use pesticides to control pests in the maintenance and production of ornamental trees, shrubs, flowers, and turf.

(4) Seed treatment. This category includes persons using or supervising the use of restricted-use pesticides on seeds.

(5) Aquatic pest control. This category includes persons using or supervising the use of any restricted-use pesticide purposefully applied to standing or running water, excluding applicators engaged in public health related activities included in subsection (8) of this section.

(6) Right-of-way pest control. This category includes persons using or supervising the use of restricted-use pesticides in the maintenance of public roads, electric powerlines, pipelines, railway rights-of-way or other similar areas.

(7) Industrial, institutional, structural, and health-related pest control. This category covers all applicators using or supervising the use of restricted-use pesticides in, on, or around food handling establishments, human dwellings, institutions such as schools and hospitals, industrial establishments, including warehouses and grain elevators, and any other structures and adjacent areas, public or private; and for the protection of stored, processed, or manufactured products. Industrial, institutional, structural and health-related pest control is divided into the following subcategories:

(a) Structural pest control certification covers the use of restricted-use pesticides in the control of general pests and wood-destroying organisms by all means other than fumigation, and covers all elements of "wood-destroying organism certification" in paragraph (c) of this subsection.

(b) Structural fumigation certification covers the use of restricted-use pesticides in the form of poisonous gases.

(c) Wood-destroying organism certification covers the use of restricted-use pesticides to control wood-destroying organisms only.

(d) General pest certification covers the use of restricted-use pesticides to control general pests only.

(8) Public health pest control. This category includes state, federal or other governmental employees using or supervising the use of restricted-use pesticides in public health programs for the management and control of pests having medical and public health importance.

(9) Regulatory pest control. This category includes state, federal or other governmental employees who use or supervise the use of restricted-use pesticides in the control of regulated pests.

(10) Demonstration and research pest control. This category includes:

(a) Individuals who demonstrate to the public the proper use and techniques of application of restricted-use pesticides or supervise such demonstration. Included in this group are such persons as extension specialists and county agents, commercial representatives demonstrating pesticide products, and those individuals demonstrating methods used in public programs; and

(b) Persons conducting field research with pesticides, who in so doing, use or supervise the use of restricted-use pesticides. This group includes state, federal, commercial, and other persons conducting field research on or utilizing restricted-use pesticides.

Section 3. General Requirements. To obtain certification, a person shall pay an application fee of twenty-five (25) dollars, submit a completed application form specifying the category or categories in which certification is requested, and satisfactorily demonstrate competence in the use and handling of pesticides in those categories. Competency in the use and handling of pesticides shall be determined on the basis of an ~~[written]~~ examination~~[s]~~, and, as appropriate, performance testing, based upon standards set forth below. Such examination and testing shall include the general standards applicable to all categories and the additional standards specifically identified for each category or subcategory in which a person desires to be certified.

Section 4. General Standards of Competency. All persons shall demonstrate practical knowledge of the principles and practices of pest control and safe use of pesticides, including standards for the supervision of noncertified persons as established by administrative regulation. Testing shall be based on examples of problems and situations appropriate to the particular category or subcategory of the person's requested certification and the following areas of competency:

(1) Label and labeling comprehension:

(a) The understanding in instructions, warnings, terms, symbols, and other information commonly appearing on pesticide labeling;

(b) Classification of the product, general or restricted;

(c) Necessity for use consistent with the labeling.

(2) Safety factors, including:

(a) Pesticides' toxicity, hazard to man and common exposure routes;

(b) Common types and causes of pesticide accidents;

(c) Precautions necessary to guard against injury to applicator and other individuals in or near treated areas;

(d) Need for and use of protective clothing and equipment;

(e) Symptoms of pesticide poisoning;

(f) First aid and other procedures to be followed in case of a pesticide accident;

(g) Proper identification, storage, transport, handling, mixing procedures and disposal methods for pesticides and used pesticide containers, including precautions to be taken to prevent children from having access to pesticide containers.

(3) The potential environmental consequences of the use and misuse of pesticides as may be influenced by such factors as:

(a) Weather and other climatic conditions;

(b) Types of terrain, soil, or other substrata;

(c) Presence of fish, wildlife, and other nontarget organisms;

(d) Drainage patterns.

(4) Pest identification, including consideration of the following factors:

(a) Common features of pest organisms and characteristics of damage necessary to facilitate pest recognition;

(b) Pest maturation and development as it may be related to the problem of identification and control.

(5) Pesticides, including consideration of the following factors:

(a) Types of pesticides;

(b) Types of pesticide formulations;

(c) Compatibility, synergism, persistence and animal and plant toxicity of the formulation;

(d) Hazards and residues associated with use;

(e) Factors which influence effectiveness or lead to such problems as resistance to pesticides;

(f) Dilution procedures.

(6) Equipment, including consideration of the following factors:

(a) Types of pesticide application equipment and advantages and limitations of each;

(b) Uses, maintenance and calibration of equipment.

(7) Application techniques; factors including:

(a) Methods used to apply various formulations of pesticides, solutions, and gases together with a knowledge of which technique or application to use in a given situation;

(b) Relationship of discharge and placement of pesticides to proper use, unnecessary use, and misuse;

(c) Prevention of drift and pesticide loss into the environment.

(8) Laws and regulations. Knowledge of pertinent aspects of the Federal Environmental Pesticides Control Act, KRS Chapter 217, KRS 217B.010 to 217B.260, and where applicable, KRS 217B.500 to 217B.585, plus administrative regulations promulgated pursuant to those chapters.

Section 5. Specific Standards of Competency. In addition to meeting the requirements of Sections 3 and 4 of this administrative regulation, persons requesting certification for a specific category must demonstrate competence related to that category as follows:

(1) Agricultural. This category is subdivided as follows:

(a) Plant. Persons requesting agricultural plant certification must

demonstrate practical knowledge of crops and specific pests of those crops on which they may be using pesticides. Practical knowledge is required concerning soil and water problems, preharvest intervals, reentry intervals, phytotoxicity, and potential for environmental contamination, nontarget injury and community problems resulting from the use of pesticides in agricultural areas.

(b) Animal. Persons requesting agricultural animal certification must demonstrate practical knowledge of such animals and their associated pests. A practical knowledge is also required concerning specific pesticide toxicities and residue potentials, since host animals will frequently be used for food. Further, the person must know the relative hazards associated with such factors as formulation, application techniques, age of animals, stress and extent of treatment.

(2) Forestry. Persons requesting forest certification shall demonstrate practical knowledge of types of forests, forest nurseries, and seed production in the Commonwealth and the pests involved therein. They should possess practical knowledge of the cyclic occurrence of certain pests and their specific population dynamics as a basis for programming pesticide applications. A practical knowledge is required of the relative biotic agents and their vulnerability to the pesticides to be applied. Because forest stands may be large and frequently include natural aquatic habitation and harbor wildlife, the consequences of pesticide use may be difficult to assess. The applicator must therefore demonstrate practical knowledge of control methods which will minimize the possibility of secondary problems such as unintentional effects on wildlife. Proper use of specialized equipment must be demonstrated, especially as it may relate to meteorological factors and adjacent land use.

(3) Ornamental and turf. Persons requesting ornamental and turf certification shall demonstrate practical knowledge of pesticide problems associated with the production and maintenance of ornamental trees, shrubs, plantings, and turf, including cognizance of potential phytotoxicity due to a wide variety of plant material, drift, and persistence beyond the intended period of pest control. Because of the frequent proximity of human habitations to application activities, applicators in this category must demonstrate practical knowledge of application methods which will minimize or prevent hazards to humans, pets, and other domestic animals.

(4) Seed treatment. Persons requesting seed certification shall demonstrate practical knowledge of types of seeds that require chemical protection against pests and factors such as seed coloration, carriers, and surface active agents which influence pesticide binding and may affect germination. They must demonstrate practical knowledge of hazards associated with handling, sorting, and mixing, and misuse of treated seed such as introduction of treated seed into food and feed channels as well as proper disposal of unused treated seeds.

(5) Aquatic. Persons requesting aquatic certification shall demonstrate practical knowledge of the secondary effects which can be caused by improper application rates, incorrect formulations, and faulty application of pesticides used in this category. They shall demonstrate practical knowledge of various water use situations and potential pesticide effects on plants, fish, birds, beneficial insects and other organisms which may be present in aquatic environments. They shall also demonstrate practical knowledge of the principles of limited-area application.

(6) Right-of-way. Persons requesting right-of-way certification shall demonstrate practical knowledge of a wide variety of environments, since rights-of-way can traverse may different terrains, including waterways. They shall demonstrate practical knowledge of problems of run-off, drift, and excessive foliage destruction and the ability to recognize target organisms. They shall also demonstrate practical knowledge of the nature of herbicides and the need for containment of these pesticides within the right-of-way area, and the impact of their application activities upon the adjacent areas and communities.

(7) Industrial, institutional, structural and health-related pest control. This category is subdivided as follows:

(a) Structural pest control certification. Persons requesting certification in this subcategory shall demonstrate practical knowledge of a wide variety of pests including general pests and wood-destroying organisms. This practical knowledge shall include their life cycles, types of formulations appropriate for their control, minimum standards of application and methods of application that avoid contamination of habitat and exposure of people and pets. Since human exposure, including babies, pregnant women, and elderly people, is frequently a potential problem, applicants must demonstrate practical knowledge of the specific factors which may lead to a hazardous condition, including continuous exposure to the various situations encountered in this category. Because health-related pest control may involve outdoor applications, applicators must also demonstrate practical knowledge of environmental conditions, particularly related to this activity.

(b) Structural fumigation certification. Persons requesting certification in this subcategory shall demonstrate a practical knowledge of those pests for which treatment by fumigation is an appropriate control technique. This practical knowledge shall include their life cycles, fumigants appropriate for their control and alternative control techniques. Because of the potential dangers inherent in the use of fumigant gases, the applicant shall demonstrate knowledge of the dangers involved and the safety precautions established by these administrative regulations and by good operating practice.

(c) Wood-destroying organism pest control. Persons requesting certification in this subcategory shall demonstrate a practical knowledge of wood-destroying organisms, formulations appropriate for their control, minimum standards of application established by administrative regulations, potential dangers and effective methods of application which minimize risks to persons and to the environment.

(d) General pest control. Persons requesting certification in this subcategory shall demonstrate a practical knowledge of a wide variety of pests including but not limited to anthropoids, mollusks, annelid worms, rodents or other pestiferous vermin, vertebrate animals, and fungi. This practical knowledge shall include their life cycles, types of formulations appropriate for their control, minimum standards of application and methods of application that avoid contamination of habitat and exposure of people and pets. Since human exposure, including babies, pregnant women, and elderly people, is frequently a potential problem, applicants must demonstrate practical knowledge of the specific factors which may lead to a hazardous condition, including continuous exposure to the various situations encountered in this category. Because health-related pest control may involve outdoor applications, applicators must also demonstrate practical knowledge of environmental conditions, particularly related to this activity.

(8) Public health. Persons requesting public health certification shall demonstrate practical knowledge of vector-disease transmission as it relates to and influences application programs. A wide variety of pests is involved, and it is essential that they be known and recognized and appropriate life cycles and habitats be understood as a basis for control strategy. These applicants shall have practical knowledge of a great variety of environments ranging from streams to those conditions found in buildings. They should also have practical knowledge of the importance and employment of such nonchemical control methods as sanitation, waste disposal and drainage.

(9) Regulatory. Persons applying for certification in this category shall demonstrate practical knowledge of regulated pests, applicable laws relating to quarantine and other regulation of pests, and the potential impact on the environment of pesticides used in suppression and eradication programs. They shall demonstrate knowledge of factors influencing introduction, spread, and population dynamics of relevant pests. Their knowledge shall extend beyond that required by their immediate duties, since their services are frequently required in other areas of the country where emergency measures are invoked to control regulated pests and where individual judgments must be

made in new situations.

(10) Demonstration and research:

(a) Persons demonstrating the safe and effective use of pesticides to other persons and the public shall meet comprehensive standards reflecting a broad spectrum of pesticide use. Many different pest related problem situations will be encountered in the course of activities associated with demonstration. Practical knowledge of problems, pests, and population levels occurring in each demonstration situation is also required. Further, such persons should demonstrate an understanding of pesticide-organism interactions and the importance of integrating pesticide use with other control methods. In general, persons conducting demonstration pest control work shall possess a practical knowledge of all of the standards detailed in this administrative regulation. In addition, they shall meet the specific standards required under subsections (1) through (10) as may be applicable to their particular activities.

(b) Persons conducting field research or method improvement work with pesticides shall be required to demonstrate knowledge of general and specific standards applicable to their particular activities, or alternatively, to meet the more inclusive requirements listed under this subsection.

Section 6. Aerial Certification. Persons desiring to apply restricted-use pesticides using aircraft shall obtain aerial certification in addition to certification in the appropriate category of pesticide use. Additional standards shall include the possession by aerial applicators of special knowledge of aerial application equipment and of particular expertise with regard to calibration of that equipment. Their knowledge shall extend to such areas as spray efficiency testing, field flight patterns, swath marking, turning procedures and subsequent considerations, awareness of obstacles and obstructions, and personal safety of pilot, flagman, and ground crew. Knowledge should also include information that is commonly on preflight checklists of spray personnel.

Section 7. License Examination. (1) General. The examination administered by the department for licenses to do business as pesticide applicators, pesticide operators, and public operators shall incorporate the certification requirements for the requested categories. A person obtaining a pesticide applicator, pesticide operator, or public operator license after the effective date of this administrative regulation, shall be certified to purchase, use, or apply restricted-use pesticides in the categories for which the person was tested.

(2) Structural. The examinations administered by the department pursuant to KRS 217B.530 and 302 KAR 31:025 for licenses to do business as structural pest control applicators, structural pest control managers, structural fumigation applicators, and structural fumigation managers shall contain all the requirements for certification to apply restricted-use pesticides under this section. Should a person obtain a license to do business in one or more of the above categories, then that person shall be certified to purchase, use or apply restricted-use pesticides in the appropriate subcategory of industrial, institutional, structural, and health-related pest control.

Section 8. Certification Maintenance. To maintain certification, each person certified to purchase, use or apply restricted- use pesticides, other than a private applicator, shall in any five (5) year period, attend at least two (2) training programs approved by the department in the use and application of pesticides, with the exception of seed treatment applicators who shall attend one (1) training course. Training received before the promulgation of these rules and regulations will be eligible for retroactive credit toward certification maintenance.

Section 9. Credentials. (1) When a person meets all the requirements to obtain a license to do business under KRS 217B.010 to 217B.260 or under KRS 217B.500 to 217B.585, the department shall issue that person a document signifying that the person is licensed to do business in the category for which a person qualifies.

(2) When a person meets all the requirements to obtain certification to purchase, use or apply restricted-use pesticides, then the department shall issue that person a document signifying that the person is certified to purchase, use or apply restricted-use pesticides in the categories for which the person qualifies.

(3) When a person qualifies for certification incident to qualification for a license to do business, then the department shall issue that person two (2) documents. One (1) document shall be the license to do business. The other document shall be the certification to purchase, use or apply restricted-use pesticides.

(4) A certification to purchase, use or apply restricted-use pesticides issued under this administrative regulation is separate and distinct from any licenses to do business issued under KRS 217B.010 to 217B.260 or under KRS 217B.500 to 217B.585. A certification may be granted or denied, or modified, suspended, or revoked independent of the grant or denial, modification, suspension, or revocation of any license to do business. In a like manner, any license to do business may be modified, suspended, or revoked independent of the grant or denial, modification, suspension, or revocation of any certification.

ED LOGSDON, Commissioner

APPROVED BY AGENCY: February 15, 1995

FILED WITH LRC: February 15, 1995 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on Monday, March 27, 1995 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 March 22, 1995, 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: Donna Greenwell Dutton

(1) Type and number of entities affected: All persons who purchase, use, or apply restricted use pesticides.

(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: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: No

(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 persons who purchase, use, or apply restricted use pesticides will be treated the same.

GENERAL GOVERNMENT CABINET
Department of Agriculture
Division of Weights and Measures
(Proposed Amendment)

302 KAR 79:010. Testing and inspection program.

RELATES TO: KRS Chapter 363

STATUTORY AUTHORITY: KRS 363.900 to 363.908, 16 CFR 306.12, 40 CFR 80.27

NECESSITY AND FUNCTION: This administrative regulation is necessary to establish procedures to implement and administer an inspection and testing program for the quality of motor fuels to ensure compliance with KRS 363.902.

Section 1. Definitions. (1) "Gasoline-oxygenate blend" - a fuel consisting primarily of gasoline along with a substantial amount of one (1) or more oxygenates.

(2) "Octane rating" - the rating of the antiknock characteristic of a grade or type of gasoline as determined by dividing by two (2) the sum of the research octane number plus the motor octane number.

(3) "Distributor" means any person who transports or stores or causes the transportation or storage of gasoline at any point between any gasoline refinery or importer's facility and any retail outlet or wholesale purchaser-consumer's facility.

Section 2. Administration. The Division of Weights and Measures in the Kentucky Department of Agriculture shall administer the program of Motor Fuels Inspection and Testing, KRS 363.900-908.

Section 3. [2.] Standard Specifications. (1) Gasoline offered for sale at a retail facility shall conform to ASTM D-4814, with the following exceptions:

(a) Distillation range (ASTM D-86) of gasoline containing up to ten (10) percent ethanol shall be the same as specified for gasoline except the minimum temperature at fifty (50) percent evaporated shall be 150 degrees Fahrenheit (sixty-six (66) degrees Celsius). For gasoline containing up to ten (10) percent ethanol, the vapor pressure limit for each class shall be increased by one (1) pound per square inch and the ASTM V/L (vapor to liquid ratio) specification is waived.

(b) For the periods from May 1 through September 15, the concentration of ethanol must be at least nine (9) percent and no more than ten (10) percent by volume of the gasoline to qualify for the waiver.

(2) The test methods used to determine the standards shall conform to ASTM D-4814.

(3) Samples obtained for testing shall be obtained in a manner consistent with ASTM D-4814.

(4) Gasoline shall not be offered for retail sale under the name "premium" gasoline unless the antiknock octane index is greater than or equal to ninety-one (91).

Section 4. [3.] General Considerations. (1) Gasoline, diesel fuel, and gasoline oxygenate blends sold in Kentucky shall state on either the bill of lading or invoice the following:

(a) The name of the person transferring the motor fuel.

(b) The name of the person to whom the motor fuel is being transferred.

(c) The date of the transfer.

(d) The octane rating, if the motor fuel is gasoline or a gasoline oxygenate blend.

(e) A declaration of any oxygenate or combination of oxygenates present in concentration of at least one (1) percent by volume in the motor fuel.

(2) Each retail facility selling motor fuel shall retain the bills of lading or [and] invoices at the location to which the motor fuel is transferred [shipped] for a period of not less than thirty (30) [ninety (90)] days. In the case of a person selling motor fuels at more than one (1) location, the bills of lading or invoices may be retained at a central location, provided bills of lading or invoices are made available to the inspector upon request.

(3) Retail dispensing devices.

(a) All retail dispensing devices shall post the octane rating of all gasoline sold to consumers. At least one (1) label on each face of the dispenser shall identify the octane rating. If two (2) or more gasolines with different octane ratings are sold from a single dispenser, separate labels for each shall be placed on the face of the dispenser.

(b) The label, or labels, shall be placed conspicuously on the dispenser so as to be in full view of consumers and as near as reasonably practical to the price.

(c) The label showing the minimum octane rating shall meet the same specifications as required under 16 CFR part 306.12.

Section 5. [4.] Diesel Fuel. (1) Diesel fuel offered for sale at a retail facility for use as a motor fuel shall conform to ASTM D-975.

(2) Each retail dispenser dispensing diesel fuel to be used as a motor fuel shall be labeled with a name or grade containing the word "diesel". Such name shall be placed conspicuously on the dispenser so as to be in full view of consumers.

Section 6. [5.] Product Storage Identification. The fill connection for any petroleum product storage tank or vessel at the retail level shall be permanently, plainly, and visibly marked in accordance with the American Petroleum Institute color codes as specified and published in the API Recommended Practice 1637.

[Section 6. Condemned Product. (1) Any person who removes product from storage because of condemnation shall provide documentation to the department outlining the final disposition process taken within ten (10) days.

(2) If the condemned product is upgraded to meet standards specified by law, the retail facility shall certify that the fuel meets all

~~standards required. The Department of Agriculture may require that additional samples be obtained by the department for tests to certify the fuel.]~~

Section 7. Inspection of Premises. (1) The department shall have access during normal business hours to all distributor and retailer records relating to the distribution or sale of motor fuel.

(2) The department shall have access to all motor fuel for the purpose of examination, inspection, taking of samples and investigation of a retailer or distributor. If access is denied by the owner or person representing a retailer or distributor, the department may obtain a search warrant or an injunction from a court of competent [~~the appropriate~~] jurisdiction.

(3) Samples of not more than one (1) gallon per grade per inspection may be collected from any distributor or retail outlet without cost to the state. The department shall present proper identification to the employee in charge prior to obtaining samples.

(4) The department may issue a stop-sale order for any motor fuel found not to be in compliance with any provision of this Act. The retailer shall be notified immediately of the stop-sale order. The order shall be in writing and contain an explanation for its failure to meet specifications. A stop-sale order shall be rescinded by the division [~~director~~] upon resolution of the violation. The stop-sale shall apply only to the location where sample analysis indicates specification violation.

Section 8. Violation Process. (1) When the division determines a violation of KRS 363.900-908 has occurred, it shall immediately notify the offending party in writing, with a notice of violation, furnishing a brief description for the specific violation alleged.

(2) An order for payment of a civil penalty, and directing any other actions necessary and appropriate to protect the public, such as a stop-sale order, may be included with the notice.

(3) Any product where a stop-sale is issued shall be removed from sale to the public until the product is brought into compliance with KRS 363.900-908.

(4) A certification that the product meets the requirements of KRS 363.900-908 shall be furnished to the division before sale may continue. Additional samples of the product in question may be required.

(5) Within ten (10) days of receipt of notice of violation, the retail facility shall provide detailed documentation to the division describing the process to bring the product into compliance with KRS 363.900-908 or of its final disposition.

(6) In issuing any order under KRS 363.900-908 the division may consider the degree and extent of harm caused by the violation, the cost of rectifying the noncompliance, the amount of financial benefit derived from the violation, whether the violation was committed willfully, and the compliance record of the violator and shall use as guidance the "Motor Fuels Inspection and Testing Civil Penalty Guidelines of 1995" when determining the civil penalty.

(7) For a first violation, the civil penalty shall not exceed $1,000 nor be less than twenty-five (25) dollars. For a second or subsequent violations, the civil penalty shall not exceed $5,000 nor less than fifty (50) dollars.

(8) Any civil penalty shall be due within thirty (30) days of receipt of the notice of violation unless a hearing is requested in accordance with subsection (10) of this section.

(9) Failure to pay a fine within thirty (30) days after receipt of the violation may result in a stop-sale order issued by the division.

(10) Upon the receipt of a notice of violation an aggrieved party may, within thirty (30) days, request in writing to the division, a hearing to contest the validity of the division's findings and order. The hearing shall be conducted in accordance with KRS Chapter 13B, the State Uniform Administrative Hearings Act. The decision of the hearing officer shall be the final order.

(11) Appeals may be taken from all final orders within thirty (30) days to Franklin Circuit Court.

~~[Section 8. Administrative Penalties. (1) When a violation is found of this chapter, the department, Division of Weights and Measures, shall issue a notice of violation.~~

~~(2) The department may enter an order imposing one (1) or more of the following penalties against any person who violates any of the provisions of this chapter or impedes, obstructs, or hinders the department in the performance of its duty in connection with the provisions of this chapter:~~

~~(a) Issuance of a warning letter.~~

~~(b) Imposition of an administrative fine of not more than $1,000 per violation for a first time offender. For a second time or repeat offender, the administrative fine shall not exceed $5,000 per violation occurrence. When imposing any fine under this section, the department shall consider the degree and extent of harm caused by the violation, the cost of rectifying the damage, the amount of money the violator benefitted from by noncompliance, whether the violation was committed willfully, and the compliance record of the violator.~~

~~(3) The fine shall be due within thirty (30) days receipt of the violation unless an appeal is requested in accordance with subsection (4) of this section. Failure to pay a fine within thirty (30) days after receipt of the violation may result in a stop sale order issued by the department, Division of Weights and Measures.~~

~~(4) Any person receiving a notice of violation from the department may request an administrative hearing within thirty (30) days receipt of the violation. The hearings will be conducted in accordance with the state uniform procedures of administrative hearings as set forth in KRS Chapter 13B.~~

~~(5) Any fine collected by the department shall be paid into an interest bearing account established in the State Treasury.~~

~~(6) Any administrative fine collected shall be in lieu of any civil penalties sought pursuant to KRS Chapter 363.]~~

Section 9. Incorporation By Reference. (1) The following documents are incorporated by reference:

(a) ASTM D-4814, Standard Specifications for Automotive Spark Ignition Engine Fuel, January 1993 edition;

(b) ASTM D 975-93, Standard Specification for Diesel Fuel Oils, December 1993 edition;

(c) American Petroleum Institute color codes as specified and published in API Recommended Practice 1637, July 1994 edition;

(d) 16 CFR 306.12 (as amended by 58 Federal Register 41375, August 3, 1993);

(e) Motor Fuels Inspection and Testing Civil Penalty Guidelines of 1995.

(2) The documents referred to in subsection (1) of this section may be inspected, copied or obtained at the office of the Department of Agriculture, Commissioner's Office, Capital Plaza Tower, Frankfort, Kentucky 40601, from 8 a.m. to 4:30 p.m., Monday through Friday.

Section 10. This administrative regulation shall expire on adjournment of the next regular session of the General Assembly.

ED LOGSDON, Commissioner

APPROVED BY AGENCY: February 15, 1995

FILED WITH LRC: February 15, 1995 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on Monday, March 27, 1995 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 March 22, 1995, 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: Vicki Searcy and Donna Dutton

(1) Type and number of entities affected: 6,000 retail outlets.

(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 is a $50 fee for the purpose of funding the administration of the motor fuels quality program. Additionally, this regulation requires that all gasoline sold in Kentucky state on the bill of lading or invoice the name of the person transferring the motor fuel, the name of the person to whom the motor fuel is being transferred, the date of transfer, the octane rating if the motor fuel is gasoline or gasoline-oxygenate blend, a declaration of any oxygenate or combination of oxygenates present in concentration of at least one (1) percent by volume in the motor fuel.

2. Second and subsequent years: There is a $50 fee for the purpose of funding the administration of the motor fuels quality program.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: This regulation does not provide for any new employees. Current employees with the Division of Weights & Measures will be responsible for this program. The $50 fee will help defray any costs incurred. There is a start-up cost of approximately $70,000 for equipment.

2. Continuing costs or savings: After the first year, there will no longer be start-up costs.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be increased reporting and paperwork by the Division of Weights & Measures due to the fact the department will be inspecting and testing motor fuels which has never been done before.

(4) Assessment of anticipated effect on state and local revenues: Any fees collected will be used to defray cost of the program.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The $50 fee will be used to defray costs.

(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:

(b) Kentucky:

(7) Assessment of alternative methods; reasons why alternatives were rejected: After years of discussion, this program seems to be most effective with the least cost.

(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 regulation tests for the quality of motor fuel throughout the state of Kentucky which will reduce any effects on the health and environmental welfare.

(b) State whether a detrimental effect on environment and public health would result if not implemented: The state has never tested for the quality of motor fuel. The effects of this regulation are not detrimental but do have an impact on the environment and public health.

(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: This program has been discussed for years and is being implemented to the satisfaction of all persons affected.

(11) TIERING: Is tiering applied? Yes. This administrative regulation provides for administrative fines from $1,000 to $5,000 based upon the degree and extent of harm caused, the cost of rectifying the damage, the amount of money the violator benefitted, whether the violation was willful or not, and the compliance record of the violator.

JUSTICE CABINET
Kentucky Parole Board
(Proposed Amendment)

501 KAR 1:030. Determining parole eligibility.

RELATES TO: KRS 439.340

STATUTORY AUTHORITY: KRS 439.340(3)

NECESSITY AND FUNCTION: KRS 439.340 requires the Kentucky Parole Board to adopt administrative regulations with respect to eligibility of prisoners for parole. This administrative regulation establishes the criteria for determining parole eligibility.

Section 1. Definitions. As used in these administrative regulations, unless the content otherwise requires:

(1) "Board" is the Kentucky Parole Board or a quorum thereof.

(2) "Quorum" is the number of members of any body who must necessarily be present in order for the body to transact business.

(3) "Panel" is anything less than a quorum.

(4) "Chair" means the Chairman of the Kentucky Parole Board. ~~[Chairman" is the chief administrative officer of the board as described in KRS 439.320(2), appointed by the Governor to direct the operations of the board and to fulfill the functions established by law for such position.]~~

(5) "Detainer" is a document issued or made by a legal authority, authorizing the keeper of a prison/jail to keep in his custody the person named in the document.

(6) "Serve-out" is a decision of the board that an inmate must serve until the completion of his sentence (SOT - serve-out time).

(7) "Deferment" is a decision of the board that an inmate must serve a specific number of months before further parole consideration.

(8) "Reconsideration" is a decision to review a previous board action.

(9) "Parole recommendation" is a decision of the board that an inmate may be released from incarceration prior to the expiration of his sentence if the inmate has an approved parole plan and if the inmate has signed his parole certificate.

(10) "Parole" is the release of an inmate with a signed parole certificate to the community prior to the expiration of his sentence, subject to conditions imposed by the board and subject to its

supervision. Where a court or other authority has issued a detainer against the inmate, the board, in its discretion, may release him to answer the detainer of such court or authority.

(11) "Parole rescission" is a decision of the board to terminate or rescind an inmate's parole recommendation, before such inmate is actually released on parole.

(12) "Parole revocation" is the formal procedure by which the board may terminate or revoke a parolee's release on parole.

(13) "Preliminary hearing" is the initial hearing conducted by an administrative law judge to determine whether probable cause exists to believe a parolee has violated the conditions of his parole.

(14) "Youthful offender" is a juvenile declared as such as described in KRS 640.010.

Section 2. Statement of Content. (1) It is the intent of the Kentucky General Assembly in creating the Kentucky Parole Board that it be autonomous and in all respects functionally and administratively separate from any other state agency, except as provided in KRS 439.320(1). Consequently, the board will protect such necessary freedom from real or apparent political control, manipulation, or undue or improper influence by any person, group, or other entity of any kind.

(2) All decisions of the board regarding policy, procedures and its actions in parole matters shall be determined by simple majority vote of the members of the board, except as provided in KRS 439.320(2). Panels of the board may make recommendations to the full board where authorized.

Section 3. Administration. (1) Board structure. The composition of the board shall be as provided by law. The appointment of members of the board, the selection of its chair[~~man~~], and the quorum requirements shall be those as specified by law.

(2) Information concerning the board.

(a) The board shall provide and disseminate written information concerning the functions of the Kentucky Parole Board.

(b) The board shall maintain close communication and cooperation with the Justice Cabinet and the Department of Corrections [~~Cabinet~~], the Governor and his staff, members and committees of the General Assembly, and other public officials, including judges, state attorney general, Commonwealth Attorney, law enforcement officials and public defenders. The board will communicate and cooperate with all public and private service agencies, including, but not limited to, agencies dealing with mental health, vocational rehabilitation, legal aid, [~~and~~] human services and victims of crime.

(c) Since the board has the authority to grant parole, it welcomes the opinion of the sentencing judge, prosecuting attorney, other public officials, and private citizens, including victims of crime, concerning parole consideration.

Section 4. Parole Eligibility. (1) Initial parole review date.

(a) All persons confined to a state penal institution or county jail who have been convicted of a felony offense committed after the effective date of this administrative regulation shall have their cases reviewed by the board (unless otherwise prohibited by statute) in accordance with the schedule set out as follows:

Sentence Being Served	Time Service Required Before First Review (Minus Jail Credit)
1 year, up to but not including 2 years	4 months
2 years, up to and including 39 years	20% of sentence received
More than 39 years, up to & including life	8 years
Persistent felony offender I in conjunction with a Class A, B, or C felony	10 years

For the crimes, committed on or after July 15, 1986, of murder, manslaughter I, rape I, sodomy I, assault I, kidnapping (where there is serious physical injury or death), arson I (where there is serious physical injury or death), criminal attempt, criminal solicitation, or criminal conspiracy to commit any of the previously listed capital offenses or Class A felonies which involve serious physical injury or death of the victim:

Sentences of a number of years	As prescribed by statute
Sentences of life	As prescribed by statute

(b) All persons confined to a state penal institution or county jail who have been convicted of a felony offense committed on or after December 3, 1980 but prior to the effective date of this administrative regulation shall have their cases reviewed by the board in accordance with the schedule set out as follows:

Sentence Being Served	Time Service Required Before First Review (Minus Jail Credit)
1 year, up to but not including 2 years	4 months
2 years, up to and including 39 years	20% of sentence received
More than 39 years, up to and including life	8 years

(c) All persons confined to a state penal institution or county jail who have been convicted of a felony offense committed prior to December 3, 1980 shall have their cases reviewed by the board in accordance with the schedule set out as follows:

Sentence Being Served	Time Service Required Before First Review (Minus Jail Credit)
1 year	4 months
More than 1 year and less than 18 months	5 months
18 months up to and including 2 years	6 months
More than 2 years and less than 2 1/2 years	7 months
2 1/2 years up to 3 years	8 months
3 years	10 months
More than 3 years, up to & including 9 years	1 year
More than 9 years, up to & including 15 years	2 years
More than 15 years, up to & including 21 years	4 years
More than 21 years, up to & including life	6 years

Parole eligibility on those individuals serving multiple sentences, one (1) or more of the crimes which resulted in the convictions committed under Section 4(b) or (c) of this administrative regulation and one (1) or more committed under Section 4(a) of this administrative regulation, will be calculated by applying the parole eligibility criteria in effect at the time the most recent crime was committed.

(d) After the initial review for parole, subsequent review, so long as confinement continues, shall be at the discretion of the board; except maximum deferment given at any one time shall not exceed the minimum parole eligibility for a life sentence as established by statute. The board reserves the right to order a serve-out on any sentence.

(e) A sentence on conviction of a felony imposed upon a confined prisoner for a crime committed prior to the date of his instant commitment, if designated to be served consecutively, shall be added to the sentence being served to determine eligibility for parole consideration if the inmate has not been discharged from the institution since his original admission on that institutional number. If

the confined prisoner is a returned parole violator with an additional consecutive sentence then parole eligibility will be determined on the length of the new sentence only, calculated from the date of final sentencing. If the confined prisoner has been recommended for parole or given a serve-out or deferment and receives an additional sentence, running either concurrently or consecutively, parole eligibility on the new sentence will be calculated from the date of original admission on the aggregate sentences (total time to serve) and allowing jail credit on all sentences, as if he had never been seen by the board. If the additional sentence is designated to be served concurrently, he shall be considered as having started to accrue parole eligibility on the day he was committed on the first sentence.

(f) A person receiving a concurrent or consecutive sentence for crime committed while confined in the institution or while on escape from the institution shall not begin accruing eligibility time towards parole consideration on the latter sentence until he has become eligible for parole on the sentence, including a life sentence, for which he was originally confined.

(g) In determining parole eligibility for an inmate who has received a sentence for an escape, the board will require, in addition to the amount of time to be served for parole eligibility on the original sentence, and the time required to be served for any crime committed while in the institution or while on escape, the service of additional time equal to the time to be served for any additional sentence received for such escape.

(h) If a confined prisoner receives a deferment, escapes before he meets the board next time, returns to the institution from escape but does not have a new sentence for escape, the time out on escape will be added to the deferred date to arrive at his new adjusted deferment date. However, if he later receives an escape sentence for that escape, his time will be calculated on the new sentence from the date of sentencing. A new escape sentence will void [~~wipe-out~~] the deferment.

(i) Even though an inmate has received a serve-out or deferment on his original sentence prior to receiving an escape sentence or a sentence or sentences for crimes committed while on escape or while confined in the institution, he will automatically be brought before the board again when, and not until, he becomes eligible for parole consideration on the additional sentence(s) and the parole eligibility will be calculated from the date of sentencing on the new sentence or sentences.

(j) If an inmate has received a parole recommendation but escapes prior to being released on parole, the parole recommendation will be rescinded by the board upon receipt of an affidavit signed and submitted by the institutional parole officer of the institution from where the inmate escaped attesting to the fact that the escape has occurred. Upon return to a state institution, the inmate will be placed back before the board at its next regularly scheduled hearing at the institution where he is confined.

(k) A person who is shock probated and later returned as a shock probation violator shall be considered for parole after he has served the required time on the sentence calculated by adding on the period of time the inmate was out of the institution to his original parole eligibility date.

(l) Persons returned to the institution as a shock probation violator with a new concurrent sentence shall have separate dates of parole eligibility on each sentence computed and the inmate will be heard separately on each eligibility date. The adjusted parole eligibility date on the sentence on which he was shock probated shall be determined by adding the period of time he was out of the institution to his original parole eligibility date calculated prior to being shock probated.

(m) A person who is shock probated and later returned to the institution with a new sentence acquired while on shock probation and ordered to be served consecutively shall be eligible for a parole hearing when he has served the amount of time required to be eligible for a parole hearing required on the aggregate of the two (2) sentences. The time served toward parole eligibility prior to discharge by shock probation shall be included as part of the total period of time to be served for parole eligibility on the aggregate sentences.

[~~(n) Persons who are defined to be "eligible sexual offenders" as set forth in KRS 197.400 to 197.440 shall not be eligible for an initial parole hearing until the board is notified by the Corrections Cabinet that the inmate has successfully completed the sex offender program. This notification must be made in writing to the board by the director of the sex offender program. Once the board is so notified the inmate will be scheduled for his initial parole hearing on the next available board at the institution where he is housed, unless the inmate successfully completes the sex offender program prior to the regular parole eligibility date.~~]

(2) In keeping with the intent of the Act, the Parole Board may with the consent of the majority of the board review the case of any inmate for parole consideration prior to his eligibility date. [~~if he qualifies for the intensive supervision program under the criteria established in conjunction with the Corrections Cabinet, or medical problems exist, as documented by the Corrections Cabinet medical doctors, or upon written request of the sentencing judge or prosecuting attorney of record.~~] This will not be done until the reason for such action is submitted to all members in writing, along with all supporting documents, and all members will note in writing as to their desire to grant a hearing. This will then be filed in the record of the inmate in question and made a permanent part of his file in the central office of the Department of Corrections [~~Cabinet~~].

(3) The parole hearing will consist of an interview with the inmate by the board, or a panel. In instances when the inmate is too ill to appear before the board, the board may, at its discretion, appoint one (1) member to interview the inmate in the health care facility where he is confined and report back to the remaining members. In this instance, as in all cases, a majority vote by a quorum is required before action is taken.

(4) If an inmate refuses to meet the board on his scheduled hearing date, a notarized statement must be presented to this effect. A person refusing to meet the board may petition the board for reconsideration [~~if he changes his mind~~].

(5) Inmates who are psychologically unstable may be deferred in absentia until they are able to meet the board if the board receives documentation from a certified psychologist or psychiatrist.

(6) The board shall schedule the initial parole hearing as follows (unless otherwise prescribed by statute):

(a) For those institutions that have hearings scheduled once per month, the inmates will be seen during the month they are eligible for parole consideration, if administratively possible.

(b) For those institutions that have hearings scheduled bimonthly, the inmates will be seen during the month eligible or one (1) month prior to the month they are eligible for parole consideration, if administratively possible.

(c) In those instances where it is not administratively possible to conduct the initial parole hearing during the month the inmate is eligible for a parole hearing, the inmate will be seen at the next available board hearing conducted at the institution where the inmate is housed.

[~~(7) In all cases where parole is recommended, it is conditional upon continued good institutional conduct through the actual release date. If an inmate with a parole recommendation receives an institutional write-up or good time loss, the board is to be notified in writing of the institutional infraction so that the board may take further action as needed.~~]

Section 5. Board Criteria for Granting or Denying Parole. (1) Before granting or denying parole, the board shall apply any or all of the following factors to each inmate:

(a) Current offense - seriousness, violence involved, firearm used;

(b) Prior record;

(c) Institutional adjustment and conduct - disciplinary reports, loss of good time, work and program involvement;

(d) Attitude toward authority - before incarceration, during incarceration;
(e) History of alcohol or drug involvement;
(f) History of prior probation, shock probation or parole violations;
(g) Education and job skills;
(h) Employment history;
(i) Emotional stability;
(j) Mental capacities;
(k) Terminal illness;
(l) History of deviant behavior;
(m) Official and community attitudes toward accepting inmate back in the county of conviction;
(n) Victim impact statements and victim impact hearings;
(o) Review of parole plan - housing, employment, need for community treatment and follow-up resources;
(p) Any other factors involved that would relate to the inmate's needs and the safety of the public.

(2) The board may rescind a parole recommendation anytime prior to the release of an inmate on parole.

(3) The board may reconsider a decision to deny parole if the chairman requests the full board to reconsider a decision and the full board votes in writing, and the majority votes in favor of the reconsideration hearing.

(4) An inmate whose parole has been revoked, rescinded or denied by deferment or serve out may request an appellate review by the board. Requests for an appellate review must be received by the board within twenty-one (21) days from the date the final disposition is made available to the inmate. If the request is not received within twenty-one (21) days, it will be denied. The request will be screened by a board member or designee to decide if a review will be conducted. Reviews will be conducted for the following reasons:

(a) If there is significant new evidence that was not available at the time of the hearing.

(b) If there are allegations of misconduct by a board member that are substantiated by the record.

(c) If there were significant procedural errors by a board member.

All requests which will receive further consideration must be based on one (1) or more of the above reasons. Requests based on the availability of new evidence or information must be accompanied by adequate documentation. Requests based on allegations of misconduct or significant procedural errors must clearly indicate the specific misconduct or procedural errors(s).

If the case is set for review, it will be conducted from the record of the first hearing and the appearance of the inmate will not be necessary. If a board member wishes to have additional testimony, an appearance hearing may be conducted. The board will vote after reviewing the initial taped interview and the record. A decision to change the result of the hearing that is the subject of the appeal will require the concurrence of four (4) board members. The decision rendered after an appellate review is final. [~~or someone on the inmate's behalf may request the board to reconsider a decision to deny parole only after thirty (30) months have passed since the board's most recent action on the inmate.~~]

Section 6. Youthful Offender. (1) Youthful offenders are subject to the jurisdiction of the Kentucky Parole Board as described in KRS 640.080.

(2) The Cabinet for Human Resources and the Department of Corrections [~~Cabinet~~] shall provide the Parole Board with all necessary records to conduct a hearing as described in KRS 640.100.

(3) Youthful offenders shall be subject to all sections of the Kentucky Parole Board administrative regulations as applicable.

(4) Youthful offenders housed by the Cabinet for Human Resources shall have a hearing at a site agreed upon by that cabinet and the Parole Board.

(5) All youthful offenders housed by the Corrections Cabinet shall have a hearing at a site determined by the Parole Board.

(6) Administrative law judges shall hold preliminary revocation hearings at facilities out of sight and sound of adult inmates.

(7) Final revocation hearings for youthful offenders shall be held at a site agreed upon by the Cabinet for Human Resources and the Kentucky Parole Board or the Central Office of the Parole Board.

(8) Special hearings for youthful offenders will be held in central office.

Section 7. Conditions of Parole. (1) The general conditions are as follows:

(a) The parolee shall report to his parole officer immediately upon arrival at his destination and submit in writing once a month, or more often if directed by the officer, a report on forms prescribed by the Division of Probation and Parole.

(b) The parolee shall permit his parole officer to visit his home and place of employment at any time.

(c) The parolee shall not indulge in the use of nonprescribed controlled substances.

(d) The parolee shall work regularly and support his legal dependents. When unemployed, he shall report this fact to his officer and make every attempt to obtain other employment.

(e) The parolee shall not associate with a convicted felon except for legitimate purposes, including but not limited to family, residential, occupational or treatment purposes.

(f) The parolee shall not visit with inmates of penal institutions without permission of his parole officer.

(g) The parolee shall not leave the state, district, residence or place of employment without written permission of his parole officer.

(h) The parolee shall not be permitted to purchase, own or have in his possession a firearm or other weapon. Purchase of a firearm by a person who has been convicted of a felony is a violation of federal law.

(i) The parolee shall not violate any law or city ordinance of this state or any other state or of the United States.

(j) The parolee shall not falsify any report to his parole officer including his monthly report.

(k) The parolee does not have the right to register for voting purposes and cannot hold office; should he register or reregister prior to restoration of civil rights, he will be in violation of the law which carries a maximum penalty of five (5) years in prison.

(l) The parolee shall comply with all rules and administrative regulations prescribed by the Division of Probation and Parole and special instructions of his parole officer.

(m) The parolee shall pay a supervision fee unless expressly waived by the Parole Board.

(2) Special conditions of parole may be added in individual cases at the discretion of the Parole Board.

HELEN HOWARD-HUGHES, Chairperson

APPROVED BY AGENCY: February 10, 1995

FILED WITH LRC: February 14, 1995 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 27, 1995, at 10 a.m. Individuals interested in being heard at this hearing shall notify this agency in writing by March 22, 1995, 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 wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

Contact person: Michael R. O'Connor, Kentucky Parole Board, 500 State Office Building, High Street, Frankfort, Kentucky 40601,

(502) 564-3620.

REGULATORY IMPACT ANALYSIS

Contact person: Michael R. O'Connor

(1) Type and number of entities affected: 501 KAR 1:030 will affect all prisoners in Kentucky who are statutorily eligible for parole.

(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 have been 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 have been 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: It is not anticipated that enactment of this regulation will result in additional costs or savings to those affected.

2. Second and subsequent years: The continued costs or savings should be the same on a yearly basis.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None known.

2. Continuing costs or savings: None known.

3. Additional factors increasing or decreasing costs: None known.

(b) Reporting and paperwork requirements: None known.

(4) Assessment of anticipated effect on state and local revenues: This regulation should not have any effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: It is not anticipated that enactment of this regulation will result in additional costs to the Kentucky Parole Board.

(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 have been received.

(b) Kentucky: No public comments have been received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: There are no known suitable alternatives.

(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 known.

(b) State whether a detrimental effect on environment and public health would result if not implemented: None known.

(c) If detrimental effect would result, explain detrimental effect: None known.

(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? (Explain why tiering was or was not used) Tiering is not applicable as this regulation applies equally to all individuals affected.

JUSTICE CABINET
Kentucky Parole Board
(Proposed Amendment)

501 KAR 1:040. Conducting parole revocation hearings.

RELATES TO: KRS 439.315, 439.330(1)(e), 439.341, 439.390, 439.430, 439.440

STATUTORY AUTHORITY: KRS 439.340(3)

NECESSITY AND FUNCTION: KRS 439.340(3) requires the Parole Board to establish administrative regulations concerning parole revocation hearings. This administrative regulation contains the procedures for the revocation of parole and the issuance of warrants.

Section 1. Preliminary Revocation Hearings. Preliminary revocation hearings shall be conducted by an administrative law judge of the Parole Board who shall have control over the proceedings and the reception of evidence at such hearings. The hearings shall be conducted in accordance with applicable state and federal law and in accordance with these administrative regulations.

(1) Charges of parole violation shall be initiated by a parole officer of the Department of Corrections by service of a notice of preliminary hearing which sets forth the alleged violations. This notice may be amended at any time prior to the close of the record of the preliminary hearing, within the discretion of the administrative law judge, provided a finding is made that the substantial rights of the parolee will not be prejudiced by the amendment. A continuance of the proceeding may be granted in the event of such amendment, if the interest of justice so requires. Failure to object to any defect in the notice prior to the close of the hearing shall be deemed a waiver of such objection.

(2) Pursuant to SCR 3.700 Sub. rule 3, in the absence of an attorney to represent the Department of Corrections, Division of Probation and Parole, before the board and the administrative law judge, any duly appointed probation and parole officer of the Commonwealth of Kentucky may appear before the board or its administrative law judge as representative of the Department of Corrections in matters relating to the revocation of probation or parole.

(3) No hearing shall be conducted within five (5) days of the service of the notice of preliminary hearing. The parolee may however, waive this waiting period. The preliminary hearing may be continued or recessed with further proof to be taken at any time prior to the close of the record for good cause shown. At the request of either party, the administrative law judge may, within his discretion, leave the record open for reception of additional evidence provided that no substantial rights are prejudiced.

(4) All preliminary revocation hearings shall be conducted on the record. The hearing may be recorded and preserved by any means practical, including but not limited to electronically, mechanically or stenographically. However, the record of the proceedings need not be transcribed, unless so requested by the Parole Board.

(5) The administrative law judges may take judicial notice of acts of the Parole Board, including, but not limited to the conditions of parole, and all other matter which may be judicially noticed in the courts of this Commonwealth. Witnesses appearing at the preliminary hearing to give testimony shall do so under oath, administered by the administrative law judge, and will be available for examination by the other party or the administrative law judge, unless good cause dictates otherwise. The parole officer shall bear the burden of proof in establishing the elements of the violation, except for those elements which are in the nature of affirmative defenses. The parole officer shall present evidence first and the parolee shall be given the opportunity to present evidence in defense or mitigation. Any further proceedings will be conducted at the discretion of the administrative law judge. The parolee may, within reasonable limits, present evidence solely for the purpose of mitigation of his conduct, including evidence of his mental condition, however, such evidence will be

subject to rebuttal by the parole officer.

(6) At the close of the hearing, or within a reasonable time thereafter, the administrative law judge shall make a determination, from the evidence produced at the hearing, as well as any evidence of which judicial notice is taken, whether there exists probable cause to believe that the parolee has committed any or all of the violations alleged in the notice of preliminary hearing. If probable cause is found to exist, the case shall then be referred to the Chair[~~man~~] of the Parole Board who shall then issue a parole violation warrant which will cause the parolee to be brought before the Parole Board for a final parole revocation hearing. Notwithstanding a finding of probable cause, upon agreement by all parties, leniency may be granted in any form deemed appropriate by the administrative law judge and upon agreement by the parolee to any additional conditions of his parole as set forth by the administrative law judge after consultation with the parole officer.

(7) In cases where the administrative law judge finds probable cause to believe that a violation of parole has been committed and the case is referred to the Chair[~~man~~] of the Parole Board for the issuance of a parole violation warrant, the administrative law judge shall issue a written decision and may issue a recommendation, along with reasons in support of that recommendation, as to what action should be taken concerning the parolee's parole, including recommendations concerning the terms and conditions of any future parole. This recommendation shall be advisory only and shall not be binding on the board. In the event that the administrative law judge recommends that a parolee not be returned as a parole violator, the case shall be referred to the Parole Board for their vote on the issuance of the parole violation warrant. This referral may be made at the discretion of the administrative law judge and shall be made only when the administrative law judge finds that there exists substantial mitigating factors or there exists a viable alternative to reincarceration.

(8) In preliminary revocation hearings conducted on probation cases or on cases in which the releasing authority is other than the Kentucky Parole Board, upon a finding of probable cause, the matter may be referred to the releasing authority for further revocation consideration, or leniency may be considered on the same basis as a case in which the Kentucky Parole Board is the releasing authority.

(9) In those cases in which the alleged violation of parole, as set forth in the notice of preliminary hearing, is new criminal conduct which does not also constitute a technical violation of the conditions of supervision, or the conditions of parole, no cases will be referred to the board for parole revocation consideration unless it is shown that the parolee has received a conviction in a court of law or there exists some other form of judicial admission, such as a plea of guilty, concerning the alleged criminal conduct, or it is found that the criminal conduct, or a substantial part of it, was committed in the presence of a duly appointed probation and parole officer of the Commonwealth of Kentucky. Nothing in this section shall prevent revocation of parole for a technical violation, which also happens to partially or wholly involve criminal conduct.

(10) Any party appearing before an administrative law judge of the Kentucky Parole Board may be represented by counsel if he so desires, and may have, upon motion thereof, a continuance for the purpose of obtaining the presence of counsel. Except however, chronic appearance for hearing without counsel by a parolee who is capable of retaining counsel, may be deemed an implicit waiver of counsel.

(11) The administrative law judges, in the absence of any specific statutory authorization, are prohibited from considering matters of bail or any other form of release from custody for those persons accused of parole or probation violations.

Section 2. Good Cause Hearings. KRS 439.315 requires the imposition of a supervision fee on all parolees and the establishment of a good cause hearing in the event the supervision fee is not paid. This section describes the good cause hearing.

(1) Upon nonpayment of any installment of the monthly supervision fee, the parole officer shall serve a notice of preliminary hearing on the parolee and also shall serve the supplemental notice of good cause hearing on the parolee.

(2) The good cause hearing shall be scheduled as any other preliminary revocation hearing.

(3) If the parolee makes the required supervision fee payment prior to the scheduled good cause hearing, the hearing shall be cancelled.

(4) The parolee shall be permitted legal representation at the good cause hearing.

(5) The burden of proof to show good cause for nonpayment of the supervision fee shall be placed upon the parolee.

(6) The administrative law judge of the Kentucky Parole Board shall determine whether good cause exists for the nonpayment of the supervision fee.

(7) If the administrative law judge finds that good cause exists for the nonpayment of the supervision fee, the charges shall be dismissed and the parolee shall be returned to parole supervision with the previously imposed supervision fee.

(8) If the administrative law judge finds that good cause does not exist, the parole officer may request that the hearing be continued sine die with the condition that the parolee pay the arrears and agrees to pay the supervision fee on a monthly basis.

(9) If the administrative law judge finds that good cause does not exist for nonpayment of the supervision fee, absent any motion from the parole officer, the hearing shall immediately continue and become a preliminary parole revocation hearing, and shall be conducted as described in Section 1 of this administrative regulation.

Section 3. Parole Violation Warrant. Parole violation warrants shall be issued as set forth below:

(1) Upon referral of a case to the Chairman of the Parole Board by the administrative law judge under the provisions of Section 1(6) of this administrative regulation, the chairman shall issue the parole violation warrant. No vote of the board is necessary. In the absence or disability of the chairman the warrant may be issued by any board member who has been designated, in writing, by the chairman to act in his behalf in such matters, or issued with the signature of four (4) board members.

(2) Upon referral of a case to the full Parole Board by the administrative law judge with a recommendation that the parolee not be returned to the institution as a parole violator, such referral being made pursuant to Section 1(7) of this administrative regulation, the board may issue a parole violation warrant, if upon review a majority of the board concurs that probable cause exists to believe a parole violation has taken place. Upon the vote of the board to issue the warrant, the warrant shall be issued by the chairman, except that in the absence or disability of the chairman, the signature of four (4) board members shall be sufficient to issue such warrant.

(3) In cases where it appears that a parolee has absconded from parole supervision, it otherwise appears that a parolee is a fugitive from justice, or a parole violation warrant is necessary to effect the return of the parolee to the state of Kentucky, the Chairman of the Parole Board may, upon sworn affidavit of the supervising parole officer, swearing that some violation has occurred, issue a parole violation warrant. No vote of the board is necessary. In the absence or disability of the chairman such warrants may be issued by majority vote of the board and the signature of four (4) board members shall be sufficient to issue such warrant. If no quorum of the board is present, a board member who has been designated, in writing, by the chairman to act in his behalf in such matters may issue such warrant.

(4) In cases where the parolee is being supervised outside the state of Kentucky, a parole violation warrant may be issued upon a vote of the Parole Board based upon an unsworn written report from the supervising state setting forth facts sufficient to conclude that there is reasonable grounds to believe that a violation of parole has

occurred. Upon the vote of the board to issue the warrant, the warrant shall be issued by the chair[~~man~~], except that in the absence or disability of the chair[~~man~~], the signature of four (4) board members shall be sufficient to issue a warrant.

(5) In all other cases parole violation warrants may be issued only upon majority vote of the board, except as set forth in subsection (7) of this section. Upon the vote of the board to issue any such warrant, the warrant shall be issued by the chair[~~man~~], except that in the absence or disability of the chair[~~man~~], the signature of four (4) board members shall be sufficient to issue a warrant.

(6) The board may, in its discretion, decline any request for a parole violation warrant made pursuant to any section of this administrative regulation except subsection (3) of this section. Any parole violation warrant, issued under any section of this administrative regulation, may be rescinded by majority vote of the board at any time.

(7) In any case where a vote of the board is required to issue a parole violation warrant, in the event there is no quorum of the board present to concur that probable cause exists and the warrant should be issued, the chair[~~man~~], or a board member designated by the chair[~~man~~], in writing, to act in his behalf in such matters, is authorized to issue a parole violation warrant if he, upon review concurs that probable cause exists to issue said warrant. If the chair[~~man~~], or his designee, issues a parole violation warrant under such circumstances, the board shall vote, as soon as is reasonable, on whether or not to concur in the issuance of the warrant. If a majority of the board does not concur, the warrant shall be voided by the chair[~~man~~] or his designee.

Section 4. Absconding. Except in those cases where a preliminary parole revocation hearing is held by the supervising state in the case of a parolee being supervised in another state, upon apprehension or return to the state of Kentucky of a parolee for whom a parole violation warrant has been issued without a preliminary revocation hearing, such hearing shall then be conducted as set forth elsewhere in Section 1 of this administrative regulation, except that if the administrative law judge finds that there is probable cause to believe that any violations set forth in the warrant have been committed by the parolee and that the warrant, as to any or all charges contained within it, was validly issued, the parolee must be ordered returned to the appropriate institution of the Kentucky Department of Corrections for further consideration by the Parole Board except as set forth elsewhere within this section. In the event no probable cause is shown, the case must be referred to the Chair[~~man~~] of the Parole Board who must then withdraw the warrant, returning the parolee to supervision. Notwithstanding a finding of probable cause, the administrative law judge may, upon motion of the parole officer, or upon finding there are overwhelming mitigation factors present, not known to the board at the time the warrant was issued, refer the case back to the Parole Board for a decision as to whether the warrant should be exercised or withdrawn. This referral back to the board may include a recommendation from the administrative law judge that the warrant be rescinded. This recommendation shall be advisory only and shall not be binding on the board. If the warrant is withdrawn the parolee shall be returned to normal parole supervision, subject to any additional conditions the Parole Board may impose. If the warrant is ordered exercised, the parolee shall be ordered returned to the appropriate institution.

Section 5. Waiver of Preliminary Parole Revocation Hearings. Any parolee charged with a violation of his parole may waive appearance before an administrative law judge of the Parole Board and by so doing waive his preliminary parole revocation hearing. Parolees desiring to waive such hearings shall execute the prescribed forms which shall be submitted to the board or its administrative law judge for approval. Such waivers may be accepted within the discretion of the board or its administrative law judges. No wavier will be accepted unless it is found that the waiver was entered into by the parolee knowingly, and voluntarily and that the parolee is, and clearly understands that he is admitting guilt as to the violations charged. Notwithstanding the submission and acceptance of a waiver of the preliminary parole revocation hearing, the parolee may still submit evidence in mitigation of his conduct. After approval of the waiver, the matter will proceed in the same manner as after a hearing before an administrative law judge.

Section 6. Final Parole Revocation Hearings. Final parole revocation hearings will be held within thirty (30) days after the return of the parolee to a state institution. At this hearing, the parolee will have the charges, specified in the warrant, explained to him and he will be given the opportunity to admit or deny them. If the inmate admits to the charges, then the board shall receive proof in mitigation of the charges. If the parolee wishes to be represented by legal counsel and wishes to present witnesses on his behalf, he shall request a special hearing. If granted by the board, a short deferment shall be given so the special hearing can be scheduled in central office and the parolee can secure legal counsel. The request for a special hearing by a parolee shall occur at the beginning of the final parole revocation hearing, before he admits or denies guilt. The parolee shall be notified of his right to request a special hearing at his preliminary parole revocation hearing. It is the responsibility of the parolee, and his alone, to request a special hearing if he so desires one.

Section 7. Special Hearings. (1) Special hearings will be conducted in the central office of the Parole Board, unless the Parole Board changes the site for security or other factors it deems pertinent. In cases so heard, where either the parole officer or the parolee requests the issuance of subpoenas to compel the appearance of a witness or production of documents, the board will issue them pursuant to KRS 439.390, providing no claims for expenses incurred by these witnesses will be submitted to the board, as it has no authorization to pay such expenses.

(2) At the special hearing, the following order of proceedings shall be followed:

(a) The parolee, parole officer and all witnesses shall be sworn in by the Parole Board.

(b) The board will present a short statement of the charges against the parolee.

(c) The parole officer will present proof to substantiate the charges, subject to cross-examination by the parolee.

(d) The parolee will present proof to rebut the parole officer's charges, subject to cross-examination by the parole officer.

(e) The parole officer may put on any rebuttal proof subject to cross-examination.

(f) The board may question both the parolee and the parole officer as well as any witnesses.

(g) The board will then make a determination as to whether the parolee has violated his parole.

(h) If the parolee is found in violation or if he admits the violation and has proof in mitigation, the board will receive proof from the parolee in mitigation of the violation subject to cross-examination.

(i) The board will then make a determination as to the disposition of the case and the parolee is either notified in person immediately or in writing as soon as practical.

Section 8. Waiver of Final Parole Revocation Hearing. A parolee being held pursuant to a parole violation warrant may, subsequent to his preliminary parole revocation hearing, or acceptance of a waiver thereof, request that he be allowed to waive his final parole revocation hearing. Parolees desiring to waive such hearings shall execute the prescribed form and submit it to the board. Acceptance of such waiver will be totally within the discretion of the board and only upon a finding that the waiver is entered into knowingly and voluntarily and

that the parolee is admitting guilt as to the violations charged. Waiver of the right to the final hearing shall also be considered as waiver of any rights to a special hearing as provided for elsewhere in this administrative regulation. In the event that waiver of the final hearing is accepted, the final decision on the revocation of the parolee's parole will be made by the majority vote of the board without any further proceedings.

HELEN HOWARD-HUGHES, Chairperson

APPROVED BY AGENCY: February 10, 1995

FILED WITH LRC: February 14, 1995 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 27, 1995, at 10 a.m. Individuals interested in being heard at this hearing shall notify this agency in writing by March 22, 1995, 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 wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

Contact person: Michael R. O'Connor, Kentucky Parole Board, 500 State Office Building, High Street, Frankfort, Kentucky 40601, (502) 564-3620.

REGULATORY IMPACT ANALYSIS

Contact person: Michael R. O'Connor

(1) Type and number of entities affected: 501 KAR 1:040 will affect all parolees in Kentucky who are charged with violating the terms of their parole.

(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 have been 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 have been 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: It is not anticipated that enactment of this regulation will result in additional costs or savings to those affected.

2. Second and subsequent years: The continued costs or savings should be the same on a yearly basis.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None known.

2. Continuing costs or savings: None known.

3. Additional factors increasing or decreasing costs: None known.

(b) Reporting and paperwork requirements: None known.

(4) Assessment of anticipated effect on state and local revenues: This regulation should not have any effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: It is not anticipated that enactment of this regulation will result in additional costs to the Kentucky Parole Board.

(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 have been received.

(b) Kentucky: No public comments have been received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: There are no known suitable alternatives.

(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 known.

(b) State whether a detrimental effect on environment and public health would result if not implemented: None known.

(c) If detrimental effect would result, explain detrimental effect: None known.

(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? (Explain why tiering was or was not used) Tiering is not applicable as this regulation applies equally to all individuals affected.

JUSTICE CABINET
Kentucky Parole Board
(Proposed Amendment)

501 KAR 1:050. Granting final discharge from parole.

RELATES TO: KRS 439.352, 439.356, 439.358

STATUTORY AUTHORITY: KRS 439.330(1)(g), 439.354

NECESSITY AND FUNCTION: KRS 439.330(1)(g) establishes the authority of the Parole Board to grant a final discharge from parole. KRS 439.354 establishes the need to set a period of time which the parolee must successfully spend on parole before the granting of a final discharge from parole. This administrative regulation establishes a set time period for the issuance of a final discharge from parole as well as specific criteria for its issuance. The purpose of this administrative regulation is to continue to encourage lawful activity and compliance with the conditions of parole on the parolee's part and to provide successful integration back into society. All matters relating to the granting of a final discharge from parole shall be conducted in the following manner.

Section 1. A parolee may request a final discharge from parole after the expiration of twenty-four (24) months clear conduct from the date of parole and receipt, by the board, of a full report from the parole officer of the parolee's activities while on parole or the maximum expiration date for all sentences excluding a life sentence. On a life sentence, the parolee may request a final discharge from parole upon the completion of a minimum of five (5) years on active or inactive parole supervision and receipt, by the board, of a full report from the parole officer of the parolee's activities while on parole, assuming clear conduct from the date of parole release. [~~After ten (10) years of service on parole, the board shall consider the parolee for a final discharge from parole. However, the board retains the right to grant an early final discharge from parole.~~]

Section 2. Upon receipt of evidence that a parolee has satisfied all preceding requirements, the chair[~~man~~] may issue, or cause to be issued, a certificate of final discharge from parole on any sentence upon receipt of a written request from the parole officer and considered by the full board.

Section 3. When a parolee reaches the maximum expiration date

of his sentence, a final discharge from parole shall be issued automatically by the board.

HELEN HOWARD-HUGHES, Chairperson

APPROVED BY AGENCY: February 10, 1995

FILED WITH LRC: February 14, 1995 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 27, 1995, at 10 a.m. Individuals interested in being heard at this hearing shall notify this agency in writing by March 22, 1995, 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 wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

Contact person: Michael R. O'Connor, Kentucky Parole Board, 500 State Office Building, High Street, Frankfort, Kentucky 40601, (502) 564-3620.

REGULATORY IMPACT ANALYSIS

Contact person: Michael R. O'Connor

(1) Type and number of entities affected: 501 KAR 1:050 will affect all prisoners in Kentucky who seek to be finally discharged from parole.

(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 have been 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 have been 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: It is not anticipated that enactment of this regulation will result in additional costs or savings to those affected.

2. Second and subsequent years: The continued costs or savings should be the same on a yearly basis.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None known.

2. Continuing costs or savings: None known.

3. Additional factors increasing or decreasing costs: None known.

(b) Reporting and paperwork requirements: None known.

(4) Assessment of anticipated effect on state and local revenues: This regulation should not have any effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: It is not anticipated that enactment of this regulation will result in additional costs to the Kentucky Parole Board.

(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 have been received.

(b) Kentucky: No public comments have been received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: There are no known suitable alternatives.

(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 known.

(b) State whether a detrimental effect on environment and public health would result if not implemented: None known.

(c) If detrimental effect would result, explain detrimental effect: None known.

(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? (Explain why tiering was or was not used) Tiering is not applicable as this regulation applies equally to all individuals affected.

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 February 14, 1995 [~~November 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
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
KSP 06-01-01	Inmate Records
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 100000-20	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 (Deleted 2/14/95)~~
~~KSP 110000-06~~	~~General Guidelines of the Classification Committee (Deleted 2/14/95)]~~
KSP 110000-12	Unit Classification Committee - Inmate Work Assignments
~~[KSP 110000-13~~	~~Classification Document (Deleted 2/14/95)]~~
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 (Deleted 2/14/95)]~~
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 (Amended 2/14/95)
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 18-01-01	General Guidelines and Functions of the Classification Document (Amended 2/14/95) (Renumbered from 110000-06)
KSP 18-06-01	Classification Document (Amended 2/14/95) (Renumbered from 110000-13)
KSP 18-10-01	Preparole Progress Report (Amended 2/14/95) (Renumbered from 110000-04)
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)~~]
KSP 25-08-01	Extended Furloughs (Amended 2/14/95) (Renumbered from 120000-31)

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: February 14, 1995

FILED WITH LRC: February 14, 1994 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for March 23, 1995 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 administrative regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(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 6:150. Eastern Kentucky Correctional Complex.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorizes the commissioner to adopt, amend or rescind administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. These 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 February 14, 1995 [~~June 14, 1994~~], are incorporated by reference and shall be referred to as the Eastern Kentucky Correctional Complex Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Department of Corrections, State Office Building, Frankfort, Kentucky 40601 or may be reviewed at the Office of General Counsel weekdays from 8 a.m. to 4:30 p.m.

EKCC 01-01-01 Institutional Legal Assistance
EKCC 01-02-01 Public Information and News Media Access (Amended 2/14/95)
EKCC 01-06-01 Inmate Death
EKCC 01-06-02 Crime Scene Camera
EKCC 01-07-01 Institutional Tours of EKCC
EKCC 01-07-02 EKCC Cooperation with Outside Bodies Including Courts, Governmental, Legislative, Executive, and Community Agencies
EKCC 01-07-03 Outside Consultation and Research
EKCC 01-08-01 Monthly Reports
EKCC 01-09-01 Duty Officer Responsibilities
EKCC 01-10-01 Annual Planning Document and Conference
EKCC 01-10-02 Organization and Assignment of Responsibility
EKCC 01-10-03 Institutional Planning
EKCC 01-13-01 Organization of Operations Manual
EKCC 01-13-02 Monitoring of Operations, Policies and Procedures
EKCC 01-13-03 Formulation and Revision of EKCC Operating Procedures
EKCC 01-13-04 Meetings Conducted and Their Purpose
EKCC 02-01-02 Inmate Canteen
EKCC 02-02-01 Fiscal Management: Agency Funds
EKCC 02-05-01 Fiscal Management: Budget
EKCC 02-08-01 Property Inventory
EKCC 02-08-02 Warehouse Operation and Inventory Control
EKCC 02-08-03 Inventory Control, Nonexpendable Items
EKCC 02-08-04 Warehouse Policy and Procedure
EKCC 02-11-01 Purchase and Supply Requisition
EKCC 02-12-01 Fiscal Management: Audits
EKCC 02-13-01 Fiscal Management: Accounting Procedures
EKCC 02-14-01 Screening Disbursements from Inmate Personal Accounts
EKCC 04-01-01 Staff Participation in Professional Organizations and Conferences; Provision for Leave and Reimbursement for Expenses
EKCC 04-02-01 Emergency Preparedness Training
EKCC 04-02-02 Advisory Training Committee
EKCC 05-01-01 Inmate Participation in Authorized Research
EKCC 05-02-01 Information System
EKCC 06-01-01 Confidentiality of Information, Roles and Services of Consultants, Contract Personnel and Volunteers
EKCC 06-03-01 Case Record Management
EKCC 10-02-01 Special Management Unit: Operating Procedures and Living Conditions (Amended 2/14/95)
EKCC 10-02-02 Special Management Inmates: Assignment, Classification, Reviews and Release (Amended 2/14/95)
EKCC 10-02-03 Grooming Standards for Special Management
EKCC 11-02-01 Meal Planning for General Population
EKCC 11-02-02 Food Service: Purchasing, Storage and Farm Products
EKCC 11-03-01 Food Service: Menu, Nutrition and Special Diets
EKCC 11-04-01 Food Service: Inspections and Sanitation
EKCC 11-04-02 Medical Screening of Food Handlers
EKCC 11-05-01 Food Service: Security
EKCC 11-06-01 Food Service: Kitchen and Dining Room Inmate Worker Responsibilities
EKCC 11-07-01 Dining Room Guidelines
EKCC 11-08-01 OJT Food Service Training Placement
EKCC 12-01-01 Vermin and Insect Control
EKCC 12-02-01 Inmate Dress and Use of Access Areas
EKCC 13-01-01 Pharmacy Policy [~~(Amended 6/14/94)~~]
EKCC 13-02-01 Emergency Medical Procedure [~~(Amended 6/14/94)~~]
EKCC 13-02-03 Consultations [~~(Amended 6/14/94)~~]
EKCC 13-02-04 Medical Services [~~(Amended 6/14/94)~~]
EKCC 13-02-05 Health Evaluations (Amended 2/14/95) [~~(Amended 6/14/94)~~]
EKCC 13-02-06 Sick Call [~~(Amended 6/14/94)~~]
EKCC 13-02-07 First Aid Kits
EKCC 13-05-01 Aids and Hepatitis B
EKCC 13-07-01 Serious Illness, Major Injuries, Death [~~(Amended 6/14/94)~~]
EKCC 13-08-01 Psychiatric and Psychological Services [~~(Amended 6/14/94)~~]
EKCC 13-08-02 Psychiatric and Psychological Services Team [~~(Amended 6/14/94)~~]
EKCC 13-08-03 Suicide Prevention and Intervention Program [~~(Amended 6/14/94) (Renumbered from 13-02-11)~~]
EKCC 13-08-04 Detoxification [~~(Amended 6/14/94) (Renumbered from 13-10-01)~~]
EKCC 13-09-01 Dental Services for Special Management Units [~~(Amended 6/14/94)~~]
EKCC 13-10-01 Optometric Services [~~(Amended 6/14/94)~~
EKCC 13-12-02 Resident Transfer/Medical Profiles [~~(Amended 6/14/94)~~]
EKCC 13-13-01 Syringes, Needles and Sharps Control [~~(Amended 6/14/94)~~]
EKCC 13-14-01 Fire and Emergency Evacuation Plan [~~(Amended 6/14/94)~~]
EKCC 13-15-01 Medical Department - General Housekeeping, Sanitation and Protection Standards and Requirements [~~(Amended 6/14/94)~~]
EKCC 13-16-01 Medical Records [~~(Amended 6/14/94)~~]
EKCC 14-02-01 Personal Hygiene Items: Issuance and Replacement Schedule
EKCC 14-04-01 Inmate Legal Services
EKCC 14-06-01 Inmate Grievance Procedure
EKCC 14-07-01 Inmate Rights and Responsibilities
EKCC 15-01-01 Hair and Grooming Standards: Inmate Barber Shop (Amended 2/14/95)
EKCC 15-02-01 Restricted Wing (Added 2/14/95)
EKCC 15-05-01 Restoration of Forfeited Good Time
EKCC 15-06-01 Due Process/Disciplinary Procedure (Amended 2/14/95)
EKCC 16-01-01 Inmate Visiting (Amended 2/14/95)
EKCC 16-02-01 Inmate Correspondence
EKCC 16-03-01 Inmate Telephone Procedures
EKCC 16-05-01 Inmate Access to and Communication with EKCC Staff

EKCC 16-05-02 Unit Bulletin Boards
EKCC 17-01-01 Authorized Inmate Personal Property
EKCC 17-01-02 Personal Property Control
EKCC 17-02-01 Assessment/Orientation
EKCC 17-04-01 Inmate Reception Process at the EKCC
EKCC 18-01-01 Inmate Classification
EKCC 18-10-01 Preparole Progress Report
EKCC 18-13-01 Meritorious Housing
EKCC 18-13-03 Enhanced Supervision Unit
EKCC 19-04-01 Inmate Work Program
EKCC 20-01-01 Educational Program
EKCC 21-01-01 Library Services
EKCC 22-02-01 Recreation and Inmate Activities
EKCC 23-01-01 Religious Services
EKCC 23-01-02 Muslim Services - Ramadan
EKCC 24-01-01 Social Services and Counseling Program
EKCC 25-02-01 Inmate Discharge Procedure
EKCC 25-03-01 Prerelease Preparation
EKCC 25-04-01 Inmate Furloughs
EKCC 25-06-01 Community Center Program
EKCC 26-01-01 Citizens Involvement and Volunteers

JACK C. LEWIS, Commissioner
APPROVED BY AGENCY: February 14, 1995
FILED WITH LRC: February 14, 1995 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for March 23, 1995 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Jack Damron or William Seabold, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack Damron
(1) Type and number of entities affected: 380 employees of the Eastern Kentucky Correctional Complex, 1522 inmates, and all visitors to state correctional institutions.
(a) Direct and indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None - All of the costs involved with the implementation of the administrative regulations are included in the operational budget.
2. Continuing costs or savings: Same as 2(a)1.
3. Additional factors increasing or decreasing costs: Same as 2(a)1.
(b) Reporting and paperwork requirements: Monthly submission of policy revisions.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed administrative regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

TRANSPORTATION CABINET
Department of Highways
Division of Right-of-way and Utilities
(Proposed Amendment)

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

RELATES TO: KRS 56.610 to 56.760, 49 CFR Part 24
STATUTORY AUTHORITY: KRS 56.690, 174.080, 183.024, 49 CFR Part 24
NECESSITY AND FUNCTION: The Transportation Cabinet is required to adopt administrative regulations and procedures to implement the provisions of KRS 56.610 to 56.760 with regard to providing for uniform relocation assistance services and compensation to persons displaced by the land acquisition programs of the Transportation Cabinet.

Section 1. Definitions. (1) "Advertising sign" means a billboard.
(2) "Average annual net earnings" means one-half (1/2) of the net earnings of the business or farm operation before federal, state, and local income taxes during the two (2) taxable years immediately prior to the taxable year in which it was displaced. If the business or farm operation was not in operation for the full two (2) taxable years prior to displacement, net earnings shall be based on the actual period of operation at the displacement site during the two (2) taxable years prior to displacement, projected to an annual rate. Average annual net earnings may be based upon a different period of time when it is determined by the Transportation Cabinet to be more equitable.
(3) [~~(2)~~] "Business" means any lawful activity, except a farm operation, conducted:
(a) Primarily for the purchase, sale, lease, or rental of personal or real property, or for the manufacture, processing, or marketing of products, commodities, or any other personal property; or
(b) Primarily for the sale of services to the public; or
(c) Primarily for outdoor advertising display purposes, when the display is required to be moved as a result of the project; or
(d) By a nonprofit organization.
(4) [~~(3)~~] "Comparable replacement dwelling" means a dwelling which is:
(a) Decent, safe and sanitary;
(b) Functionally equivalent to the displacement dwelling;
(c) Adequate in size to accommodate the occupants;
(d) In an area not subject to unreasonable adverse environmental conditions, and is not generally less desirable than the location of the displaced person's dwelling with respect to public utilities and commercial and public facilities and reasonably accessible to the person's place of employment;
(e) On a site that is typical in size for residential development with normal site improvements, including customary landscaping. The site need not include special improvements such as outbuildings, swimming pools, or greenhouses;
(f) Currently available to the displaced person on the private market; and
(g) Within the financial means of the displaced person.
(5) [~~(4)~~] "Contributes materially" means that during the two (2) taxable years prior to the taxable year in which displacement occurs the business or farm operation:
(a) Had average annual gross receipts of not less than $5,000; or
(b) Had average annual net earnings of not less than $1,000; or

(c) Contributed at least one-third (1/3) of the owner's or operator's average annual gross income from all sources.

(6) [~~(5)~~] "Control of the property" means that the Transportation Cabinet has paid the owner for the property to be acquired or if acquisition is by condemnation, the Transportation Cabinet has posted the purchase price of the property with the circuit court.

(7) [~~(6)~~] "Decent, safe and sanitary dwelling" means a dwelling which meets local housing and occupancy codes, but at a minimum shall:

(a) Be structurally sound, weathertight and in good repair;

(b) Contain a safe, electrical wiring system adequate for lights and other electrical devices;

(c) Contain a heating system capable of sustaining a healthful temperature of approximately seventy (70) degrees for a displaced person;

(d) Be adequate in size with respect to the number of rooms and area of living space needed to accommodate the displaced person. There shall be a separate, well-lighted and ventilated bathroom that provides privacy to the user and contains a sink and a toilet, all in good working order and properly connected to a source of water and to a sewage drainage system. In the case of a housekeeping dwelling, there shall be a kitchen area that contains a fully usable sink, properly connected to potable hot and cold water and to a sewage drainage system and adequate space and utility service connections for a stove and refrigerator;

(e) Contain unobstructed egress to safe, open space at ground level. If the replacement dwelling unit is on the second story or above, with access directly from or through a common corridor, the common corridor shall have at least two (2) means of egress; and

(f) If the displaced person is an individual with a disability be free of any barriers which would preclude reasonable ingress, egress, or use of the dwelling by the displaced person.

(8) [~~(7)~~] "Displaced person" means a person who moves from the real property or moves his personal property from the real property, including a person who occupies the real property prior to its acquisition but who does not meet the length of occupancy requirements:

(a) As a direct result of a written notice of intent of the Transportation Cabinet to acquire, or the initiation of negotiations for, or the acquisition of, the real property in whole or in part; or

(b) As a direct result of a written notice of intent of the Transportation Cabinet to acquire, or the acquisition of, in whole or in part, other real property on which the person conducts a business or farm operation. However, eligibility under this subsection applies only for the purpose of obtaining relocation assistance advisory services and moving expenses.

(9) [~~(8)~~] "Dwelling" means the place of permanent or customary and usual residence of a person including a single-family house; a single-family unit in a two (2) family, multifamily, or multipurpose property; a unit of a condominium or cooperative housing project; a nonhousekeeping unit; a mobile home; or any other residential unit.

(10) [~~(9)~~] "Fair market value" means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts.

(11) [~~(10)~~] "Family" means two (2) or more individuals living together in a single-family dwelling unit who:

(a) Are related by blood, adoption, marriage, or legal guardianship who live together as a family unit, plus all other individuals regardless of blood or legal ties who live with and are considered a part of the family unit; or

(b) Are not related by blood or legal ties but live together by mutual consent.

(12) [~~(11)~~] "Farm operation" means any activity conducted solely or primarily for the production of one (1) or more agricultural products or commodities, including timber, for sale or home use, and customarily producing the products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(13) [~~(12)~~] "Furnished dwelling unit" means a unit in which the furnishings are owned by someone other than the displaced person.

(14) [~~(13)~~] "An individual with a disability" means a person who has a physical or mental impairment that substantially limits one (1) or more major life activities, has a record of an impairment or is regarded as having an impairment.

(15) [~~(14)~~] "Initiation of negotiations" means the delivery of the initial written offer of compensation to purchase the real property by the Transportation Cabinet to the owner or the owner's representative. If the Transportation Cabinet issues a notice of its intent to acquire the real property, and a person moves after that notice, but before delivery of the initial written purchase offer, the date of "initiation of negotiations" is the date of the actual move of the person from the property.

(16) [~~(15)~~] "Mortgage" means the classes of liens that are commonly given to secure advances on, or the unpaid purchase price of, real property, under the laws of the Commonwealth of Kentucky together with the credit instrument, if applicable.

(17) [~~(16)~~] "Net earnings" means any compensation obtained from the business or farm operation by its owner or the owner's spouse the owner's dependents.

(18) [~~(17)~~] "No duplication of payment" means that no person shall receive any payment under this administrative regulation if that person receives a payment under federal, state or local law which is determined to have the same purpose and effect as the payment under this administrative regulation.

(19) [~~(18)~~] "Nonprofit organization" means an organization incorporated in the Commonwealth of Kentucky as a nonprofit organization under the provisions of KRS Chapter 273 and which is exempt from paying federal income taxes under the Internal Revenue Code (26 USC 501).

(20) [~~(19)~~] "Notice of intent to acquire" or "notice of eligibility for relocation assistance" means written notice furnished to a person who is to be displaced, which establishes eligibility for relocation benefits prior to initiation of negotiations.

(21) [~~(20)~~] "Owner of a dwelling" means a person who has purchased or holds any of the following interest in the real property:

(a) Fee title, a life estate, a ninety-nine (99) year lease, or a lease including any options, for extension with at least fifty (50) years to run from the date of acquisition; or

(b) An interest in a cooperative housing project which includes the right to occupy a dwelling; or

(c) A contract to purchase any of the interests or estates described in paragraph (a) or (b) of this subsection; or

(d) Any other interest, including a partial interest, which warrants consideration as ownership.

(22) [~~(21)~~] "Person" means any individual, family, partnership, corporation, or association.

(23) [~~(22)~~] "Persons not displaced" means but is not limited to the following:

(a) One who moves before the initiation of negotiations, unless the Transportation Cabinet determines that the person was displaced as a direct result of the project; or

(b) One who initially occupies the property after the date of its acquisition by the Transportation Cabinet; or

(c) One who occupies the property for the purpose of obtaining assistance under this administrative regulation; or

(d) One who the Transportation Cabinet determines is not displaced as a direct result of partial acquisition of the property; or

(e) An owner-occupant who voluntarily conveys his property, after being informed in writing that if a mutually satisfactory agreement on terms of the conveyance cannot be reached, the Transportation Cabinet does not intend to acquire the property. In these cases, however, any resulting displacement of a tenant is subject to the provisions of this administrative regulation; or

(f) A person who is determined to be in unlawful occupancy prior

to the initiation of negotiations, or a person who has been evicted for cause, under applicable law; or

(g) A person determined by the Transportation Cabinet to not be displaced because of another special condition.

(24) [~~(23)~~] "Purchases a dwelling" means, in addition to actually buying a dwelling, the following:

(a) Purchases and rehabilitates a substandard dwelling; or

(b) Relocates a dwelling which he owns or purchases; or

(c) Constructs a dwelling on a site he owns or purchases; or

(d) Contracts for the purchase or construction of a dwelling on a site provided by a builder or on a site the person owns or purchases; or

(e) Currently owns a previously purchased dwelling and site, valuation of which shall be on the basis of current fair market value.

(25) [~~(24)~~] "Real property" means land, and generally whatever is erected or growing upon or affixed to land.

(26) [~~(25)~~] "Salvage value" means the probable sale price of an item if offered for sale on the condition that it is to be removed from the property at the buyer's expense, allowing a reasonable period of time to find a person buying with knowledge of the uses and purposes for which the item is adaptable and capable of being used, including separate use of serviceable components and scrap when there is no reasonable prospect of sale except on that basis.

(27) [~~(26)~~] "Small business" means a business having not more than 500 employees working at the site being acquired or displaced by the project where the site is the location of economic activity.

(28) [~~(27)~~] "Subsequent occupant" means any person who did not occupy the property at the time negotiations began for acquisition of the property and who is in occupancy at the time the property is acquired and who subsequently moves from the real property. Relocation assistance payments made to a subsequent occupant shall be through the provisions of Last Resort Housing in Section 30 [~~29~~] of this administrative regulation.

(29) [~~(28)~~] "Tenant" means a person who has the temporary use and occupancy of real property owned by another.

(30) [~~(29)~~] "Uneconomic remnant" means a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property, and which the Transportation Cabinet has determined has little or no value or utility to the owner.

(31) [~~(30)~~] "Unlawful occupancy" means that a person has been ordered to move by a court of competent jurisdiction prior to the initiation of negotiations or is determined by the Transportation Cabinet to be a squatter who is occupying the real property without the permission of the owner and otherwise has no legal right to occupy the property. The Transportation Cabinet may, at its discretion, consider a squatter to be in lawful occupancy.

(32) [~~(31)~~] "Utility costs" means expenses for heat, light, water, and sewer.

Section 2. Applicability. (1) The payments and services set forth in this administrative regulation which involve a Transportation Cabinet project in which a person, business, farm operation, or nonprofit organization is required to relocate or discontinue operation shall be made regardless of whether federal funds are used or not used in the project.

(2) If the Transportation Cabinet acquires real property on behalf of another agency that agency may authorize the cabinet to follow the provisions of this administrative regulation.

Section 3. Relocation Notices - General. (1) Each relocation notice provided by the Transportation Cabinet shall be personally delivered or sent by certified or registered mail, return receipt requested.

(2) As soon as feasible, a person scheduled to be displaced shall be notified of the possibility of his displacement. He shall also be furnished with a general written description of the relocation program which gives at least the following information:

(a) Informs the person that he may be displaced because of the project and generally describes any relocation payment for which the person may be eligible, the basic conditions of eligibility, and the procedures for obtaining the payment;

(b) Indicates that any person displaced shall be given reasonable relocation advisory services to help the person relocate successfully including housing referrals, help in filing payment claims and other necessary assistance;

(c) Informs any displaced person lawfully occupying the property that he shall not be required to move without at least ninety (90) days advance notice except under the most unusual of circumstances;

(d) Describes the person's right to appeal the determination of eligibility for, or the amount of, any relocation payment for which the person may be eligible;

(e) Informs the person that in order to be eligible for benefits he is required to occupy the property at the time of initiation of negotiations and includes a definition of initiation of negotiations; and

(f) Informs the displaced person that he cannot be required to move permanently unless at least one (1) comparable replacement dwelling has been made available.

(3) Eligibility for relocation assistance shall begin on the date of initiation of negotiations for acquisition of the occupied property. At this time the Transportation Cabinet shall notify each occupant or family to be displaced in writing of his eligibility for relocation assistance.

(4) No lawful occupant shall be required to move unless he has received at least ninety (90) days advance written notice of the earliest date by which he may be required to move. Only in unusual circumstances, such as a substantial danger to the person's health or safety, shall an occupant be required to vacate the property on less than ninety (90) days advance written notice.

(5)(a) At the initiation of negotiations the Transportation Cabinet shall give the displaced person a ninety (90) day notice.

(b) The notice shall be either:

1. A specific date which is the earliest date by which he shall be required to move; or

2. A statement that before the displaced person is required to move from the property, he shall be given a thirty (30) day written notice specifying the date by which the property shall be vacated.

(6)(a) The Transportation Cabinet may issue a notice to a displaced person specifying the date by which he is required to vacate the acquired property, if:

1. The Transportation Cabinet has gained control of the property to be acquired;

2. Sixty (60) or more days have passed since the issuance of a ninety (90) day notice; and

3. Comparable replacement housing has been made available to the displaced person.

(b) The required vacation date shall be at least thirty (30) days after the notice is issued.

Section 4. Notice at Initiation of Negotiations. (1) The Transportation Cabinet shall furnish an owner-occupant of 180 days or more no later than seven (7) working days after the fair market value offer for the property, the following written information:

(a) The maximum amount of replacement housing computation and eligibility requirements to receive the payment;

(b) The address of comparable housing used to compute the replacement housing payment;

(c) The possibility of his eligibility to receive an increased interest payment, or payment of incidental expenses incurred in the purchase of replacement housing;

(d) His option to rent rather than purchase replacement housing;

(e) The availability of relocation assistance advisory services and how they may be obtained;

(f) A ninety (90) day notice; and

(g) His right to appeal.

(2) The Transportation Cabinet shall furnish an owner-occupant of less than 180 days no later than seven (7) working days after the fair market value offer for the property, the following written information:

(a) The maximum amount of a rental replacement housing payment and the maximum amount of a down payment for the purchase of replacement housing, as well as the requirements to receive these payments;

(b) The address of comparable housing used to compute the replacement housing payment;

(c) The requirements to receive reimbursement for incidental expenses;

(d) The availability of relocation assistance advisory services and how they may be obtained;

(e) A ninety (90) day notice; and

(f) His right to appeal.

(3) The Transportation Cabinet shall furnish a tenant-occupant of ninety (90) days or more, no later than seven (7) working days after the fair market value offer for the property, the following written information:

(a) The amount of rental and purchase replacement housing payments and the eligibility requirements to receive these payments;

(b) The address of the comparable housing used to compute the rental and replacement housing payments;

(c) The requirements to receive reimbursement for incidental expenses;

(d) The availability of relocation assistance advisory services and how they may be obtained;

(e) A ninety (90) day notice;

(f) His right to appeal; and

(g) The date of the initiation of negotiations for the property.

(4) The Transportation Cabinet shall furnish in writing to a subsequent tenant-occupant within seven (7) working days from the date the cabinet acquires the property the following information:

(a) His eligibility to receive moving expense payments;

(b) The availability of relocation advisory services and how they may be obtained;

(c) Assurance that comparable replacement housing is available within his financial means; and

(d) The ninety (90) day notice to vacate. This notice shall specify the date by which the property shall be vacated, and shall not be issued until comparable housing is available.

Section 5. Alternate Notices. (1) The Transportation Cabinet may specify an alternative notification procedure to those established in Sections 3 and 4 of this administrative regulation if there are insufficient rental units available for the tenant-occupants of the acquired property.

(2) If the Transportation Cabinet determines that an alternative notification procedures will be used, it shall not be required to make the replacement housing payment offer to the displaced tenants within the seven (7) working days specified in Section 4(3) of this administrative regulation.

(3) The alternate notification procedure used by the Transportation Cabinet shall be as follows:

(a) Contact the owner and make the fair market value offer for the property;

(b) Within seven (7) working days, contact the tenants and give each a written statement which shall include:

1. The date of initiation of negotiations for the parcel; and

2. An explanation of the eligibility requirements to receive a rental replacement housing payment, or a down payment.

(c) At the time the replacement housing payment is computed and the written statement required in paragraph (b) of this subsection is given the tenant, the ninety (90) day notice shall be included. The cabinet shall use the procedure in issuing the thirty (30) day vacation written notice as specified in Section 4 of this administrative regulation.

(d) The thirty (30) day notice to vacate shall not be required if an occupant moves of his own volition prior to the date the Transportation Cabinet would have issued the notice.

(4) A notice of intent to acquire the property shall be furnished to an owner or tenant only if it becomes necessary to establish eligibility requirements prior to negotiations on the parcel. This notice shall not be issued until acquisition has been authorized for the project. The notice of intent to acquire the property shall contain the following:

(a) Statement of eligibility and any restrictions on eligibility;

(b) The anticipated date of the initiation of negotiations for acquisition of the property; and

(c) How additional information regarding relocation payments and services can be obtained.

(5) If a notice of intent to acquire the property is given to an owner, the tenant shall be issued the notice within fifteen (15) days. The owner shall be given a copy of the notice issued to the tenant.

(6)(a) When the Transportation Cabinet acquiring property results in a property being landlocked, the occupant of the landlocked property shall be considered displaced. The displaced occupant shall:

1. Be eligible for relocation assistance; and

2. Have one (1) year to obtain an occupied decent, safe and sanitary replacement housing.

(b) The vacation date shall begin to run from either the date the Transportation Cabinet:

1. Makes a payment for damages to the nonresident owner of the property; or

2. Posts payment for damages in court.

Section 6. Availability of Comparable Replacement Dwelling Prior to Displacement. (1) No person to be displaced shall be required to move from his dwelling unless at least one (1) comparable replacement dwelling has been made available to the person. When possible, three (3) or more comparable replacement dwellings shall be made available. A comparable replacement dwelling shall be considered to have been made available to a person if:

(a) The person is informed of its location;

(b) The person has sufficient time to negotiate and enter into a purchase agreement or lease for the property; and

(c) The person is assured of receiving the relocation assistance and acquisition compensation, subject to reasonable safeguards, to which the person is entitled in sufficient time to complete the purchase or lease of the property.

(2) The requirements of subsection (1) of this section may be waived if the displaced person is required to move in case of an emergency situation which shall include:

(a) A major disaster as described in Section 102(c) of the National Disaster Relief Act of 1974;

(b) A presidentially declared national emergency;

(c) Highway slides or floods; or

(d) When continued occupancy would constitute a substantial danger to the health or safety or the occupants or the public.

(3) If a person is required by the Transportation Cabinet to relocate for a temporary period due to an emergency, the Transportation Cabinet shall do the following:

(a) Take the necessary steps to assure the person is temporarily relocated to decent, safe and sanitary housing;

(b) Pay actual reasonable out-of-pocket moving expenses and any reasonable increases in rent and utility costs incurred in connection with the temporary relocation; and

(c) Make available to the displaced person as soon as feasible at least one (1) comparable replacement dwelling.

(d) In the case of an emergency relocation, the date of displacement shall be the date the person moves from the temporarily-occupied dwelling. This date shall be used in:

1. Filing a claim for relocation assistance; and

2. Determining eligibility requirements for a relocation payment.

Section 7. Relocation Advisory Services. (1) The Transportation Cabinet Advisory Services Program shall include the measures, facilities, and services that may be necessary or appropriate in order to:

(a) Personally interview each family or person to be displaced to:

1. Determine the person's relocation needs and preferences;

2. Explain the relocation payments; and

3. Explain other assistance for which the person may be eligible, including requirements for obtaining the assistance;

(b) Provide current and continuing information on the availability, price and rental cost of comparable replacement dwellings, and explain that the person cannot be required to move unless at least one (1) comparable replacement dwelling is made available;

(c) In order that the displaced person is made aware of the amount of the replacement housing payment to which he may be entitled, inform the displaced person, in writing, of:

1. The specific comparable replacement dwelling;

2. The price and rent used as a basis for establishing the upper limit of the replacement housing payment; and

3. The basis for the determination;

(d) If feasible, inspect the comparable housing prior to its being made available to assure that it is decent, safe and sanitary;

(e) It shall be the policy of the Transportation Cabinet to provide a minority displaced person an opportunity to elect relocation to a replacement dwelling which is located outside an area of minority concentration if:

1. It would not require the Transportation Cabinet to pay a larger relocation payment than is required by this administrative regulation; and

2. It is within the financial means of the minority displaced person;

(f) Offer the displaced person transportation to inspect housing to which he is referred;

(g) Provide current and continuing information on the availability, location purchase price, and rental cost of comparable and suitable commercial and farm properties. Assist any person displaced from a business, farm operation, or nonprofit organization to obtain and become established in a suitable replacement location;

(h) Minimize hardships to persons in adjusting to relocation by providing counseling, advice about other sources of assistance that may be available, and other help that may be appropriate;

(i) Supply persons to be displaced with information concerning federal and state housing programs, disaster loans and other programs administered by the Small Business Administration, and other federal and state programs offering assistance to persons to be displaced;

(j) Advise a displaced person that no payments received under the relocation assistance program shall be considered as income for the purposes of:

1. The federal Internal Revenue Code; or

2. Determining the eligibility or the extent of eligibility of any person for assistance under the Social Security Act or any other federal or state law; and

(k) Maintain contact with other governmental agencies to determine the extent of other programs which might affect the Transportation Cabinet relocation program and the availability of housing resources.

(2) The amount and extent of the relocation advisory services rendered shall be determined by the needs of the displaced person.

(3) The Transportation Cabinet may offer relocation advisory services to a person occupying property adjacent to the real property acquired if that person is caused substantial economic injury because of the cabinet's acquisition of the real property.

(4) The Transportation Cabinet shall coordinate relocation activities with project work and other displacement-causing activities to ensure that persons displaced receive consistent treatment and duplication of functions is minimized.

Section 8. Claims for Relocation Assistance Payments. (1)(a) Any claim for relocation assistance payment shall be accompanied by documentation to support expenses incurred.

(b) A displaced person shall be provided reasonable assistance in completing and filing a claim for payment.

(c) The Transportation Cabinet shall review claims in an expeditious manner and promptly notify the claimant if additional documentation is required.

(d) Payment for a relocation assistance claim shall ordinarily be made only after:

1. The displaced person has moved or after closing; and

2. As soon as feasible following receipt of sufficient documentation to support the claim.

(e) The payment for a claim may be processed in advance of a move or closing but shall not be made until it can be reasonably expected that the objective of the payment has been or is to be accomplished.

(2) All claims for a relocation payment shall be filed based on the following unless the time limits have been waived for good cause by the Transportation Cabinet:

(a) For tenants, within eighteen (18) months after the date of displacement; or

(b) For owners, within eighteen (18) months of the date of displacement or the date of the final payment for the acquisition of the real property, whichever is later.

(3) If two (2) or more occupants of one (1) household of the displacement dwelling move to separate replacement dwellings, each occupant is entitled to a prorated share of all relocation payments that would have been made if the occupants had moved together to a comparable replacement dwelling. However, if it is determined that two (2) or more occupants maintained separate households within the same dwelling, the occupants shall have separate entitlements to relocation payments.

(4) If a person to be displaced owes rent to the Transportation Cabinet, the amount owed may be deducted from his relocation assistance payment unless the deduction would prevent the displaced person from obtaining comparable replacement housing. The Transportation Cabinet shall not withhold any part of a relocation assistance payment to a displaced person to satisfy an obligation to any other creditor.

(5) By written agreement between the displaced person, the mover and the Transportation Cabinet, the displaced person may present an unpaid moving bill to the Transportation Cabinet for direct payment to the mover. The displaced person shall initially make this request on forms prescribed and furnished by the Transportation Cabinet.

(6) If the Transportation Cabinet denies a claim of eligibility for or the amount of a payment, the claimant shall be promptly notified in writing of the reason for denying the claim and of his right to appeal.

Section 9. Moving and Related Expense Payments-General. Moving and related expense payments are types of relocation assistance payments. Any eligible individual, family, business, farm operation, or nonprofit organization displaced by a Transportation Cabinet project and who qualifies as a displaced person is entitled to payment of his actual moving and related expenses as the Transportation Cabinet determines to be reasonable and necessary.

(1) To be eligible for moving and related expense payments the displaced person shall:

(a) Be in legal occupancy at the initiation of negotiations for the real property or at the time the property is acquired, in whole or in part by the Transportation Cabinet or at the time he is given a written notice by the Transportation Cabinet of intent to acquire the real property; and

(b) Move from the real property, or move his personal property from the real property subsequent to the dates established in paragraph (a) of this subsection.

(2) If the acquisition of real property used for a business, farm operation, or nonprofit organization causes a person to vacate a dwelling or other real property not acquired by the Transportation Cabinet, the additional moving cost shall be eligible for reimbursement. Also, if it is necessary to move personal property that is legally located within the acquired property, the cost shall be eligible for reimbursement.

(3) A second move for a displaced person shall not be automatically authorized, nor generally eligible for payment. However, under exceptional circumstances, a second moving payment may be made. Prior to authorizing a second move, the Transportation Cabinet shall consider all special circumstances.

(4) The displaced person shall be informed in writing as soon as possible after the initiation of negotiations of the following requirements:

(a) The displaced person shall provide the Transportation Cabinet reasonable advance notice of the approximate date of the start of the move or disposition of his personal property and a list of the items to be moved; and

(b) The displaced person shall allow the Transportation Cabinet to make reasonable and timely inspections of the personal property at both the displacement and replacement sites and allow the cabinet to monitor the move.

Section 10. Moving and Related Expense Payments for Residential Moves. (1) A displaced person, owner-occupant or tenant of a dwelling who qualifies as a displaced person:

(a) Is entitled to receive payment for the actual, reasonable and necessary moving expenses of his personal property, himself, and his family.

(b) Has the option to receive reimbursement on the basis of actual, reasonable expenses, or from the fixed-rate schedule listed in subsection (5) of this section which is based on the number of rooms of personal property.

(2) An owner-occupant of a multiple-family dwelling may be entitled to a moving payment for a residential move for himself and moving payments for his personal property located in other units.

(3) In order to determine that more than one (1) household exists in a single dwelling unit, each family unit shall have separate baths, kitchen areas and bedrooms.

(a) Two (2) or more families occupying the same dwelling unit, who are required to relocate into separate dwelling units because a single comparable dwelling unit is not available, may elect to be reimbursed either on an actual cost basis or from the fixed-rate schedule.

(b) Two (2) or more families occupying the same dwelling unit, who relocate into separate dwelling units on a voluntary basis when a single comparable dwelling unit is available, may elect to be reimbursed either on an actual cost basis or from the fixed-rate schedule. A fixed-rate schedule move payment shall be based on the number of rooms actually occupied by each family, plus community rooms utilized by each family.

(c) Two (2) or more individuals who occupy the same dwelling unit are considered to be a single family and payments shall be made accordingly.

(4) When an owner retains his dwelling, the cost of moving it onto a different site is not eligible for reimbursement as a part of the cost of moving personal property. However, if he chooses to use his dwelling as a means of moving personal property, the cost of moving the personal property may be considered eligible for reimbursement. Payments in these cases shall be from the fixed-rate schedule.

(5) If the displaced person elects to move on an actual cost basis, the following expenses are eligible for payment:

(a) Transportation of the displaced person and personal property. Transportation costs for a distance beyond fifty (50) miles are not eligible, unless it is determined by the Transportation Cabinet that relocation beyond fifty (50) miles is justified;

(b) Packing, crating, unpacking, and uncrating of the personal property;

(c) Disconnecting, dismantling, removing, reassembling and reinstalling relocated household appliances and other personal property;

(d) Storage of the personal property for a period not to exceed twelve (12) months, unless it is determined by the Transportation Cabinet that a longer period of time is necessary. For the storage costs to be eligible the Transportation Cabinet shall determine that storage is reasonable and necessary and that the personal property is not stored on property being acquired or property owned or leased by the displaced person;

(e) Insurance for the replacement value of the property in connection with the move and necessary storage;

(f) The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available; and

(g) Other moving related expenses not listed as ineligible in Section 14 ~~[13]~~ of this administrative regulation but which are determined by the Transportation Cabinet to be reasonable and necessary.

(6)(a) The displaced person may elect to move by the use of a licensed commercial mover and receive reimbursement for the actual, reasonable expenses. These expenses shall be supported by receipted bills.

(b) The Transportation Cabinet may furnish the displaced person a list of licensed movers in the area.

(c) The displaced person shall select one (1) mover and the Transportation Cabinet shall select one (1) mover.

(d) The Transportation Cabinet shall:

1. Obtain from both of the selected movers an estimate of the moving costs including any necessary utility service connections.

2. Base payment on the lower estimate.

(e) The displaced person may hire either company.

(5) The displaced person, including a person displaced from a seasonal residence, may elect to move his personal property according to the fixed-rate schedule. The separate items authorized under commercial and self moves have been included in establishing the fixed-rate schedule and no additional moving payments shall be authorized. The room count of furniture shall be based on the actual number of furnished rooms, plus basements, attics, garages and out buildings if such spaces contain sufficient personality as to constitute a room. Payment shall be based on the following schedule:

1 Room = $250	5 Rooms = $ 750
2 Rooms = $400	6 Rooms = $ 850
3 Rooms = $550	7 Rooms = $ 950
4 Rooms = $650	8 Rooms = $1050
	Each Additional Room = $100

(6) If the displaced person lives in a furnished dwelling unit, he shall be paid moving costs for moving his personal property according to the following schedule:

First Room = $225

Each Additional Room = $35

(7) The moving expenses of a person with minimal personal possessions who occupies a dormitory style room shared by two (2) or more other unrelated persons or a person whose residential move is performed by an agency at no cost to the person shall be limited to fifty (50) dollars.

Section 11. Moving and Related Expense Payments, Including Reestablishment Expenses, for Business, Farm Operations, or Nonprofit Organizations. The owner of a displaced business, farm operation, or nonprofit organization is entitled to receive a payment for moving and related expenses, including reestablishment expenses.

(1) Any business, farm operation, or nonprofit organization which

qualifies as a displaced person is entitled to payment for the actual moving and related expenses as the Transportation Cabinet determines to be reasonable and necessary, including expenses for the following:

(a) Transportation of personal property. Transportation costs for a distance beyond fifty (50) miles are ineligible, unless it is determined by the Transportation Cabinet that [~~the~~] relocation beyond fifty (50) miles is justified;

(b) Packing, crating, unpacking and uncrating of the personal property;

(c) Disconnecting, dismantling, removing, reassembling and reinstalling relocated machinery, equipment and other personal property including substitute personal property and including connection to utilities available nearby. Also, included are modifications to the personal property necessary to adapt it to the replacement structure, the replacement site, or the utilities at the replacement site and modifications necessary to adapt the utilities at the replacement site to the personal property. (Expenses for providing utilities from the right-of-way to the building or improvement are excluded);

(d) Storage of the personal property for a period not to exceed twelve (12) months unless it is determined by the Transportation Cabinet that a longer period of time is necessary. For the storage costs to be eligible the Transportation Cabinet shall determine that storage is reasonable and necessary and that the personal property is not stored on property being acquired or property owned or leased by the displaced person;

(e) Insurance for the replacement value of the personal property in connection with the move and necessary storage;

(f) Any license, permit, or certification required of the displaced person at the replacement location. However, the payment may be prorated, based on the remaining useful life of the existing license, permit or certification;

(g) The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his agent, or employee), where insurance covering the loss, theft, or damage is not reasonably available; and

(h) Professional services necessary for planning the move of the personal property; moving the personal property; and installing the relocated personal property at the replacement location.

(2) The owner of a business, farm operation, or nonprofit organization, may be paid the actual reasonable cost of moving his personal property as determined to be reasonable and necessary by using a qualified commercial mover. These expenses shall be supported by receipted bills. Prior to authorizing the move, the Transportation Cabinet shall:

(a) Obtain a certified inventory of the personal property to be moved. The displaced person shall certify that the items are to actually be moved to the replacement site. If there is any significant deviation from the list of items actually relocated the amount to be paid shall be revised accordingly. If the business, farm operation, or nonprofit organization has a fluctuating inventory, the cabinet may require a reinventory just prior to authorizing the move; and

(b) Obtain two (2) bids from qualified movers when a replacement property has been found. The payment of moving expenses shall be authorized only on the basis of the lower of the bids.

(3) The owner of the business, farm operation, or nonprofit organization, may elect to move himself. Under this circumstance the Transportation Cabinet shall:

(a) Obtain a certified inventory of the personal property to be moved. The displaced person shall certify that the items actually are to be moved to the replacement site. If there is any significant deviation from the list of items actually relocated the amount to be paid shall be revised accordingly. If the business, farm operation, or nonprofit organization has a fluctuating inventory, the cabinet may require a reinventory just prior to authorizing the move; and

(b) Obtain two (2) bids from qualified movers after a replacement property has been found. The move may be authorized only on the basis of the lower of the bids. The Transportation Cabinet shall pay to the displaced person the amount of the lower bid once it is determined that all property was moved to the new location.

(4) If the cost of the move is not likely to exceed $5,000, a single estimate may be prepared by a qualified staff employee of the Transportation Cabinet other than the person preparing the claim.

(5) When the Transportation Cabinet obtains bids for a business, farm operation, or nonprofit organization move, the bidder shall be instructed in writing that the amount of his bid shall be the property of the Transportation Cabinet and shall be considered confidential information. The bidder shall state in his letter transmitting his bid to the cabinet that he shall not divulge the amount of his bid to any other person, including the displaced person. Any bidder who does not adhere to these requirements shall not be permitted to submit future bids.

(6) If it is necessary to reprint available stationery because the business, farm operation, or nonprofit organization, has been relocated, the Transportation Cabinet shall pay the actual cost for reprinting the number and type of item to be replaced. Payment shall be made for only the number of each item approved in advance of the reprinting by the Transportation Cabinet. The claim for payment shall be documented by receipted bills from the provider.

(7) If it is necessary to reletter a sign that has been made obsolete as a result of the move, if possible, only that portion of the sign which changes shall be eligible to be relettered. However, if necessary, the cost of relettering the complete sign shall be an eligible expense. The payment request shall be documented by receipted bills from the provider. Approval of the relettering shall be obtained from the Transportation Cabinet in advance of work being performed.

(8)(a) The Transportation Cabinet shall reimburse the displaced business, farm operation, or nonprofit organization actual and reasonable expenses in searching for a new location.

(b) Payment shall be limited to $1,000.

(c) The items for which an invoice may be submitted include:

1. Transportation;

2. Lodging and meals away from home;

3. Time spent in searching, based on reasonable salary or earnings, of the person conducting the search; and

4. Fees paid to a real estate agent or broker to locate a replacement site, exclusive of any fees or commissions related to the purchase of such site.

(d) The claim for payment shall be documented by receipted bills for meals and lodging when away from home and an affidavit shall be required for mileage and time. The affidavit shall show:

1. Persons contacted;

2. Places visited;

3. Activity involved; and

4. Basis for the hourly rate charged for time.

(9)(a) Payment of actual direct losses of tangible personal property may be made when the business, farm operation, or nonprofit organization owner moves or discontinues his operation. Payment for actual direct losses of tangible personal property may be made only after a bona fide effort has been made by the owner to sell the items involved. The payment shall consist of the lesser of:

1. The fair market value of the item for continued use at the displacement site less the proceeds from its sale.

a. The claimant shall make a good faith effort to sell the personal property, unless the Transportation Cabinet determines that the effort is not necessary.

b. When payment for property loss is claimed for goods held for sale, the fair market value shall be based on the cost of the goods to the business, not the potential selling price; or

2. The estimated cost of moving the item, with no allowance for storage. If the business, farm operation, or nonprofit organization is discontinued, the estimate shall be based on a move of fifty (50) miles;

(b) The prompt purchase of substitute personal property to replace an item not to be moved in a business, farm operation, or nonprofit organization move, yet which performs a comparable function at the replacement site. Payment shall be the lesser of:

1. The cost of the substitute item, including installation costs at the replacement site, less any proceeds from the sale or trade-in of the replaced item; or

2. The estimated cost of moving and reinstalling the replaced item, with no allowance for storage. If the estimated cost for the move is $5,000 or less, the estimated cost may be based on a single estimate prepared by a qualified Transportation Cabinet employee.

(c) If no offers are received for the property at the sale and the property is abandoned, payment for the actual direct loss of that item shall not be more than the fair market value of the item for continued use at its location prior to displacement or the estimated cost of moving the item fifty (50) miles, whichever is less, plus the reasonable costs of the attempted sale, irrespective of the cost to the Transportation Cabinet of removing the item.

(d) If personal property is abandoned with no effort made by the owner to dispose of the property by sale, the owner shall not be entitled to moving expenses, or losses, for the item involved.

(e) The cost of removal by the Transportation Cabinet of personal property shall not be considered as an offsetting charge against other payments to the displaced person.

(f) The sale price, if any, and the actual reasonable costs of advertising and conducting the sale shall be supported by a copy of the bill of sale or similar documents, and by copies of any advertisements, offers to sell, auction records, and other data which support the sale.

(10) A small business, farm operation, or nonprofit organization is entitled to receive a payment not to exceed $10,000 for expenses actually incurred in relocating and reestablishing the small business, farm operation, or nonprofit organization at the replacement site. Eligibility for this payment shall be contingent upon the following:

(a) Eligible expenses shall be reasonable and necessary as determined by the Transportation Cabinet and may include:

1. Repairs or improvements to the replacement real property as required by federal, state, or local law, code, regulation or ordinance.

2. Modification to the replacement property to accommodate the business operation or make replacement structures suitable for conducting the business.

3. Construction and installation costs for exterior signing to advertise the business.

4. Provision of utilities from the right-of-way to improvements on the replacement site.

5. Redecoration or replacement of soiled or worn surfaces at the replacement site, such as paint, panelling, or carpeting.

6. Licenses, fees and permits when not paid as a part of moving expenses.

7. Feasibility surveys, soil testing and marketing studies.

8. Advertisement of the replacement location.

9. Professional services in connection with the purchase or lease of a replacement site.

10. Increased cost of operation during the first two (2) years at the replacement site for items such as lease or rental charges, personal or real property taxes, insurance premiums, and utility charges, excluding impact fees.

11. Impact fees or one (1) time assessments for anticipated heavy utility usage.

12. Other items determined by the Transportation Cabinet to be essential to reestablishment of the business.

(b) A representative of the Transportation Cabinet and the displaced person shall meet at the replacement site prior to any work being done to determine what repairs or changes are necessary. After the move has been completed, the displaced person shall submit to the Transportation Cabinet itemized paid receipts for reestablishment expenses he has incurred.

(c) The following is a nonexclusive list of reestablishment expenses not considered to be reasonable, necessary, or eligible:

1. Purchase of capital assets, such as office furniture, filing cabinets, machinery or trade fixtures;

2. Purchase of manufacturing materials, production supplies, product inventory or other items used in the normal course of the business operations;

3. Interest on money borrowed to make the move or purchase the replacement property;

4. Payment to a part-time business in the home which does not contribute materially to the household income.

(d) Sites occupied solely by outdoor advertising signs, devices or displays do not qualify as a business for reestablishment expenses under the provisions of this section.

~~[(9) The direct loss payment for an advertising sign which is personal property shall be the lesser of the depreciated reproduction cost of the sign less the proceeds from its sale; or the estimated cost of moving the sign as determined by the Transportation Cabinet but with no allowance for storage.~~

~~(10) An owner of a discontinued or relocated business otherwise eligible for payment of moving expenses may choose to receive a fixed payment in lieu of the payments for actual moving and related expenses and actual reasonable reestablishment expenses.~~

~~(a) The amount of the fixed payment shall equal the average annual net earnings for the business but not less than $1,000 and not more than $20,000.~~

~~(b) For an owner of a business to be entitled to this payment, it shall be determined that:~~

~~1. The business owns or rents personal property which has to be moved in connection with the displacement and for which an expense would be incurred in the move and the business vacates or relocates from the displacement site;~~

~~2. The business cannot be relocated without a substantial loss of patronage (clientele or net earnings). A business is assumed to meet this test unless it is determined by the Transportation Cabinet that it will not suffer a substantial loss of its existing patronage;~~

~~3. The business is not part of a commercial enterprise having more than three (3) other entities which are not being acquired, and which are under the same ownership and engaged in the same or similar business activities;~~

~~4. The business is not operated at a displacement dwelling solely for the purpose of renting the dwelling to others; and~~

~~5. The business contributed materially to the income of the displaced person during the two (2) taxable years prior to displacement. The displaced person shall furnish the Transportation Cabinet copies of his income tax returns and other proof of net earnings.~~

~~(c) In determining whether two (2) or more displaced legal entities constitute a single business which is entitled to only one (1) fixed payment, all pertinent factors shall be considered, including the extent to which:~~

~~1. The same premises and equipment are shared;~~

~~2. Substantially identical or interrelated business functions are carried out and business and financial affairs are commingled;~~

~~3. The entities are held out to the public, to those customarily dealing with them, as one (1) business; and~~

~~4. The same person or closely related persons own, control, or manage the affairs of the entities.~~

~~(11) An owner of a displaced farm operation may choose to apply for a fixed payment in lieu of the payments for actual moving and related expenses and actual reasonable reestablishment expenses.~~

~~(a) The amount of the fixed payment shall equal the average annual net earnings for the farm operation but not less than $1,000 and not more than $20,000.~~

~~(b) In the case of partial acquisition of land which was a farm operation before the acquisition, a fixed payment may be made only if the Transportation Cabinet determines that:~~

~~1. The farm operation contributed materially to the income of the~~

~~displaced person during the two (2) taxable years prior to displacement;~~

~~2. Acquisition of part of the land caused the operator to be displaced from the farm operation on the remaining land; or~~

~~3. The partial acquisition caused a substantial change in the nature of the farm operation.~~

~~(12)(a) A displaced nonprofit organization may choose to apply for a fixed payment in lieu of the payments for actual moving and related expenses and actual reasonable reestablishment expenses.~~

~~(b) The payment shall not be less than $1,000 nor more than $20,000.~~

~~(c) Any request for payment in excess of $1,000 shall be supported with financial statements for the two (2) twelve (12) month periods prior to the acquisition.~~

~~(d) The amount to be used in determining the payment is the average of two (2) years annual gross revenues less administrative expenses.~~

~~(e) Gross revenues may include membership fees, class fees, cash donations, tithes, receipts from sales or other fund raising activities.~~

~~(f) Administrative expenses include rent, utilities, salaries, advertising and fund raising expenses. Operating expenses for carrying out the purpose of the nonprofit organization are not included in administrative expenses.~~

~~(g) Monetary receipts and expense amounts may be verified with certified financial statements or financial documents required by public agencies.~~]

Section 12. Moving and Related Expense Payments for Advertising Signs. (1) The owner of an eligible displaced advertising sign which is not included in the appraisal of the real property is entitled to receive a payment for moving and related expenses as determined by the Transportation Cabinet to be reasonable and necessary, including:

(a) Transportation of the advertising sign. Transportation costs for a distance beyond fifty (50) miles shall be ineligible unless it is determined by the Transportation Cabinet that relocation beyond fifty (50) miles is justified;

(b) Packing, crating, unpacking, or uncrating of the advertising sign;

(c) Disconnecting, dismantling, removing, reassembling, or reinstalling relocated machinery, equipment, or other personal property related to the advertising sign and substitute personal property, including connection to utilities available nearby;

(d) Modifications to the advertising sign necessary to adapt it to the replacement structure, the replacement site, or utilities at the replacement site;

(e) Modifications necessary to adapt utilities at the replacement site to the advertising sign, excluding expenses for providing utilities from the right-of-way to the sign;

(f) Storage of the advertising sign for a period not to exceed twelve (12) months unless it is determined by the Transportation Cabinet that a longer period of time is necessary. For storage costs to be eligible the Transportation Cabinet shall determine that:

1. Storage is reasonable and necessary; and

2. The advertising sign is not stored on property being acquired or property owned or leased by the displaced person;

(g) Insurance for the replacement value of the advertising sign in connection with the move and necessary storage;

(h) Any license, permit, or certification required of the displaced person at the replacement location. Payment may be prorated based on the remaining useful life of any existing license, permit or certification;

(i) The replacement value of the advertising sign or property related to it which is lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his agent, or employee), where insurance covering the loss, theft, or damage is not reasonably available; and

(j) Professional services necessary for:

1. Planning the move of the advertising sign;

2. Moving the advertising sign; or

3. Installing the relocated advertising sign at the replacement location.

(2) The owner of an advertising sign which is not included in the appraisal of the real property may be paid the actual cost of moving the sign as determined to be reasonable and necessary by using a qualified commercial mover. These expenses shall be supported by receipted bills. Prior to authorizing the move, the Transportation Cabinet shall:

(a) Obtain photographs of the advertising sign to be moved. The displaced person shall certify that the sign will actually be moved to the replacement site. If there is a significant change in the sign relocation, the amount to be paid shall be revised accordingly.

(b) Obtain two (2) bids from qualified movers once a replacement site has been found. Payment of moving expenses shall be authorized only on the basis of the lower of two (2) acceptable bids.

(3) The owner of an advertising sign which is not included in the appraisal of the real property, may elect a self-move based on the lower of two (2) bids from qualified movers. Under this circumstance the Transportation Cabinet shall:

(a) Obtain photographs of the advertising sign to be moved. The displaced person shall certify that the sign will actually be moved to the replacement site. If there is a significant change in the sign relocation, the amount to be paid shall be revised accordingly;

(b) Obtain two (2) bids from qualified movers once a replacement site has been found. The move may be authorized only on the basis of the lower of the bids. The Transportation Cabinet shall pay to the displaced person the amount of the lower bid once it is determined that the sign was moved to the new location.

(4) If the cost of the move is not likely to exceed $5,000, a single estimate may be prepared by a qualified Transportation Cabinet employee other than the person preparing the claim.

(5) The displaced person shall give the Transportation Cabinet reasonable, advance notice of the approximate date the move will commence.

(6) When the Transportation Cabinet obtains bids for moving a sign, the bidder shall be instructed in writing that the amount of his bid shall be the property of the Transportation Cabinet and shall be considered confidential information. The bidder shall state in his letter transmitting his bid to the cabinet that he shall not divulge the amount of his bid to any other person, including the displaced person. Any bidder who does not adhere to these requirements shall not be permitted to submit future bids.

(7) The Transportation Cabinet shall reimburse the owner of a displaced advertising sign actual and reasonable expenses in searching for a new location.

(a) Payment shall be limited to $1,000.

(b) The items for which an invoice may be submitted include:

1. Transportation;

2. Lodging and meals away from home;

3. Time spent in searching, based on reasonable salary or earnings, of the person conducting the search; and

4. Fees paid to a real estate agent or broker to locate a replacement site, exclusive of any fees or commissions related to the purchase of the site.

(c) Receipts will be required for meals and lodging when away from home. An affidavit which includes the following items is required to document mileage and time:

1. Persons contacted;

2. Places visited;

3. Activity involved; and

4. Basis for the hourly rate charged for time.

(8) Payment for actual direct losses of tangible personal property may be made when the owner of a displaced advertising sign which

is excluded from the appraisal of the real property elects not to relocate the sign. The direct loss payment shall be the lesser of the following:

(a) The depreciated reproduction cost of the sign less the proceeds from its sale; or

(b) The estimated cost of moving the sign as determined by the Transportation Cabinet but with no allowance for storage.

Section 13. [~~12.~~] Miscellaneous Moves. There are entities to be relocated that meet none of the definitions of a business, a farm operation, or a nonprofit organization. The moving expenses in these instances shall usually be paid as a self-move. Examples of moves of this type are:

(1) Partial taking of a farm or residential lot on which only a shed, barn or garage contains personal property;

(2) Acquisition of a tenant-occupied residence if the owner has some personal property in the building; or

(3) Acquisition of a tenant-occupied service station where the owner or distributor has personal property to be moved.

Section 14. [~~13.~~] Ineligible Moving and Related Expenses. A displaced person shall not be entitled to payment for the following:

(1) The cost of moving any structure or other real property improvement in which the displaced person reserved ownership;

(2) Interest on a loan to cover moving expenses;

(3) Loss of good will;

(4) Loss of profits;

(5) Loss of trained employees;

(6) Any additional operating expenses of a business or farm operation incurred because of operating in a new location (except as provided for under reestablishment expenses);

(7) Personal injury;

(8) Any legal fee or other cost for preparing a claim for a relocation payment or for representing the claimant before the Transportation Cabinet;

(9) Expenses for searching for a replacement dwelling;

(10) Physical changes to the real property at the replacement location of a business, farm, or nonprofit organization except as provided for under actual reasonable moving expenses and reestablishment expenses; or

(11) Costs for storage of personal property on real property already owned or leased by the displaced person.

~~[Section 14. Reestablishment Expenses of Businesses, Farm Operations or Nonprofit Organizations. A small business, farm operation or nonprofit organization may be eligible to receive a payment not to exceed $10,000 for expenses actually incurred in relocating and reestablishing the small business, farm operation or nonprofit organization at the replacement site. Eligibility for this payment shall be contingent upon the following:~~

~~(1) Eligible expenses shall be reasonable and necessary as determined by the Transportation Cabinet and may include:~~

~~(a) Repairs or improvements to the replacement real property as required by federal, state, or local law, code, regulation or ordinance;~~

~~(b) Modification to the replacement property to accommodate the business operation or make replacement structures suitable for conducting the business;~~

~~(c) Construction and installation costs for exterior signing to advertise the business;~~

~~(d) Provision of utilities from the right-of-way to improvements on the replacement site;~~

~~(e) Redecoration or replacement of soiled or worn surfaces at the replacement site, such as paint, paneling, or carpeting;~~

~~(f) Licenses, fees and permits when not paid as a part of moving expenses;~~

~~(g) Feasibility surveys, soil testing and marketing studies;~~

~~(h) Advertisement of the replacement location;~~

~~(i) Professional services in connection with the purchase or lease of a replacement site;~~

~~(j) Increased cost of operation during the first two (2) years at the replacement site for items such as lease or rental charges, personal or real property taxes, insurance premiums, and utility charges, excluding impact fees;~~

~~(k) Impact fees or one (1) time assessments for anticipated heavy utility usage; and~~

~~(l) Other items determined by the Transportation Cabinet to be essential to the reestablishment of the business.~~

~~(2) Expenses in excess of the maximums set forth in subsection (1)(c), (h) and (j) of this section may be considered eligible if large and legitimate disparities exist between the cost of operation at the displacement site and cost of operation at an otherwise similar replacement site. In these cases, the limitations for reimbursement of the cost may be waived by the Transportation Cabinet, but in no case shall the total costs payable for reestablishment expenses exceed the $10,000 maximum.~~

~~(3) A representative of the Transportation Cabinet and the displaced person shall meet at the replacement site prior to any work being done in order to determine what repair or changes are necessary. After the move has been completed, the displaced person shall submit to the Transportation Cabinet the itemized paid receipts for those reestablishment expenses he has incurred.~~

~~(4) The following is a nonexclusive listing of reestablishment expenditures not considered to be reasonable, necessary, or otherwise eligible:~~

~~(a) Purchase of capital assets, such as, office furniture, filing cabinets, machinery or trade fixtures;~~

~~(b) Purchase of manufacturing materials, production supplies, product inventory or other items used in the normal course of the business operations;~~

~~(c) Interior or exterior refurbishments at the replacement site which are for aesthetic purposes, except as provided in subsection (1)(e) of this section;~~

~~(d) Interest on money borrowed to make the move or purchase the replacement property;~~

~~(e) Payment to a part-time business in the home which does not contribute materially to the household income.~~

~~(5) Sites occupied solely by outdoor advertising signs, devices or displays shall not qualify as a business for reestablishment expenses under the provisions of this section.]~~

Section 15. Fixed Payments In Lieu of Payments for Moving and Related Expenses, Including Reestablishment Expenses, to Businesses, Farms, and Nonprofit Organizations. (1) An eligible owner of a discontinued or relocated business may choose to receive a fixed payment in lieu of all payments for moving and related expenses, including reestablishment expenses, which are set forth in Section 11 of this administrative regulation.

(a) The amount of the fixed payment shall equal the average annual net earnings for the business but not less than $1,000 and not more than $20,000.

(b) For an owner of a business to be entitled to this fixed payment, the Transportation Cabinet shall determine that the business meets all of the following:

1. It owns or rents personal property which has to be moved in connection with the displacement and for which an expense would be incurred in the move;

2. It vacates or relocates from the displacement site;

3. It cannot be relocated without a substantial loss of patronage (clientele or net earnings). A business is assumed to meet this test unless it is determined by the Transportation Cabinet that it will not suffer a substantial loss of its existing patronage;

4. It is not part of a commercial enterprise having more than three (3) other entities which are not being acquired, and which are under the same ownership and engaged in the same or similar business

activities;

5. It is not operated at a displacement dwelling solely for the purpose of renting the dwelling to others;

6. It is not operated at the displacement site solely for the purpose of renting the site to others; and

7. It contributed materially to the income of the displaced person during the two (2) taxable years prior to displacement.

(c) The displaced owner of a business shall furnish proof of net earnings through income tax returns.

(d) The payment amount of the fixed payment shall be determined by adding the annual net earnings before federal, state and local income taxes for the two (2) taxable years immediately preceding the taxable year in which the enterprise is relocated (or that two (2) year period deemed more representative by the Transportation Cabinet), and dividing that amount by two (2).

(e) In determining whether two (2) or more displaced legal entities constitute a single business which is entitled to only one (1) fixed payment, all pertinent factors shall be considered, including the extent to which:

1. The same premises and equipment are shared;

2. Substantially identical or interrelated business functions are carried out and business and financial affairs are commingled;

3. The entities are held out to the public, to those customarily dealing with them, as one (1) business; and

4. The same person or closely related persons own, control, or manage the affairs of the entities.

(2) An eligible owner of a displaced farm operation may choose to receive a fixed payment in lieu of all payments for moving and related expenses, including reestablishment expenses, as set forth in Section 11 of this administrative regulation.

(a) The amount of the fixed payment shall equal the average annual net earnings for the farm operation, but not less than $1,000 and not more than $20,000.

(b) In the case of partial acquisition of land which was a farm operation prior to the acquisition, a fixed payment shall be made only if the Transportation Cabinet determines that:

1. The partial acquisition caused the operation to be displaced from the farm operation on the remaining land; or

2. The partial acquisition caused a substantial change in the nature of the farm operation.

(c) For an owner of a farm operation to be entitled to this fixed payment, the farm operation shall have contributed materially to the income of the displaced person during the two (2) taxable years prior to displacement.

(d) The displaced owner of a farm operation shall furnish proof of net earnings through income tax returns.

(e) The amount of the fixed payment shall be determined by adding the annual net earnings before federal, state and local income taxes for the two (2) taxable years immediately preceding the taxable year in which the enterprise is relocated (or that two (2) year period deemed more representative by the Transportation Cabinet), and dividing that amount by two (2).

(3) An eligible displaced nonprofit organization may choose a fixed payment in lieu of all payments for moving and related expenses, including reestablishment expenses, as set forth in Section 11 of this administrative regulation.

(a) The fixed payment shall not be less than $1,000 nor more than $20,000.

(b) Any request for payment in excess of $1,000 shall be supported with financial statements for the two (2) twelve (12) month periods prior to the acquisition.

(c) The amount to be used in determining the fixed payment is the average of two (2) years annual gross revenues less administrative expenses.

(d) Gross revenues may include membership fees, class fees, cash donations, tithes, receipts from sales or other fundraising activities.

(e) Administrative expenses include rent, utilities, salaries, advertising and fund raising expenses but shall not include operating expenses for carrying out the purpose of the nonprofit organization.

(f) A displaced nonprofit organization shall furnish proof of monetary receipts and expense amounts through certified financial statements or financial documents required by public agencies.

Section 16. ~~[15.]~~ Replacement Housing Payments - General. (1) It shall be the policy of the Transportation Cabinet to consistently apply the provisions of this administrative regulation relating to eligibility for replacement housing payments to housing situations not specifically provided for in this administrative regulation. Displaced persons may include individuals or families displaced from condominiums or cooperative apartments.

(2) The displaced individual or family shall not be required to relocate to the same occupancy (owner or tenant) status in order to receive the replacement housing payment, but has other options based on his ownership status and tenure of occupancy.

(3)(a) The Transportation Cabinet shall not participate in more than one (1) replacement housing payment for each dwelling unit, except in the case of multifamily occupancy of a single family dwelling as described in Section 18 ~~[17]~~ of this administrative regulation.

(b) The claim for payment shall be filed with the cabinet no more than eighteen (18) months after the date of displacement for tenants.

(c) For owners, the claim for payment shall be filed no more than eighteen (18) months after the date of:

1. Displacement; or

2. The final payment for the acquisition of real property, whichever is later.

(d) Before the payment is made to the displaced person, the Transportation Cabinet shall determine that the replacement dwelling is decent, safe and sanitary.

(4)(a) If a displaced person qualifies for a replacement housing payment, but has not yet purchased or occupied a suitable replacement dwelling, provided he purchases and occupies the inspected dwelling within the one (1) year time limit, the Transportation Cabinet shall provide a written or oral certification that the displaced person is eligible for the payment of a specific amount

(b) The Transportation Cabinet shall release this certification only:

1. Upon the request of the displaced person who is purchasing the dwelling;

2. After inspecting the proposed dwelling; and

3. Upon finding that the dwelling is decent, safe and sanitary.

(c) The certification shall include the address of the property inspected and the amount of money the displaced person is required to spend for the replacement property in order to receive the full amount of his replacement housing payment.

(5)(a) Replacement housing payments may be made directly:

1. To the relocated individual or family; or

2. Upon written instructions from the displaced person:

a. Directly to the lessor for rent; or

b. Directly to the seller for use toward the purchase of a dwelling.

(b) This written instruction from the displaced person shall be submitted with the application for payment.

(c) The Transportation Cabinet shall make the replacement housing payment into an escrow account if:

1. The displaced person has made a specific request in the application; and

2. The applicant otherwise qualifies for a replacement housing payment.

(6)(a) The Transportation Cabinet shall determine the probable selling price of a comparable dwelling by analyzing at least three (3) comparable dwellings representative of the dwelling unit to be acquired which are available on the private market.

(b) Less than three (3) comparable dwellings may only be used for this determination when sufficient comparable dwellings are not available.

(c) Selection of comparable dwellings and computation of payment shall be made by a qualified Transportation Cabinet employee other than the appraiser or review appraiser on the parcel involved.

(d) The selected comparable dwellings shall be the most nearly comparable available and equal to or better than the subject property.

(7)(a) If the lapse of time between obtaining a listing of an available dwelling which is used to compute a replacement housing payment and the offer of the replacement housing payment amount to the displaced person exceeds thirty (30) days, the Transportation Cabinet shall determine that the property is still on the market.

(b) If a check of the market reveals the comparable dwelling relied upon is not available, a new comparable dwelling shall be selected and a new replacement housing payment computed.

(8) An adjustment shall be made to the asking price of the selected comparable dwelling only when the market reflects a difference of more than five (5) percent in the asking price and the sale price of comparable housing in the area. To determine whether an adjustment to the asking price is needed the Transportation Cabinet may contact realtors or use multiple listings books for recent sales.

(9)(a) If the site of the comparable replacement dwelling lacks a major exterior attribute of the displacement dwelling site (for example, the site is significantly smaller or does not contain a swimming pool), the value of the attribute shall be subtracted from the acquisition cost of the displacement dwelling for purposes of computing the replacement housing payment.

(b) If an uneconomic remnant of land remains after the Transportation Cabinet acquired only a portion of a tract of property and the owner of the remaining property refuses to sell it to the Transportation Cabinet, the fair market value of the uneconomic remnant shall be deducted from the before value of the displacement dwelling for purposes of computing the replacement housing payment.

(10) To the extent feasible, comparable replacement dwellings shall be selected from the neighborhood in which the displacement dwelling was located or, if that is not possible, in nearby or similar neighborhoods where housing costs are generally the same or higher.

(11) A person who occupies a property for less than ninety (90) days before initiation of negotiations or who occupies the property subsequent to the initiation of negotiations but before the property is acquired is entitled to moving expenses and advisory services. Any replacement housing payment if applicable shall be made under the provisions of Section 30 [~~29~~] of this administrative regulation.

(12) A person shall not be denied eligibility for a replacement housing payment solely because the person is unable to meet the occupancy requirements set forth in this administrative regulation for a reason beyond his control, such as:

(a) A disaster;

(b) An emergency; or

(c) An imminent threat to the public health or welfare as determined by:

1. The President;
2. The federal agency funding the project; or
3. The Transportation Cabinet; or

(d) A delay in the construction of the replacement dwelling;

(e) Military reserve duty; or

(f) A hospital stay.

(13)(a) A displaced tenant who initially rents a replacement dwelling and receives a rental assistance payment is eligible to receive a purchase or down payment assistance payment if he meets the eligibility criteria for the payments, including purchase and occupancy within the prescribed one (1) year period.

(b) Any portion of the rental assistance payment that has been disbursed shall be deducted from the payment.

(c) A displaced owner-occupant who originally rents a replacement dwelling and receives a rent supplement payment is eligible to receive a replacement housing payment, if he purchases and occupies a dwelling within the prescribed one (1) year.

(14)(a) A replacement housing payment is personal to the displaced person and upon his death, the undisbursed portion of any payment shall not be paid to the heirs or assigns, except that the amount attributable to the displaced person's period of actual occupancy of the replacement housing shall be paid.

(b) The full payment shall be disbursed in any case in which a member of a displaced family dies and the other family members continue to occupy a decent, safe and sanitary replacement dwelling.

(c) Any portion of a replacement housing payment necessary to satisfy the legal obligation of an estate in connection with the selection of a replacement dwelling by or on behalf of a deceased person shall be disbursed to the estate.

(15) In order to avoid duplicate compensation, the amount of any insurance proceeds received by a displaced person in connection with a loss to the displacement dwelling shall be included in the acquisition cost of the displacement dwelling when the Transportation Cabinet computes the replacement housing payment.

Section 17. [~~16.~~] Replacement Housing Payments - Partial Tract Acquisition. (1)(a) If the acquired dwelling is located on a tract typical in size for residential use in the area and if only a portion of the tract is acquired by the Transportation Cabinet, the maximum replacement housing payment shall be the probable selling price of a comparable replacement dwelling on a tract typical in size for the area, less the difference in the before and after values of the residential property.

(b) This difference represents the acquisition price and shall include any damages to the portion of the tract not acquired by the Transportation Cabinet.

(2) If the acquired dwelling is located on a tract larger in size than typical for residential use in the area and if only a portion of the tract is acquired by the Transportation Cabinet, the cabinet shall only consider that portion of the tract which is a typical size for computation of the maximum replacement housing payment. The maximum housing payment shall be the probable selling price of a comparable replacement dwelling and tract typical in size for residential use in the area, less the difference in the before and after value of the typical size residential property which was carved out of the total tract.

(3)(a) If the acquired dwelling is located on a farm and if only a portion of the farm is acquired by the Transportation Cabinet, the cabinet shall only consider that portion of the farm which is a typical size tract for a residential property in the area for computation of the maximum replacement housing payment.

(b) The maximum replacement housing payment shall be the probable selling price of a comparable replacement dwelling and tract typical in size for residential use in the area, less the difference in the before and after value of the typical size residential property which was carved out of the total farm.

(4) If an outbuilding is located on the tract to be acquired and if the outbuilding is used for nonresidential purposes such as corncribs or implement storage, its value shall not be included in the computation of the replacement housing payment.

(5) If the acquired dwelling is located on a tract where the fair market value is established on a use higher and better than residential and if only a portion of the tract is acquired by the Transportation Cabinet, the maximum amount payable is the probable selling price of a comparable replacement dwelling on a tract typical in size for residential use in the area, less the difference in the before and after value of the typical size homesite using the value indicated by the higher and better use, or if larger than typical, the difference in the value before and after a portion is carved out. This difference shall represent the acquisition price.

Section 18. [~~17.~~] Replacement Housing Payments - Multiple Occupancy of Same Dwelling Unit. (1)(a) If two (2) or more eligible families occupy the same single-family dwelling unit, and a comparable replacement dwelling is available, the occupants are entitled to

only one (1) replacement housing or rent supplement payment.

(b) If a comparable replacement dwelling is not available, a replacement housing or rent supplement payment for each family shall be based on housing which is comparable to the quarters privately occupied by each family plus community rooms which have been shared with other occupants.

(c) For owner-occupants the acquisition price to be used as the basis for replacement housing payment computations is that amount each owner received from the total payment for the property to be acquired.

(2)(a) If two (2) or more eligible individuals occupy the same single-family dwelling unit, they are considered one (1) family for replacement housing payment or rent supplement purposes.

(b) If all individuals do not relocate to decent, safe and sanitary housing, the Transportation Cabinet shall determine and pay those individuals who do relocate into decent, safe and sanitary housing a proportional share of the payment that would have been received if all individuals had relocated together in the same ownership or rental status as they had at the time of initiation of negotiations.

(3) If a displaced individual or family occupies living quarters on the same premises as a displaced business, farm or nonprofit organization, the individual or family is a separate displaced person for purposes of determining entitlement to relocation payments. The Transportation Cabinet shall compute the replacement housing payment for joint residential and business use properties as follows:

(a) If the owner occupies living quarters in the building the replacement housing payment shall be determined by establishing the difference in the before and after value of the land using the appraised value (if acquiring the entire tract the cabinet shall use the total land value) adding the value of the living quarters portion of the building and then subtracting the total from the most comparable property to the living quarters available for sale on the market.

(b) If a tenant occupies living quarters in the building to be acquired, the replacement housing payment shall be determined by subtracting the base monthly rent of the displaced tenant in the acquired dwelling as determined in Section 24 ~~[23]~~(2) of this administrative regulation from the amount the displaced person actually pays per month for a rental replacement dwelling including the estimated average monthly utilities or, if less, the amount determined by the Transportation Cabinet as necessary to rent a comparable dwelling including the estimated average monthly utilities. That amount shall be multiplied by forty-two (42) to establish the replacement housing payment.

(c) A displaced person eligible for a rental replacement housing payment under Section 24 ~~[23]~~(1) of this administrative regulation may receive a down payment assistance payment not to exceed $5,250. In order to receive this payment, the full amount of the payment shall be applied toward the purchase price of the replacement dwelling and related incidental expenses.

(4) The procedure for computing replacement housing payment amounts to an owner of a multifamily dwelling who occupies one (1) unit is as follows:

(a) The comparable dwellings considered in the computation shall be the same as that acquired, that is, if the property is a triplex, then the comparable dwellings shall be triplexes. If comparable dwellings are not available, structures of the next lowest density shall be used. If there are not any available comparable multifamily structures to be found, the comparison of the owner's living unit shall be to a single-family residence. A higher density structure shall never be used as a comparable structure.

(b)1. The value of the owner's unit shall be used as the basis for the replacement housing payment determination, not the entire fair market value of the property being acquired. The replacement housing payment determination is that difference, if any, between the value of the owner's living unit and the value of a living unit on the most comparable available property.

2. If the comparable housing is a triplex:

a. The replacement housing payment is based on the value of only one (1) of the three (3) units;

b. A duplex, the payment is based on the value of only one (1) of the two (2) units;

c. A single-family dwelling, the payment is based on the entire value of the dwelling.

3. The other living units of a multifamily dwelling shall not be included in the value of a comparable unit because these are considered as income producing and not part of the owner's personal living area.

Section 19. ~~[18.]~~ Replacement Housing Payments - Owner-Occupants of 180 Days or More. (1) A displaced owner-occupant may receive replacement housing payments if the displaced person has actually owned and occupied the displacement dwelling for 180 days or more immediately prior to the initiation of negotiations and if he purchases and occupies a decent, safe and sanitary replacement dwelling within a one (1) year period, beginning on the later of the following dates:

(a) The date the person receives final payment from the Transportation Cabinet for the displacement dwelling; or

(b) In the case of condemnation, the date the full amount of the estimate of just compensation is deposited in court; or

(c) The date the person is advised by the Transportation Cabinet of the availability of comparable housing.

(2) The owner-occupant is eligible for a replacement housing payment when:

(a) He is in occupancy at the initiation of negotiations for the acquisition of the real property, in whole or part;

(b) He is in occupancy at the time he is given a written notice by the Transportation Cabinet of intent to acquire the property by a given date;

(c) His occupancy of the property has been for at least 180 consecutive days immediately prior to the date of vacation or initiation of negotiations, whichever is earlier; and

(d) He purchased and occupied a decent, safe and sanitary dwelling within the time period specified in subsection (1) of this section;

(3) The combined total of the replacement housing payments for an owner-occupant of 180 days shall not exceed $22,500 for the additional costs necessary to purchase replacement housing; for compensation to the owner for the loss of favorable financing on his existing mortgage in the financing of replacement housing; and to reimburse the owner for expenses incidental to the purchase of replacement housing which are incurred.

(4)(a) The amount of the replacement housing payment for the sole owner of a dwelling is the amount, if any, which when added to the amount for which the Transportation Cabinet acquired his dwelling, equals the actual cost which the owner is required to pay for a decent, safe and sanitary replacement dwelling, or the amount determined by the Transportation Cabinet as necessary to purchase a comparable dwelling, whichever is less.

(b) When the displaced person obtains his decent, safe and sanitary replacement dwelling (not necessarily comparable to the dwelling from which he was displaced), his replacement housing payment shall be based on the amount spent for the replacement dwelling.

(c) If the replacement dwelling is not decent, safe and sanitary, he may be paid to correct the deficiencies if he maintains documented receipts.

(d) Any payment to correct a decent, safe and sanitary deficiency shall be counted toward the actual cost that the owner is required to pay for decent, safe and sanitary replacement dwelling.

(5) If a single-family dwelling is owned by several persons, and occupied by only part of the owners, the replacement housing payment shall be the lesser of:

(a) The difference between the owner-occupants' share of the

acquisition cost of the acquired dwelling and the actual cost of the replacement dwelling; or

(b) The difference between the total acquisition cost of the acquired dwelling and the amount determined by the Transportation Cabinet as necessary to purchase a comparable dwelling.

(6) If the displaced owner-occupant of 180 days or more does not purchase and occupy a decent, safe and sanitary dwelling, he shall be entitled to receive a rent supplement payment if he rents and occupies a decent, safe and sanitary dwelling.

(7) It shall be the Transportation Cabinet's responsibility to make available a comparable replacement dwelling unit and to relocate the displaced person to his original ownership status if this is his desire. If the displaced owner-occupant desires to rent, the Transportation Cabinet shall make a reasonable effort to accomplish the request.

(8)(a) When an owner-occupant of 180 days or more retains and moves his dwelling to another location, the Transportation Cabinet shall determine if he is eligible for a replacement housing payment.

(b) If the dwelling meets the decent, safe and sanitary standards, improvements such as room additions or remodeling shall not be allowed in determining the amount of the replacement housing payment.

(c) If the dwelling retained and moved is not decent, safe and sanitary, the cost to improve it so that it complies with adequate standards shall be allowed if documented receipts are maintained.

(d) Any payment to correct a decent, safe and sanitary deficiency shall be counted toward the actual cost that the owner is required to pay for a decent, safe and sanitary replacement dwelling.

(9) If an owner-occupant of 180 days or more has received a rental replacement housing payment and subsequently chooses to purchase a replacement dwelling, the amount of the rental replacement housing payment shall be deducted from the amount he would have been entitled to receive if he had purchased a replacement dwelling immediately. The combined payments shall not exceed $22,500.

(10) If the owner is allowed the option of retaining his dwelling, the replacement housing payment shall be computed in accordance with the appropriate paragraph below. The payments computed under paragraphs (a) through (c) of this subsection shall not exceed the amount the displaced person would have received if he had purchased a replacement dwelling.

(a) If the dwelling is decent, safe and sanitary, the payment, if any, shall be the amount by which the cost to relocate the retained dwelling exceeds the acquisition price of the dwelling and homesite. The cost to relocate may include the reasonable costs of acquiring a new site and other expenses incidental to retaining and moving the dwelling, and restoring it to a condition comparable to that before the move. Payment shall not exceed $22,500;

(b) If the owner chooses to move his dwelling to a part of the tract not acquired by the Transportation Cabinet, the current fair market value for purchase of a residential site, not to exceed a typical size homesite, may be included as a cost to relocate the dwelling; or

(c) If the retained dwelling is not decent, safe and sanitary, the payment shall be computed as shown above, except the costs to correct deficiencies shall be included in the costs to relocate.

(11)(a) An owner-occupant of 180 days or more eligible for a purchase replacement housing payment who elects to rent a replacement dwelling is eligible for a rental replacement housing payment which shall not exceed $5,250 unless the conditions of subsection (12) of this section exist.

(b) To compute the eligible payment, from the amount the displaced person actually pays for a rental replacement dwelling, including the estimated average monthly utilities, or if less, the amount determined by the cabinet as necessary to rent a comparable dwelling including the estimated average monthly utilities the Transportation Cabinet shall subtract the fair market rent including monthly utilities of the acquired dwelling as determined by the cabinet, then multiply that amount by forty-two (42).

(12) The rental payment authorized by subsection (11) of this section may only exceed $5,250 if the payment to purchase for an owner-occupant of 180 days could have been authorized as a last resort housing payment under Section 30 [~~29~~] of this administrative regulation and therefore, could have exceeded $22,500.

Section 20. [~~19.~~] Replacement Housing Payments - Owner-Occupants of Less Than 180 Days. (1)(a) A displaced owner-occupant who has owned and occupied the dwelling for less than 180 days and who elects to rent a replacement dwelling is eligible for a rental replacement housing payment not to exceed $5,250.

(b) To compute the rental payment, from the amount the displaced person actually pays for a rental replacement dwelling including the estimated average monthly utilities, or if less, the amount determined by the cabinet as necessary to rent a comparable dwelling including the estimated average monthly utilities the Transportation Cabinet shall subtract the monthly fair market rent of the acquired dwelling as determined by the cabinet, then multiply that amount by forty-two (42).

(2) A displaced owner-occupant who has owned and occupied the dwelling for less than 180 days, may elect to receive an amount to enable him to make a down payment on the purchase of a replacement dwelling including the actual expenses incidental to the purchase, not to exceed $5,250, or for additional costs to relocate his retained dwelling in accordance with the following:

(a) The full amount of the payment shall be applied toward the purchase of the replacement dwelling and related incidental expenses and the displaced person shall purchase and occupy the dwelling within the time frame specified in Section 24 [~~23~~](1) of this administrative regulation;

(b) The displaced person may be eligible for the entire $5,250 for a down payment including incidental expenses, when the amount of the rental replacement housing computation is less than $5,250 or is zero, except either payment shall not exceed the amount the displaced person would receive if he were an owner-occupant of 180 days or more.

(3)(a) If an owner-occupant of less than 180 days retains his dwelling, then the replacement housing payment, if any, shall be determined in accordance with the provisions of Section 19 [~~18~~] (10) of this administrative regulation, but the payment shall not exceed $5,250.

(b) If an owner-occupant of less than 180 days has received a rental replacement housing payment, the amount of the rental payment shall be deducted from the amount to which he is entitled.

(c) The combined payments shall not exceed $5,250.

Section 21. [~~20.~~] Revisions to Replacement Housing Payment. (1) If the comparable housing used in the Transportation Cabinet's computation is not available at the time of the relocation offer, a new replacement housing payment shall be computed cased on available housing which is equal to or better than the dwelling acquired and meets the other comparable criteria. However, the new replacement housing payment amount shall not be less than the original computed amount.

(2) When an adjustment is made in the fair market value offer to the owner-occupant because of an administrative settlement, an appeal from the commissioners' award, jury award or similar reason the replacement housing payment shall be recomputed based on the new acquisition price.

Section 22. [~~21.~~] Replacement Housing Payments - Increased Interest Payments. Increased interest payments are provided to compensate a displaced person for the increased interest costs he is required to pay for financing a replacement dwelling.

(1)(a) The increased interest payment shall be allowed only when the dwelling acquired by the Transportation Cabinet was encumbered by a mortgage which was made in good faith without fraud or deceit

and which was a valid lien on the dwelling for not less than 180 days prior to initiation of negotiations for the acquisition of the real property, in whole or in part, or at the time a written notice is given of the Transportation Cabinet's intent to acquire the property and the displaced person obtains a mortgage on his replacement dwelling at a higher interest rate than the mortgage rate on the dwelling acquired by the Transportation Cabinet.

(b) All mortgages on the dwelling acquired by the Transportation Cabinet shall be considered in computing the increased interest cost portion of the replacement housing payment.

(c) In the case of a home equity loan, the unpaid balance shall be that balance which existed 180 days prior to the initiation of negotiations or the balance on the date of acquisition, whichever is less.

(2) In determining the amount of the increased interest payment, the computation shall be based on the monthly payment of the old mortgage, the remaining term of the old mortgage or term of new mortgage, whichever is shorter, and the old and new interest rates. Most increased interest payments shall also be based on the unpaid mortgage balance on the displacement dwelling. However, if the new mortgage amount is less, the payment shall be reduced accordingly.

(3) Documentation of the terms, amount and interest rate for the existing and new mortgages shall be submitted on a form prescribed and furnished by the Transportation Cabinet. This form shall be completed for the existing and new mortgages and signed by a representative of the lending agency. When a loan is included in a land contract, a copy of the contract may be used for documentation.

(4) Payment for purchaser's points, loan origination fees or assumption fees but not seller's points, shall be paid to the extent that:

(a) They are not paid as incidental expenses;

(b) They do not exceed rates normal to real estate transactions in the area; and

(c) They are determined to be necessary; and

(d) The points and fees are based on the unpaid mortgage balance on the displacement dwelling, less the amount of the mortgage payment computed in this section.

(5) To document these charges in subsection (4) of this section, the Transportation Cabinet shall be provided a copy of the lending agency's closing statement.

(6) The interest rate on the mortgage for the replacement dwelling to be used in the computation shall be the actual interest rate but shall not exceed the prevailing fixed interest rate currently charged by mortgage lending institutions in the area in which the replacement dwelling is located.

(7) Increased interest payments normally shall be made directly to the displaced person. However, upon written request from the displaced person the payment may be made directly to the mortgagee of the replacement dwelling or may be paid into escrow prior to the displaced person's moving.

(8)(a) If the dwelling acquired is located on a tract normal for residential use in the area and only a portion of the tract is acquired by the Transportation Cabinet, the mortgage balance shall be reduced by the percentage ratio the acquisition price bears to the before value of the total tract. The reduction shall not apply when the mortgagee requires the entire mortgage balance to be paid because of the acquisition and it is necessary to refinance.

(b) If a dwelling is located on a tract larger than normal for residential use in the area and only a portion of the tract is acquired by the Transportation Cabinet, the total mortgage balance shall be reduced to the percentage ratio that the value of the residential portion bears to the before value. This reduction shall apply whether or not it is required that the entire mortgage balance be paid.

(9) The interest payment on multiuse properties shall be reduced to the percentage ratio the residential value of the multiuse property bears to the before value.

(10)(a) If a dwelling is located on a tract where the fair market value is established on a higher and better than residential use, and if the mortgage is based on residential value, the interest payment shall be computed as shown in subsection (7)(b) of this section.

(b) If the mortgage interest rate is obviously based on the higher use, the interest payment shall be reduced to the percentage ratio that the estimated residential value of the parcel has to the before value of the parcel.

Section 23. [~~22.~~] Replacement Housing Payments- Incidental Relocation Expenses. The incidental expenses which may be paid are those necessary and reasonable costs actually incurred by the displaced person incidental to the purchase of a replacement dwelling and customarily paid by the buyer.

(1) The type of incidental expenses eligible for payment shall include:

(a) Legal, closing, and related costs, including those for title search, preparing conveyance instruments, notary fees, preparing surveys and plats and recording fees;

(b) Lender, Federal Housing Administration, or Veteran's Administration application and apprising fees;

(c) Loan origination or assumption fees that do not represent prepaid interest;

(d) Certification of structural soundness and termite inspection when required;

(e) Credit report;

(f) Owner's and mortgagee's evidence of title, e.g., title insurance, not to exceed the costs for preparation of title insurance of a comparable replacement dwelling;

(g) Escrow agent's fee;

(h) State revenue or documentary stamps, sales on transfer taxes (not to exceed the costs for a comparable replacement dwelling); and

(i) Other costs as determined by the Transportation Cabinet to be incidental to the purchase.

(2)(a) An owner-occupant of 180 days or more who has a mortgage on the dwelling acquired and who places a mortgage on his replacement dwelling shall be reimbursed for the necessary and reasonable incidental expenses incurred when obtaining a mortgage on his replacement dwelling.

(b) An owner-occupant of 180 days or more who has no mortgage on the acquired dwelling, but who places a mortgage on his replacement dwelling shall not be reimbursed for the incidental expenses of obtaining his loan.

(c) An owner-occupant of less than 180 days, or a tenant-occupant of more than ninety (90) days who chooses to purchase a replacement dwelling may be reimbursed for eligible incidental expenses if they are included in the down payment. However, the total of the down payment and incidental expenses is limited to a maximum of $5,250.

Section 24. [~~23.~~] Replacement Housing Payments - Rental Payments. (1) A tenant or owner-occupant displaced from a dwelling is entitled to a payment not to exceed $5,250 for rental assistance, if the displaced person:

(a) Actually and lawfully occupied the displacement dwelling for at least ninety (90) days immediately prior to the initiation of negotiations; and

(b) Has rented or purchased and occupied a decent, safe and sanitary replacement dwelling within one (1) year after the date he moves from the displacement dwelling if he is a tenant; or

(c) In the case of an owner-occupant, has rented or purchased and occupied decent, safe and sanitary dwelling within one (1) year of the later of the date he received final payment for the displacement dwelling, or in the case of condemnation, the date the full amount of the estimate of just compensation is deposited with the court; or the date he moved from the displacement dwelling.

(2) The base monthly rental for the displacement dwelling shall be the least of the three (3) computations below:

(a) The average monthly cost for rent and utilities at the displace-

ment dwelling for a reasonable period prior to displacement using either actual or fair market rent. For a tenant who paid little or no rent for the displacement dwelling, fair market rent shall be used unless it would result in a hardship due to his personal income or other circumstances; or

(b) Thirty (30) percent of the person's average monthly gross household income. If a person refuses to provide evidence of income or is a dependent, the base monthly rent shall be the average monthly cost for rent or utilities. A full-time student or resident of an institution may be assumed to be a dependent, unless the person demonstrates otherwise; or

(c) The total of the amount designated for shelter and utilities if receiving a welfare assistance payment from a program that designates the amount for shelter and utilities. The base monthly rental shall include any rent supplement supplied by others unless the supplement is to be discontinued upon vacation of the property.

(3)(a) To compute the rental assistance payment, from the amount the displaced person actually pays for a rental replacement dwelling including the estimated average monthly utilities or, if less, the amount determined by the Transportation Cabinet as necessary to rent a comparable dwelling including the estimated average monthly utilities the Transportation Cabinet shall subtract the base monthly rent of the acquired dwelling as determined in subsection (2) of this section.

(b) Then the cabinet shall multiply that amount by forty-two (42) to determine the actual payment.

(c) For owner-occupants the cabinet shall use the actual or fair market rent instead of the base monthly rent when computing the payment amount.

(d) In determining the amount necessary to rent a comparable dwelling the Transportation Cabinet shall examine, if available, three (3) comparable rental properties.

(e) Only when the local housing market does not contain three (3) comparable rental properties may the Transportation Cabinet determine the payment based on less than three (3).

(4) The disbursement of rental replacement housing payments may be in a lump sum payment, or in installments. The full amount vests immediately, whether or not there is any later change in the person's income or rent, or in the condition or location of the person's housing.

Section 25. [~~24.~~] Replacement Housing Payments - Down Payment Assistance. (1) Down payment assistance may be given to a tenant-occupant of ninety (90) days or more who purchases a replacement dwelling.

(2)(a) A displaced person eligible for rental replacement housing payment under Section 24 [~~23~~] of this administrative regulation may receive a down payment assistance payment not to exceed $5,250.

(b) In order to receive this payment, the full amount of the payment shall be applied toward the purchase price of the replacement dwelling and related incidental expenses.

(c) If the rental assistance payment computed under Section 24 [~~23~~] of this administrative regulation would be zero dollars, the displaced person is entitled to receive the $5,250 for a down payment.

(3) A displaced person eligible to receive a replacement housing payment as a 180 or more day owner-occupant is not eligible for this payment.

Section 26. [~~25.~~] Replacement Housing Payment - Sleeping Room Tenant. A displaced person who has occupied a sleeping room for ninety (90) days or more and who is eligible to receive a replacement housing payment, may receive an amount not to exceed $5,250 as a rent supplement, or to enable him to make a down payment on a replacement dwelling. The provisions of Sections [~~23 or~~] 24 or 25 of this administrative regulation shall be followed.

Section 27. [~~26.~~] Mobile Homes - General. (1) The general provisions for moving expense payments to owners and tenants of conventional dwellings shall be applicable to owners or tenants of mobile homes.

(2) If it is determined that a sufficient portion of a mobile home park is taken that the remainder is not sufficient to continue the operation, and a mobile home in the remaining part of the park is required to be moved as a result of the project, the owner and any tenant shall each be considered a displaced person. A mobile home may be considered a replacement dwelling provided it is substantially a decent, safe and sanitary dwelling.

(3) The ownership or tenancy of the mobile home (not the land on which it is located) shall determine the occupant's status as an owner or a tenant. The length of ownership and occupancy of the mobile home or the mobile home site shall determine the occupant's status as a 180 day or ninety (90) day owner or tenant. The mobile home shall have been occupied on the same site (or in the same mobile home park) for the requisite 180 days or ninety (90) days to make the occupant eligible for a replacement housing payment or rent supplement.

(4) A nonoccupant-owner of a mobile home is eligible for an actual cost moving expense payment.

(5) If the person is displaced from a mobile home park, a nonreturnable mobile home park entrance fee is reimbursable provided it does not exceed the fee at a comparable park or if the Transportation Cabinet determines that it is necessary to pay the fee to effect relocation.

(6) There is no limit to the distance of the move of the displaced person. However, a relocation assistance moving expense payment shall be computed on a move of a distance of no more than fifty (50) miles, except when it is determined that the relocation cannot be accomplished within a fifty (50) mile radius. Beyond the fifty (50) mile radius, approval for a distance payment shall be limited to the nearest available mobile home site.

(7)(a) If a comparable replacement mobile home is not available, the replacement housing payment shall be computed on the basis of the reasonable cost of a comparable conventional dwelling.

(b) If it is determined that it would be practical to relocate the mobile home, but the owner-occupant elects not to do so, the cost of a comparable replacement dwelling shall be assumed to be:

1. The sum of the value of the mobile home;
2. The cost of any necessary repairs or modifications; and
3. The estimated cost of moving the mobile home to a replacement site.

(c) If a mobile home is not actually acquired, but the occupant is considered displaced under this administrative regulation, the initiation of negotiations shall be the date of the initiation of negotiations to acquire the land, or, if the land is not acquired, the date the occupant is notified in writing that he is a displaced person for the purpose of these procedures.

(d) If the owner is reimbursed for the cost of moving the mobile home under this administrative regulation, he is not eligible for a replacement housing payment to assist in purchasing or renting a replacement mobile home. The person may, however, be eligible for assistance in purchasing or renting a replacement site.

(8) There may be other combinations of ownership of occupancy relating to mobile homes not covered in these procedures. In these cases, the Transportation Cabinet shall make every effort to treat the displaced person in a manner consistent with the other provisions of this section.

Section 28. [~~27.~~] Mobile Home Moving Expense Payments. (1)(a) The general provisions for moving expense payments to owners and tenants of conventional dwellings shall also be applicable to owners and tenants of mobile homes.

(b) Displaced individuals or families occupying a mobile home may receive payment for the actual, reasonable expense of moving

their personal property.

(c) If an owner-occupied mobile home is considered personal property, the cost of moving the mobile home is reimbursable.

(d) If the owner chooses to move the mobile home, it shall be moved by a commercial mobile home carrier licensed by the Department of Vehicle Regulation.

(e) The owner may choose the mover, and receive reimbursement for the actual, reasonable expenses. Request for payment of moving expenses shall be supported by receipted bills.

(f) Prior to authorizing a move of a mobile home, the Transportation Cabinet shall determine:

1. The items of personal property to be moved, including the mobile home and any items stored in accessory buildings; and

2. Determine that the mobile home mover is a licensed commercial mobile home carrier and obtain from him an estimate of the moving costs.

a. This estimate shall include any necessary utility service connections.

b. If this estimate is not reasonable, the cabinet may approach another mobile home mover or renegotiate the price.

(2) If the mobile home is not acquired, but the mobile home owner-occupant obtains a replacement housing payment under one (1) of the circumstances described in Section 29 [~~28~~](2)(c) of this administrative regulation, the owner shall not be eligible for payment for moving the mobile home, but may be eligible for payment for moving personal property from the mobile home.

(3) However, the following expenses shall be eligible for an actual cost moving expense payment:

(a) The reasonable cost of disassembling, moving, and reassembling any attached appurtenance, such as a porch, deck, skirting, or awning; anchoring of the unit; and utility hookup charges; and

(b) The reasonable cost of repairs or modifications if a mobile home requires repairs or modifications so that it can be moved or made decent, safe and sanitary, and it is determined that it would be economically feasible to incur the additional expense.

(3) Arrangements may be made between the Transportation Cabinet, the displaced person, and the mover so that the displaced person may present an unpaid moving bill to the Transportation Cabinet for direct payment to the mover.

(4) An application for moving expense payments may be submitted in advance of the move so that payment is made available immediately upon completion of the move. In some unusual circumstances, and with prior approval of the Transportation Cabinet, moving expense payments may be made prior to the actual move.

(5) If a mobile home is considered real property, acquired by the Transportation Cabinet and included in the appraised value of the site, and if the owner repurchases the mobile home from the Transportation Cabinet, the cost of moving the mobile home shall not be eligible for moving expense payments.

(6) If the landowner occupies the mobile home and the mobile home is acquired by the Transportation Cabinet or if a tenant-occupant of a mobile home is displaced, the displaced person shall move his personal property from his mobile home by one (1) of the following methods:

(a) The displaced person may elect to move his personal belongings by the use of a commercial mover as prescribed in Section 10(4) of this administrative regulation.

(b) The displaced person may elect to move his personal property from the mobile home according to the fixed-rate schedule set out in Section 10(5) of this administrative regulation. The room count of furniture shall be based on the actual number of furnished rooms. A small detached shed or building used to store such things as lawn mowers, lawn chairs, hoses, etc., shall be considered as an additional room, if the shed or building contains sufficient personality as to constitute a room.

Section 29. [~~28.~~] Mobile Home Replacement Housing and Rent Supplement Payments. (1) The replacement housing or rent supplement payment for a mobile home shall be computed in two (2) parts:

(a) The replacement housing or rent supplement payment for the mobile home shall be computed in accordance with the procedures set forth in Sections 16 and 19 through 26 [~~15 and 18 through 25~~] of this administrative regulation.

(b) The replacement housing or rent supplement payment for the mobile home site shall be computed based on comparable sites, but the total payment shall be limited to the maximums established in this administrative regulation according to the displaced person's ownership or tenancy of the land.

(c) The sum of these two (2) parts shall not [~~cannot~~] exceed the $5,250 or $22,500 limit set for rent supplement or replacement housing payments. The total of these two (2) parts shall not [~~cannot~~] exceed $22,500.

(2) A mobile home owner-occupant who has owned and occupied the mobile home for 180 days or more shall be eligible for a replacement housing payment not to exceed $22,500 provided:

(a) The displaced person owns the displacement mobile home and occupied it on the displacement site at least 180 days immediately prior to the initiation of negotiations;

(b) The displaced person meets the other basic eligibility requirements in Section 19 [~~18~~] of this administrative regulation; and

(c) The Transportation Cabinet acquired the mobile home as real property, or the mobile home is not acquired by the Transportation Cabinet but the owner is displaced because it is determined that the mobile home:

1. Is not and cannot economically be made decent, safe and sanitary; or

2. Cannot be relocated without substantial damage or unreasonable cost; or

3. Cannot be moved because there is no available comparable replacement site; or

4. Cannot be relocated because it does not meet mobile home park entrance requirements.

(d) If the mobile home is not actually acquired, the acquisition cost of the displacement dwelling used for the purpose of computing the price differential amount, shall include the salvage value or trade-in value of the mobile home, whichever is higher.

(3) A displaced owner-occupant of 180 days or more of a mobile home and site who meets the provisions of subsection (2) of this section:

(a) Shall be eligible for replacement housing payments for the following specific items:

1. The additional costs necessary to purchase replacement housing in accordance with Section 19 [~~18~~] of this administrative regulation;

2. The amount necessary to compensate him for the loss of favorable financing on his existing mortgage in the financing of replacement housing under the provisions of Section 22 [~~21~~] of this administrative regulation; and

3. An amount to reimburse the owner for incidental expenses incurred in the purchase of replacement housing in accordance with Section 23 [~~22~~] of this administrative regulation.

(b) Who is eligible for a replacement housing payment and who elects to rent is eligible for a rental replacement housing payment, not to exceed $5,250.

(4) If the Transportation Cabinet acquires both the mobile home and site from the owner-occupant of 180 days described in subsection (2) of this section, the replacement housing payment shall be computed as follows:

(a) If the owner purchases replacement housing the amount, if any, which when added to the amount for which the Transportation Cabinet acquired his mobile home and site equals the lesser of the amount the owner is required to pay for a decent, safe and sanitary replacement mobile home and site, or if a mobile home and site are not available, the cost of a conventional dwelling, and the amount

determined by the Transportation Cabinet as necessary to purchase a comparable mobile home and site or conventional dwelling in accordance with the provisions of Section 19 [18] of this administrative regulation.

(b) If the owner elects to rent, the Transportation Cabinet shall compute the rental replacement housing payment by subtracting the fair market rent, including utilities as determined by the Transportation Cabinet from the amount the displaced person actually pays for a rental replacement dwelling, including estimated average monthly utilities, if less, the amount determined by the Transportation Cabinet as necessary to rent a comparable mobile home and mobile home site or conventional dwelling, including the estimated average monthly utilities multiplied by forty-two (42).

(5) If the Transportation Cabinet from the owner-occupant of 180 days or more described in subsection (2) of this section acquires the site, but not the mobile home situated upon the site, and the mobile home is required to be moved, the replacement housing payment shall be computed as follows:

(a) If the owner purchases a replacement site, the amount, if any, which when added to the amount for which the Transportation Cabinet acquired his mobile home site equals the lesser of the amount the owner is required to pay for a comparable site, or the amount determined by the Transportation Cabinet as necessary to purchase a comparable mobile home site;

(b) If the owner elects to rent a replacement site, the rental replacement housing payment shall be computed by subtracting the fair market rent including utilities as determined by the Transportation Cabinet from the amount the displaced person actually pays for a rental site, including the estimated average monthly utilities or if less, the amount determined by the Transportation Cabinet as necessary to rent a comparable mobile home site, including the estimated average monthly utilities. To compute the actual payment the cabinet shall multiply that amount by forty-two (42).

(6) If an owner-occupied mobile home situated on a rental site is acquired from the owner-occupant of 180 days described in subsection (2) of this section, the replacement housing payment shall be computed as follows:

(a) If the owner purchases a replacement mobile home, the amount, if any, which when added to the amount for which the Transportation Cabinet acquired the mobile home equals the lesser of the actual amount the owner is required to pay for a replacement dwelling, or the amount determined by the Transportation Cabinet as necessary to purchase a comparable mobile home, plus a site rental payment computed by subtracting the actual or fair market rent, including utilities as determined by the Transportation Cabinet from the amount the owner pays for a rental site including the estimated average monthly utilities or if less, the amount determined by the Transportation Cabinet as necessary to rent a comparable mobile home site, including the estimated average monthly utilities. To determine the actual payment the Transportation Cabinet shall multiply that amount by forty-two (42). The owner of the mobile home may choose to purchase a comparable mobile home site as an alternative to renting a site. If so, to receive the replacement housing payment, the full amount of the payment shall be applied toward the purchase price of the replacement lot and related incidental expenses. Also, the displaced person shall purchase the lot and place his mobile home on the replacement lot. This payment shall be limited to $5,250.

(b) If the owner elects to rent a replacement mobile home, the rent supplement payment shall be computed by subtracting the actual or fair market rent, including utilities as determined by the Transportation Cabinet from the amount the displaced person pays for a rental mobile home and site, including the estimated average monthly utilities or if less, the amount determined by the Transportation Cabinet as necessary to rent a comparable mobile home and site including the estimated average monthly utilities. The Transportation Cabinet shall then multiply that amount by forty-two (42) to compute the actual payment.

(7) If the Transportation Cabinet acquires the site where the owner-occupant of 180 days of a mobile home described in subsection (2) of this section rents the site but the cabinet does not acquire the mobile home, the replacement housing payment shall be determined as follows:

(a) If the owner of the mobile home elects to purchase a replacement site, the replacement housing payment shall be a down payment assistance payment not to exceed $5,250 if the owner of the mobile home purchases and occupies the replacement site within one (1) year. The full amount of the payment shall be applied to the purchase of a replacement mobile home site and related expenses.

(b) If the owner of the mobile home elects to rent a replacement site, the rental replacement housing payment shall be determined by subtracting the actual or fair market rent including utilities as determined by the Transportation Cabinet from the amount the owner pays for a rental mobile home site including the estimated average monthly utilities, or if less, the amount determined by the cabinet as necessary to rent a comparable mobile home site including utilities. The Transportation Cabinet shall then multiply that amount by forty-two (42).

(8)(a) A displaced owner-occupant of a mobile home who has occupied for less than 180 days the mobile home on the site from which he is being displaced, and who is otherwise eligible under the provisions of Section 19 [18] of this administrative regulation is eligible for a replacement housing payment not to exceed $5,250.

(b) The replacement housing payment may enable him to make a down payment on the purchase of replacement housing in accordance with the provisions of paragraph (a) of this subsection and reimburse him for the actual expenses incidental to the purchase.

(c) If he elects to rent, a rental replacement housing payment shall be determined as provided in paragraph (b) of this subsection. The payment is to be computed and disbursed in accordance with the provisions of Section 24 [23] of this administrative regulation.

(d) When the cabinet is acquiring both the mobile home and site from the owner-occupant, the displaced person eligible for a rental replacement housing payment may receive a down payment assistance payment not to exceed $5,250 only if the full amount of the payment is applied to the purchase price of the replacement dwelling and related incidental expenses. The amount for which he is eligible shall be limited to the amount he would receive if he were an owner-occupant of 180 days or more.

(e) If the Transportation Cabinet acquires the mobile home and site from the less than 180 days owner-occupant, a rental replacement housing payment shall be computed by subtracting the monthly fair market rent of the mobile home and site including utilities as determined in by the cabinet from the amount the owner actually pays for a rental mobile home and site including the estimated average monthly utilities or if less, the amount determined by the Transportation Cabinet as necessary to rent a comparable mobile home and site, including the estimated average monthly utilities. To compute the actual payment the Transportation Cabinet shall multiply this amount by forty-two (42).

(9) If the Transportation Cabinet acquires the site but not the mobile home from the owner-occupant described in subsection (2) of this section except that he had occupied the mobile home for less than 180 days, the replacement housing payment shall be determined as follows:

(a) If the owner purchases conventional replacement housing or purchases a site to which the mobile home is moved, the replacement housing payment shall be determined as in subsection 8(a) of this section.

(b) If the owner elects to rent replacement housing, a rental replacement housing payment shall be computed by subtracting the monthly fair market rent of the acquired site, including utilities as determined by the cabinet from the amount the displaced person actually pays for a rental replacement mobile home site, including the

estimated average monthly utilities, or if less, the amount determined by the Transportation Cabinet as necessary to rent comparable mobile home site including the estimated average monthly utilities. To compute the actual payment the Transportation Cabinet shall then multiply this amount by forty-two (42).

(10) A displaced tenant of a mobile home who has occupied for at least ninety (90) days the mobile home on the site from which he has been displaced and who is otherwise eligible under the provisions of Section 24 [~~23~~](1) of this administrative regulation, is eligible for a replacement housing payment, not to exceed $5,250. The rental replacement housing payment shall be determined in accordance with the provisions of Section 24 [~~23~~] of this administrative regulation. If the displaced person elects to purchase a replacement dwelling, he shall receive a payment in accordance with Section 25 [~~24~~] of this administrative regulation.

Section 30. [~~29.~~] Last Resort Housing. The last resort housing procedures of this section shall be implemented when it is determined that a Transportation Cabinet project cannot proceed to actual construction because comparable replacement sale or rental housing, within the monetary limits is not available and the housing cannot otherwise be made available. A person cannot be required to move from his dwelling unless at least one (1) comparable replacement dwelling is made available to the person.

(1) If comparable decent, safe and sanitary housing is not available, any decision to provide last resort housing assistance shall be justified either:

(a) On a case-by-case basis, during which consideration has been given to:

1. Availability of comparable housing in the area of the project;
2. Resources available to provide comparable housing; and
3. Individual circumstances of the displaced person; or

(b) It is determined that:

1. There is little, if any, comparable replacement housing available to a displaced person within an entire project area. Therefore, a case-by-case justification for last resort housing assistance is not necessary;

2. A project cannot be advanced to completion in a timely manner without last resort housing assistance; and

3. The method selected for providing last resort housing assistance is cost effective, considering all elements which contribute to total project costs.

(2) No displaced person shall be deprived of any rights the person may have under KRS 56.610 to 56.760. No displaced person shall be required, without the person's written consent, to accept a dwelling provided by the Transportation Cabinet under the procedures described in subsection (3) of this section in lieu of any acquisition payment or any relocation payment for which the person may be eligible;

(3) The methods of providing last resort housing include, but are not limited to:

(a) A replacement housing payment in excess of the limits set forth in Sections 19 and 24 [~~18 and 23~~] of this administrative regulation. Rental assistance subsidy in last resort housing may be provided in installments or in a lump sum as determined by the Transportation Cabinet;

(b) Rehabilitation of or addition to an existing replacement dwelling;

(c) Construction of a new replacement dwelling;

(d) The provision of a direct loan, which requires regular amortization or deferred repayment. The loan may or may not be secured by the real property. The loan may or may not be interest free;

(e) The relocation and, if necessary, rehabilitation of a dwelling;

(f) The purchase of land or a replacement dwelling by the Transportation Cabinet and subsequent sale or lease to or exchange with a displaced person;

(g) Removal of barriers to the handicapped; and

(h) The change in status of the displaced person from tenant to homeowner when it is more cost effective to do so, as in cases where a down payment may be less expensive than a last resort rental assistance payment.

(4) Under special circumstances, modified methods of providing housing of last resort permit consideration of:

(a) Replacement housing based on space and physical characteristics different from those in the displacement dwelling;

(b) Upgraded, but smaller replacement housing that is decent, safe and sanitary and adequate to accommodate the individuals or families displaced from marginal or substandard housing with probable functional obsolescence; or

(c) For the displaced person who is ineligible for a rent supplement or a replacement housing payment (for example, a tenant of less than ninety (90) days or a person who occupies the property subsequent to the initiation of negotiation) when comparable rental replacement housing is not available at rental rates within the person's financial means. The housing provided shall be comparable housing. To determine if a tenant in this category is entitled to a replacement housing payment, the Transportation Cabinet shall subtract thirty (30) percent of the person's gross monthly household income from the cost of a comparable replacement dwelling and multiply the difference by forty-two (42). There shall be no prohibition against making direct payments to a displaced person under last resort housing. Each case shall be reviewed to determine if it is the best interest of the person or family. The payment may be made to a third party or in installments.

Section 31. [~~30.~~] Appeals. (1) A person may file a written appeal and request for hearing with the Transportation Cabinet in any case in which the person believes that the cabinet has failed to properly determine:

(a) His eligibility; or

(b) The amount of the payment required under the provisions of this administrative regulation.

(2) The Transportation Cabinet shall consider a written appeal regardless of form.

(3) The appeal shall be filed within sixty (60) days of the date of his written notice from the Transportation Cabinet of the cabinet's determination on the person's claim.

(4) A person may be represented by legal counsel or other representative in connection with his appeal, but solely at his own expense.

(5)(a) The Secretary of the Transportation Cabinet shall appoint a hearing officer for the purpose of conducting the hearing and making a recommendation to the secretary with reference to the appeal.

(b) Technical rules of evidence shall not apply;

(c) The hearing officer shall be authorized to issue rulings regarding the competency, relevancy and materiality of the evidence to be presented at the hearing;

(d) A record of all evidence introduced at the hearing shall be made by the Transportation Cabinet.

(6)(a) The hearing officer shall make findings of facts, conclusions of law and a recommended decision on the disposition of the appeal.

(b) A copy of this shall be made available to all parties concerned, including the person requesting the hearing and the attorney representing the Transportation Cabinet in this appeal procedure.

(c) They shall have twenty (20) days in which to comment on or object to the hearing officer's recommended decision. These comments or objections shall be presented in writing.

(7) The Transportation Secretary or his representative, who shall not have been directly involved in the action appealed, shall consider:

(a) The hearing officer's recommended decision; and

(b) any written comments received from the involved parties in making his final ruling.

(8) If the full relief requested in the appeal is not granted, the Transportation Cabinet shall advise the person of his right to seek judicial review.

J. M. YOWELL, P.E., State Highway Engineer
JERRY D. ANGLIN, Deputy Secretary and Commissioner
DON C. KELLY, P.E., Secretary
APPROVED BY AGENCY: January 13, 1995
FILED WITH LRC: February 7, 1995 at 2 p.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on March 29, 1995 at 11 a.m., local prevailing time in Room 1003 of the State Office Building. The State Office Building is located on the corner of High and Clinton Streets, Frankfort, Kentucky. Any person who intends to attend this meeting must in writing by March 24, 1995 so notify this agency. If no notification of intent to attend the hearing is received by this date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given the opportunity to comment on the administrative regulation. A transcript of the public comment hearing will not be made unless a written request for a transcript is made and then at the requestor's expense. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. Written comments will be accepted until close of business on March 29, 1995. If you have a disability for which you need an accommodation, please contact the Transportation Cabinet by March 24, 1995 so that appropriate arrangements might be made. Send written notification of intent to attend the public comment hearing or written comments on the administrative regulation to: Sandra G. Pullen, Staff Assistant, Transportation Cabinet, 1003 State Office Building, 501 High Street, Frankfort, Kentucky 40622, (502) 564-4890.

REGULATORY IMPACT ANALYSIS

Contact person: Sandra G. Pullen

(1) Type and number of entities affected: This proposed amendment is likely to affect 100-200 billboards each year. Billboards located on property needed for roadway construction will be relocated by relocation assistance rather than being acquired through the appraisal 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, to the extent available from the public comments received: There should be very little, if any, change in cost. Throughout Kentucky billboards will be relocated rather than acquired through the appraisal process.

(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 should be very little, if any, change in cost. Throughout Kentucky billboards will be relocated rather than acquired through the appraisal process.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: Relocating billboard activity through a different process should not impact a business' cost, paperwork, or competition in any way.

1. First year following implementation:
2. Second and subsequent years:

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: The cabinet will be exchanging the existing paperwork associated with the appraisal process for the paperwork associated with the relocation process.

(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: Road funds: highway construction project funds, the same as under existing procedure.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: None

(a) Geographical area in which administrative regulation will be implemented: State of Kentucky.

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: The no-change alternative was rejected because the existing process has proven cumbersome and difficult to deal with. The appraisal process does not readily lend itself to the billboard acquisition/relocation process and has caused delays in many highway construction projects.

(8) Assessment of expected benefits: The cabinet anticipates that it will be more equitable to relocate billboards under the uniform relocation assistance program than under the appraisal/acquisition process.

(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: DNA

(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: DNA

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Yes. The entire administrative regulation is a tiering of the level of payments to relocated persons, businesses and farms.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Section 213, Uniform Relocation Assistance and Real Property Acquisition Act of 1970, PL 91-646 as amended. 49 CFR Part 24.

2. State compliance standards. Not applicable.

3. Minimum or uniform standards contained in the federal mandate. The federal regulations are applicable to all property acquired using federal funds. The Federal Highway Administration left many parts of the assistance to the discretion of the individual states. The federal minimum standards relate to general relocation requirements, payments for moving and related expenses, replacement housing payments, and mobile homes.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes. The Transportation Cabinet has made the program applicable to both state and federal projects.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. State law allows an agency to adopt the program for nonfederally funded projects as well as federally funded ones. In the instance of a highway construction project part federally funded and the remainder not, it is unfair to provide this benefit to only a portion of the persons displaced and not the others. The reasoning why part of the residents of a displaced neighborhood would receive extra funds from the state to make their relocation easier but the others wouldn't is impossible to explain to the participants.

TRANSPORTATION CABINET
Department of Highways
Department of Vehicle Regulation
Division of Operations
Division of Motor Carriers
(Proposed Amendment)

603 KAR 5:112. Annual permits for moving utility equipment, poles, or pipes.

RELATES TO: KRS 189.060, 189.270, 49 CFR 393.11
STATUTORY AUTHORITY: KRS 189.270, 281.600
NECESSITY AND FUNCTION: KRS 189.270 authorizes the Department of Highways to issue annual permits for the movement of utility equipment, poles, or pipes exceeding legal dimensions. This administrative regulation establishes the permit application procedures within the Transportation Cabinet and establishes movement requirements necessary in the interest of highway safety.

Section 1. Definitions. (1) "Daylight hours" means the period of a day from one-half (1/2) hour before sunrise until one-half (1/2) hour after sunset. However, it shall not include any time when atmospheric conditions such as heavy rain, snow, sleet or fog render visibility lower than is ordinarily the case during that period of the day.

(2) "National holiday" means:

(a) New Year's Day;

(b) Memorial Day (as observed on the last Monday in May);

(c) Independent Day;

(d) Labor Day;

(e) Thanksgiving Day; and

(f) Christmas Day.

(3) "Pole trailer" means the vehicle which is designed to be drawn by a motor vehicle and attached to the towing motor vehicle by means of a reach or pole or by being boomed or otherwise secured to the towing motor vehicle and used for transporting long or irregularly shaped loads such as poles, pipes, or structural members which generally are capable of sustaining themselves as beams between the supporting connections.

(4) "Utility equipment" means the specialized equipment, including earth-moving equipment, necessary for the installation or operation of utility poles or pipes or utility electrical field equipment such as transformers or regulators. It shall not include any equipment necessary for the construction or operation of a power generation station.

(5) "Overdimensional" means the motor vehicle exceeds the dimension limits set forth in 603 KAR 5:070.

Section 2. Permit Application. (1) Application for an annual permit to move overdimensional utility equipment, poles, or pipes on Kentucky highways shall only be made to the Department of Vehicle Regulation, Division of Motor Carriers, Frankfort, Kentucky. The address is 501 High Street, Third Floor, State Office Building, Frankfort, Kentucky 40622. The telephone number is (502) 564-4540.

(2) An application for an annual permit to transport overdimensional utility equipment, poles or pipes shall include the following information:

(a) Name of the motor carrier applying for the permit;

(b) KYU identification number of the motor carrier;

(c) The full address of the motor carrier; and

(d) Description of the towing vehicle for which the annual permit is being applied specifically including the following:

1. Its length;
2. Number of axles;
3. Truck configuration;
4. Year;
5. Make;
6. Registration license plate number;
7. Vehicle identification number; and
8. Company unit number.

Section 3. Permit Required. A special single trip or annual permit shall be obtained from the Department of Vehicle Regulation, Division of Motor Carriers either under the provisions of this administrative regulation, 601 KAR 1:015, 601 KAR 1:016, or 603 KAR 5:075 issued pursuant to KRS Chapter 189 prior to the following:

(1) Operation on any state-maintained highway of a straight truck style vehicle transporting utility equipment, pole, or pipe with a total length greater than forty-five (45) feet (13.72 meters);

(2) Operation on any state-maintained highway of a combination style vehicle, including a truck and pole trailer combination, transporting utility equipment, pole, or pipe which has a total length greater than fifty-five (55) feet (16.76 meters);

(3) Operation on any highway listed in 603 KAR 5:070, Section 5 [3] of a vehicle and trailer combination, including a truck and pole trailer combination, transporting utility equipment, pole, or pipe which exceeds the length limitations set forth in 603 KAR 5:070, Section 4 [2](2)(b);

(4) Operation on a state-maintained highway not listed in 603 KAR 5:070, Section 5 [3] of a motor vehicle transporting utility equipment, pole, or pipe which has an overall width greater than ninety-six (96) inches (2.44 meters);

(5) Operation on a state-maintained highway listed in 603 KAR 5:070, Section 5 [3] of a motor vehicle transporting utility equipment, pole, or pipe which has an overall width greater than 102 inches (2.59 meters); and

(6) Operation of a motor vehicle transporting utility equipment, poles, or pipe which has a combined gross weight in excess of the legal weight limit set forth for the highway in 603 KAR 5:301 [300].

(7) The procedures which shall be followed for the issuing of a single trip permit or an annual permit for the movement of overweight specialized equipment are set forth in 601 KAR 1:015, 601 KAR 1:016, and 603 KAR 5:075.

Section 4. Annual Permits. (1) The movement of a vehicle transporting utility equipment, poles, or pipe under the provisions of an annual permit shall only be on highways or in the geographical area specified on the annual permit.

(2) If the permit holder intends to transport overdimensional utility equipment, poles, or pipes under the provisions of the annual permit, but outside the area or highways specified on the annual permit, he shall contact the Division of Motor Carriers and receive approval for that move or series of moves prior to the move.

(3)(a) If the utility equipment, pole, or pipe in excess of forty-five (45) feet (13.72 meters) overhangs the vehicle required to be permitted on both the front and rear by more than ten (10) feet (3.05 meters) each, the permit holder shall contact the Operations Branch of the Highway District Office having jurisdiction over the county in which the moves are scheduled to occur and receive permission for that move or series of moves prior to the move.

(b) The Highway District Office may require that the permit holder demonstrate his proposed method and route of operation prior to issuing or denying permission for the move.

(4) An annual permit issued under the provisions of this administrative regulation shall not be valid for the utility equipment, pole, or pipe and transporting motor vehicle if it exceeds twelve (12) feet (3.66 meters) in width. In this instance, a permit shall be obtained pursuant to 603 KAR 5:075.

Section 5. Safety Items. (1) On all highways of four (4) or more lanes, one (1) rear street escort vehicle shall be required for the movement of a vehicle and trailer combination [which]:

(a) Which, [When] combined with its load, exceeds 110 feet (33.528 meters) in length; or

(b) When a minimum speed of forty-five (45) miles (72.42

kilometers) per hour is not maintained.

(2)(a) On highways of less than four (4) lanes, one (1) escort shall be required in the rear of each vehicle and trailer combination which, when combined with its load, exceeds seventy-five (75) feet (22.86 meters) in length.

(b) This requirement shall not be applicable if the utility equipment, pole, or pipe being transported is fifty-five (55) feet (16.76 meters) or less in length.

(3) On highways of less than four (4) lanes, one (1) rear and one (1) lead escort shall be required for each vehicle and trailer combination which, when combined with its load, exceeds eighty-five (85) feet (25.91 meters) in length.

(4) If the utility equipment, pole, or pipe being transported exceeds fifty-five (55) feet (16.76 meters) in length, a front escort vehicle shall accompany the vehicle required to be permitted when transporting utility equipment, poles, or pipe if the front overhang exceeds ten (10) feet (3.05 meters).

(5) If the utility equipment, pole, or pipe being transported exceeds fifty-five (55) feet (16.76 meters) in length, a rear escort vehicle shall accompany the vehicle required to be permitted when transporting utility equipment, poles, or pipe if the rear overhang exceeds ten (10) feet (3.05 meters).

(6) On a two (2)-lane highway, utility equipment with a width in excess of ten and one-half (10.5) feet (3.2 meters) but twelve (12) feet (3.66 meters) or less in width shall have one (1) lead escort.

(7)(a) Required escort vehicles shall accompany the permitted vehicle at a distance of 300 feet (91.44 meters) on open highway.

(b) This interval shall be shortened in cities or congested areas to protect other traffic.

(8) An escort vehicle's headlamps shall be lit at all times.

(9) An escort vehicle, either front or rear, may be required by the Transportation Cabinet when the cabinet determines that highway conditions dictate the need.

(10) An amber strobe or flashing light shall be placed on the power unit of the towing vehicle and shall be in use any time the power unit is in operation.

(11)(a) The lighting devices and reflectors set forth in 49 CFR Part 393.11 for pole trailers and projecting loads shall be required. ~~[An amber strobe or flashing light shall be placed on the extreme ends of the utility equipment, pole or pipe when the front or rear overhang exceeds four (4) feet. The]~~

(b) Each lamp or light shall be in use any time the vehicle is on or beside a highway.

(c) A front overhang shall not be allowed on a combination vehicle.

(12) Red or orange fluorescent warning flags at least eighteen (18) inches (11611.7 millimeters) square shall be displayed on both sides of an overwidth vehicle at the widest extremities of the vehicle or load.

(13) A warning sign shall be fastened to both the front of the towing unit and the rear of the load if the towing vehicle and load exceeds ten and one-half (10.5) feet (3.2 meters) in width or has either a front or rear overhang of four (4) or more feet (1.22 or more meters). Each warning sign shall:

(a) State "OVERSIZE LOAD" in black letters on a yellow background;

(b) Not be less than seven (7) feet (2.13 meters) long and eighteen (18) inches (457.2 millimeters) high; and

(c) Have a brush stroke of not less than one and four-tenths (1.4) inches (35.36 millimeters).

(14) All towing vehicles and loads shall be marked and lighted and operated in accordance with those requirements set forth in 601 KAR 1:005.

(15) The towing unit shall maintain radio communication with its escort vehicles at all times.

(16) Each required escort vehicle shall have one (1) of the following:

(a) An amber strobe or flashing light on the roof of the escort vehicle; or

(b) A clearly-legible warning sign in black letters on a yellow background which states "OVERSIZE LOAD". The sign shall be placed on the front of a front escort vehicle and on the rear of a rear escort vehicle.

Section 6. Duplicate Permits. A duplicate permit which is needed to replace a lost, stolen, or destroyed annual permit or to transfer the permit to another towing vehicle may be obtained from the Division of Motor Carriers by the payment of ten (10) dollars. Only one (1) transfer to another towing vehicle shall be allowed for each annual permit during its effective year. Any additional transfer of the annual permit requested shall be subject to the fees set forth in KRS 189.270.

Section 7. Presentation of Permits. (1) The original of the annual permit or copy of the annual permit authenticated by the Transportation Cabinet by embossing with a stamp shall be carried in the towing vehicles at all times.

(2) It shall be presented, upon request, to any law enforcement officer or any authorized personnel of the Department of Vehicle Regulation for inspection.

(3) An unembossed photocopy of the annual permit shall not be valid.

Section 8. Permit Validity. (1) Except as set forth in subsection (4) of this section, permits are valid only:

(a) During daylight hours; and

(b) From Monday through Saturday noon.

(2) Except as set forth in subsection (4) of this section, travel shall not be permitted from noon of the day preceding a national holiday until daylight of the next permissible day.

(3) If the national holiday occurs on Saturday, Sunday or Monday the restricted movement period shall extend from noon of the preceding Friday to daylight of the following Tuesday.

(4) When a utility company is working in an emergency situation to restore utility service to an area otherwise experiencing an outage, the restrictions of subsection (1), (2), and (3) of this section shall not prohibit travel.

Section 9. Liability. Any damage to the highway, signs, guardrail or other public or private property caused by the transportation of utility poles or pipes shall be the responsibility of the permit holder. The permit holder shall either repair all damage incurred or pay for the repair.

NORRIS BECKLEY, Commissioner
J.M. YOWELL, P.E., State Highway Engineer
JERRY D. ANGLIN, Deputy Secretary
DON C. KELLY, P.E., Secretary

APPROVED BY AGENCY: January 13, 1995

FILED BY AGENCY: February 6, 1995 at 9 a.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on March 29, 1995 at 10 a.m. local prevailing time in the Transportation Cabinet, Corner of High, Clinton and Holmes Streets, 4th Floor Hearing Room, 501 High Street, Frankfort, Kentucky 40622. Any person who intends to attend this meeting must in writing by March 24, 1995 so notify this agency. If no notification of intent to attend the hearing is received by this date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given the opportunity to comment on the administrative regulation. A transcript of the public comment hearing will not be made unless a written request for a transcript is made and then only at the requestor's expense. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by March 24, 1995. This request does

not have to be in writing. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. Written comments will be accepted until the close of business on March 29, 1995. Send written notification of intent to attend the public comment hearing or written comments on the administrative regulation to: Sandra G. Pullen, Staff Assistant, Transportation Cabinet, 1003 State Office Building, 501 High Street, Frankfort, Kentucky 40622, (502) 564-4890.

REGULATORY IMPACT ANALYSIS

Contact person: Sandra G. Pullen

(1) Type and number of entities affected: All utility companies operating 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: None

(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: 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: None

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(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: None

(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: The Kentucky Association of Rural Electric Cooperatives pointed out that during emergency conditions such as a power outage due to an ice storm, the utility companies were required to move poles or pipes during nondaylight hours and under other conditions normally prohibited for the movement of these poles or pipes. To respond to the emergency situation, the utilities have continued moving the poles and pipes, but not in compliance with their permits. The utility companies run 2 risks under this scenario which, in the interest of the public welfare, should be eliminated. The first is being issued a citation by a law enforcement officer for noncompliance with the provisions of the permit. The second is the fear that in an accident their liability insurance would be nonresponsive because technically, the utilities have not been in compliance with the provisions of the permit during these emergency movements of poles or pipes. The Transportation Cabinet does not wish to hamper the restoration of utility service during an emergency situation.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Allowing the utility companies to legally perform their duty and meet their responsibilities during an emergency will benefit the public health.

(b) State whether a detrimental effect on environment and public health would result if not implemented: There could be a detrimental effect on public health if the utility companies were required to operate strictly under the provisions of the current administrative regulation.

(c) If detrimental effect would result, explain detrimental effect: The effect would be a delay in the restoration of utility service until a later time. During an emergency, this could mean no electricity or phone service.

(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:

(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 as a whole has different safety standards for different size trucks, poles and pipes.

TRANSPORTATION CABINET
Department of Highways
Division of Transportation Planning
Division of Operations
(Proposed Amendment)

603 KAR 5:230. Bridge weight limits on the extended weight coal or coal by-products haul road system.

RELATES TO: KRS 177.9771, 189.230

STATUTORY AUTHORITY: KRS 177.9771

NECESSITY AND FUNCTION: KRS 177.9771(2) requires the Secretary of the Transportation Cabinet to certify those public highways which meet certain criteria as the extended weight coal or coal by-products haul road system. KRS 189.230 provides that the Department of Highways may prescribe gross vehicle weight limits for bridges lower than the limits prescribed in KRS 177.9771 on any bridge which may be damaged or destroyed to the point of catastrophic failure if gross vehicle weights exceed certain limits. This administrative regulation identifies the extended weight coal or coal by-products haul road system and the bridges on the system which the Department of Highways has judged may be so damaged and prescribes the maximum weight limit for each of these bridges. Further, KRS 177.9771(9) requires the Transportation Secretary to meet with certain local governing bodies and give consideration to their concerns before adding to or deleting from the extended weight coal or coal by-products haul road system and establishes procedures to be followed by local governing bodies requesting this consideration.

Section 1. Definitions. The following terms when used in this administrative regulation shall have the following meanings:

(1) "TY I" means a single unit truck consisting of two (2) single axles.

(2) "TY II" means a single unit truck consisting of one (1) steering axle and two (2) axles in tandem arrangement.

(3) "TY III" means a single unit truck consisting of one (1) steering axle and three (3) axles in tridem arrangement.

(4) "TY IV" means a tractor-semitrailer combination with five (5) or more axles.

(5) "KY" means a state numbered highway maintained by the Kentucky Department of Highways.

(6) "US" means a United States numbered highway maintained by the Kentucky Department of Highways.

(7) "I" means an interstate and defense highway maintained by the Kentucky Department of Highways.

(8) "CR" means a public highway, road, or street not maintained by the Kentucky Department of Highways.

(9) "MP" means milepoint.

(10) "FROM" means the beginning milepoint and terminus of a road segment on the extended weight coal haul road system.

(11) "TO" means the ending milepoint and terminus of a road segment on the extended weight coal haul road system.

(12) "Catastrophic failure" means a failure that is marked by sudden or unpredictable damage ranging from extreme misfortune to utter ruin.

(13) "AASHTO" means the American Association of State Highway and Transportation Officials.

(14) "CO" means county.

(15) "LN" means line.

(16) "Mpt." means milepoint.

(17) "PKWY" means parkway.

(18) "Local governing body" means the fiscal court of any county, the city council or commission of a city of the first through fourth classes or the council of an urban county government.

(19) "Coal by-products" means any of the following: fly ash, bottom ash, wet bottom boiler slag, scrubber sludge, burned coal waste (red dog), coal slag, and coal cinders.

(20) "P" means parallel bridge.

Section 2. Evaluation of Bridges. (1) The Department of Highways shall determine the bridges on the extended weight coal or coal by-products haul road system which may be damaged or destroyed to the point of catastrophic failure by motor vehicles operating at the weights authorized by KRS 177.9771. This determination shall be based upon an analysis of the bridges in accordance with the guidelines and ratings set forth in the AASHTO Manual for Maintenance Inspection of Bridges, 1983 edition and 1984 and 1985 Interim Revisions. The load factor method of analysis may be used only when a bridge is known to have been designed by that method. When the allowable stress method of analysis is used the maximum allowable stress in steel members shall not exceed sixty-nine (69) percent of the yield strength of the steel.

(2) When the analysis specified in subsection (1) of this section cannot be applied to a bridge, the Department of Highways shall determine if any bridge may be damaged or destroyed to the point of catastrophic failure in accordance with the AASHTO Manual for Maintenance Inspection of Bridges, 1983 edition and 1984 and 1985 Interim Revisions. Before making such a determination the Department of Highways shall conduct an on-site inspection to determine whether the bridge shows appreciable signs of deterioration or distress or otherwise poses a significant hazard to the traveling public.

Section 3. Limiting Weight on Bridges. When the Department of Highways determines that a bridge on the extended weight coal or coal by-products haul road system may be damaged or destroyed to the point of catastrophic failure, the department may adopt a weight limit for the bridge in accordance with the guidelines set forth in the AASHTO Manual for Maintenance Inspection Bridges, 1983 edition and 1984 and 1985 Interim Revisions.

Section 4. Dimension Limits on the Extended Weight Coal Haul Road System. Motor vehicles displaying a valid extended weight coal haul decal or cooperative license plate issued pursuant to KRS 177.9771 and being operated on a road segment set forth in Section 5 of this administrative regulation may be operated at the dimension limits but shall not exceed the dimension limits set forth in 603 KAR 5:070, Section 3.

Section 5. [4.] The Extended Weight Coal and Coal By-product Highway System and Limited Bridges. The following highways, or portions of those highways, are certified as meeting the criteria of and are designated as the extended weight coal and coal by-products haul road system. Further, the Department of Highways has determined that the bridges listed beneath the highways on the extended weight coal or coal by-products haul road system may be damaged or destroyed to the point of catastrophic failure as provided in Section 2 of this administrative regulation and has established a weight limit for each as set forth in Section 3 of this administrative regulation:

ADAIR COUNTY

	ROAD	FROM	TO
*	Cumberland Parkway	48.9 KY 55	57.8 Russell County Line

Weight Limit - Russell Creek Bridge @ milepoint 56.19
TY I = 20 tons, TY II = 44 tons, TY III = 47 tons, TY IV = 55 tons

*	KY 55	10.1 Cumberland Parkway	19.0 Taylor County Line

Weight Limit - Bridge over Cumberland Parkway @ milepoint 10.06
TY I = 20 tons, TY II = 41 tons, TY III = 43 tons, TY IV = 51 tons
Weight Limit - Russell Creek Bridge @ milepoint 11.66
TY I = 20 tons, TY II = 35 tons, TY III = 39 tons, TY IV = 56 tons

ANDERSON COUNTY

	ROAD	FROM	TO
*	Bluegrass Pkwy	44.8 Washington County Line	61.9 Woodford County Line

BATH COUNTY

	ROAD	FROM	TO
*	KY 11	0.0 Montgomery CO LN	12.8 Fleming CO LN

BELL COUNTY

	ROAD	FROM	TO
*	US 25E	0.0 Virginia State LN	12.9 [~~13.9~~] KY 66

Weight Limit - Bridge B000126 over Little Yellow Creek @ milepoint 2.17
TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons
Weight Limit - Bridge over CSX [~~L & N~~] R.R. @ milepoint 7.52
TY I = 20 tons, TY II = 44 [~~43~~] tons, TY III = 46 [~~44~~] tons, TY IV = 57 [~~56~~] tons

*	US 119	0.0 US 25E	15.8 Harlan CO LN

Weight Limit - Bridge over Cumberland River @ milepoint 0.02

TY I = 20 tons, TY II = 30 tons, TY III = 32 tons, TY IV = 40 tons

*	KY 66	~~[0.0 US 25E~~	~~1.6 KY 221]~~
		12.6 Tipple ~~[11.6 Straight Creek Road]~~	14.8 Mine
*	KY 74	0.0 Tenn. State Line	0.9 KY 535
		9.8 Mine	16.8 US 25E

Weight Limit - Bridge B000112 over CSX ~~[L & N]~~ R.R. @ milepoint 11.56
TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons
Weight Limit - Bridge over Stoney Fork @ milepoint 13.07
TY I = 20 tons, TY II = 42 ~~[43]~~ tons, TY III = 48 ~~[45]~~ tons, TY IV = 60 tons
Weight Limit - Bridge over Yellow Creek Bypass Canal @ milepoint 14.21
TY I = 20 tons, TY II = 42 tons, TY III = 48 tons, TY IV = 60 tons
Weight Limit - Bridge over Little Yellow Creek @ milepoint 16.66
TY I = 20 tons, TY II = 30 tons, TY III = 33 tons, TY IV = 37 tons

*	KY 186	0.3 Mine ~~[0.0 Tennessee State Line]~~	3.0 KY 74

Weight Limit - Bridge over Bennett's Fork @ milepoint 2.41
TY I = 20 tons, TY II = 35 tons, TY III = 40 tons, TY IV = 60 tons

~~[*~~	~~KY 190~~	~~4.1 Blacktop Church Road~~	~~7.4 Hall Henderson Road]~~
*	KY 221	10.4 Tipple	12.6 Harlan CO LN
*	KY 441	0.0 KY 74	0.5 Beans Fork RD

Weight Limit - Bridge B00089 over Beans Fork @ milepoint 0.41
TY I = 20 tons, TY II = 24 tons, TY III = 26 tons, TY IV = 41 tons
~~[Weight Limit - Bridge over Yellow Creek @ milepoint 4.62~~
~~TY I = 20 tons, TY II = 39 tons, TY III = 41 tons, TY IV = 50 tons]~~

*	KY 535	0.0 KY 74	0.3 Mine
*	Old US 25E Loop #5 Road		
	CR 5144	0.0 Tipple	0.3 US 25E
~~[*~~	~~KY 1595~~	~~0.2 Blacktop Church~~	~~1.5 Whitley County Line~~
~~*~~	~~KY 3483~~	~~0.0 KY 1595~~	~~1.0 KY 190~~
~~*~~	~~KY 3485~~	~~0.0 KY 74~~	~~4.6 KY 190~~
~~*~~	~~Straight Creek Road~~		
	~~CR 5040~~	~~0.0 KY 66~~	~~0.6 Knox CO LN]~~
*	Beans Fork RD		
	CR 5217	0.0 KY 441	1.1 Mine
*	Hignite Creek Road		
	CR 5219	0.0 KY 74	2.3 Mine Access RD

Weight Limit - Bridge over Hignite Creek
TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons

BOURBON COUNTY

	ROAD	FROM	TO
*	US 27	8.3 US 460	15.4 Harrison CO LN

Weight Limit - Bridge B0001 over Houston Creek @ milepoint 8.95
TY I = 20 tons, TY II = 37 tons, TY III - 38 tons, TY IV = 47 tons
~~[Weight Limit - Bridge over Cooper Run @ milepoint 11.82~~
~~TY I = 20 tons, TY II = 43 tons, TY III = 45 tons, TY IV = 60 tons]~~
Weight Limit - Bridge over Townsend Creek @ milepoint 15.43
TY I = 20 tons, TY II = 42 tons, TY III = 44 tons, TY IV = 56 tons

*	US 68	2.4 US 68X	10.8 Nicholas CO LN

Weight Limit - Bridge over Hinkston Creek @ milepoint 9.41
TY I = 20 tons, TY II = 34 tons, TY III = 38 tons, TY IV = 51 tons

*	US 68X	1.4 KY 627	2.8 US 68 (East)
*	US 460	7.7 US 27	9.2 US 68X

Weight Limit - Bridge B00063 over Houston Creek @ milepoint 8.95
TY I = 20 tons, TY II = 37 tons, TY III = 38 ~~[39]~~ tons, TY IV = 47 tons

*	KY 627	0.0 Clark CO LN	9.5 US 68X

~~[Weight Limit - Bridge over Strodes Creek Mill Race @ milepoint 0.75~~
~~TY I = 20 tons, TY II = 43 tons, TY III = 49 tons, TY IV = 60 tons]~~

BOYD COUNTY

	ROAD	FROM	TO
*	US 23	0.0 Lawrence CO LN	21.0 Greenup CO LN

~~[Weight Limit - Bridge over I-64 @ milepoint 10.56~~
~~TY I = 20 tons, TY II = 45 tons, TY III = 46 tons, TY IV = 60 tons]~~
Weight Limit - Bridge B00063 over CSX ~~[C & O]~~ R.R. @ milepoint 19.45 ~~[31]~~
TY I = 20 tons, TY II = 29 tons, TY III = 31 tons, TY IV = 40 tons
Weight Limit - Bridge B00038 over CSX ~~[C & O]~~ R.R. & Armco Rd. @ milepoint 19.45 ~~[34]~~
TY I = 20 tons, TY II = 45 tons, TY III = 47 tons, TY IV = 54 tons

*	US 23S	0.0 US 60	0.6 Ohio State LN
	Weight Limit - Northbound Bridge B00058 over Ohio River @ milepoint 0.03		
	TY I = 20 tons, TY II = 32 tons, TY III = 37 tons, TY IV = 54 tons		
	Weight Limit - Southbound Bridge B00040 over Ohio River @ milepoint 0.05		
	TY I = 20 tons, TY II = 28 tons, TY III = 33 tons, TY IV = 36 tons		
*	US 23X	1.6 US 60	1.7 US 23
*	US 60	12.1 US 23X [~~9.2 I-64~~]	12.4 US 23
	[~~Weight Limit - Bridge over C & O R.R. at Princess @ milepoint 2.69~~		
	~~TY I = 20 tons, TY II = 39 tons, TY III = 45 tons, TY IV = 60 tons~~		
~~*~~	~~KY 5~~	~~7.7 KY 766~~	~~8.1 Rockhouse Fork Road]~~
*	KY 757	6.2 US 23	10.2 US 23 [~~8.5 Deck~~]
[~~*~~	~~KY 766~~	~~0.0 KY 5~~	~~1.3 KY 1134~~
~~*~~	~~KY 1134~~	~~0.0 KY 766~~	~~0.9 US 60~~
~~*~~	~~KY 2842~~	~~0.0 US 23~~	~~0.1 KY 757~~
~~*Rockhouse Fork Road~~			
	~~CR 5477~~	~~0.0 KY 5~~	~~1.1 Greenup CO LN]~~

BRACKEN COUNTY

	ROAD	FROM	TO
*	KY 8	0.0 Pendleton CO LN	1.0 KY 2228
*	KY 9 [~~546~~]	0.0 Pendleton CO LN	19.9 Mason CO LN
*	KY 2228	0.0 KY 9	0.3 KY 8

BREATHITT COUNTY

	ROAD	FROM	TO
*	KY 15	0.0 Perry CO LN	27.5 Wolfe CO LN
	Weight Limit - Bridge over Lost Creek @ milepoint 0.48		
	TY I = 20 tons, TY II = 37 tons, TY III = 40 tons, TY IV = 53 tons		
	Weight Limit - Bridge over Lost Creek @ milepoint 3.07		
	TY I = 20 tons, TY II = 37 tons, TY III = 40 tons, TY IV = 53 tons		
	Weight Limit - Bridge over Lost Creek @ Milepoint 3.80		
	TY I = 20 tons, TY II = 36 tons, TY III = 40 tons, TY IV = 52 tons		
	Weight Limit - Bridge over Lost Creek @ milepoint 6.48		
	TY I = 20 tons, TY II = 38 tons, TY III = 41 tons, TY IV = 50 tons		
	Weight Limit - Bridge over Lost Creek @ milepoint 6.69		
	TY I = 20 tons, TY II = 39 tons, TY III = 42 tons, TY IV = 52 tons		
	Weight Limit - Bridge over Troublesome Creek @ Milepoint 7.64		
	TY I = 20 tons, TY II = 38 tons, TY III = 42 tons, TY IV = 51 tons		
	Weight Limit - Bridge over Quicksand Creek @ milepoint 14.73		
	TY I = 20 tons, TY II = 36 tons, TY III = 39 tons, TY IV = 48 tons		
*	KY 30	14.1 Tipple [~~13.3 KY 52~~]	14.8 KY 15 (North)
[~~*~~	~~KY 52~~	~~0.0 Lee CO LN~~	~~9.7 KY 30~~
	~~Weight Limit - Bridge over Linden Fork of Cane Creek @ milepoint 9.46~~		
	~~TY I = 20 tons, TY II = 38 tons, TY III = 39 tons, TY IV = 55 tons~~		
~~*~~	~~KY 205~~	~~0.0 KY 15~~	~~6.6 Wolfe CO LN]~~
*	KY 476	0.0 Perry CO LN	11.4 KY 15
	Weight Limit - Bridge over Troublesome Creek @ milepoint 7.02		
	TY I = 20 tons, TY II = 30 tons, TY III = 37 tons, TY IV = 44 tons		
[~~*~~	~~KY 540~~	~~0.0 KY 1812~~	~~3.7 Steer Fork Road~~]
*	KY 542	15.8 Tipple [~~13.3 Mine~~]	18.6 Magoffin CO LN
*	KY 1098	0.0 KY 15 [~~18.0 KY 1111~~]	12.8 Mine [~~20.4 Knott CO LN~~]
	Weight Limit - Bridge B00047 over South Fork Quicksand Creek @ milepoint 5.27		
	TY I = 20 tons, TY II = 33 tons, TY III = 38 tons, TY IV = 60 tons		
[~~*~~	~~KY 1111~~	~~0.0 KY 10.98~~	~~2.2 Big Lovely RD~~
~~*~~	~~KY 1419~~	~~0.0 KY 1812~~	~~2.9 Wolfe County Line~~
~~*~~	~~KY 1812~~	~~9.5 KY 540~~	~~14.4 KY 205~~
	~~Weight Limit - Bridge over Boone Fork of Frozen Creek @ milepoint 14.25~~		
	~~TY I = 20 tons, TY II = 34 tons, TY III = 35 tons, TY IV = 40 tons~~		
	~~Weight Limit - Bridge over Boone Fork of Frozen Creek @ milepoint 14.44~~		
	~~TY I = 12 tons, TY II = 13 tons, TY III = 14 tons, TY IV = 20 tons~~		
		~~15.7 KY 1419~~	~~17.5 Wolfe County Line~~
~~*~~	~~Big Lovely Branch RD~~		
	~~CR 5030~~	~~0.0 KY 1111~~	~~1.4 KY 542~~
~~*~~	~~Sneed Fork Road~~		
	~~CR 5050~~	~~0.0 KY 540~~	~~0.6 Mine]~~
*	Slucher Branch RD		
	CR 5067	0.0 KY 542	3.0 Mine

* Slucher Branch/Howes Fork RD		
CR 5068	0.0 Slucher Branch RD	1.5 Haul RD
* Buckhorn Creek RD		
CR 5135	0.0 KY 476	2.0 [2.1] Long Fork RD
~~[* Long Fork RD~~		
~~CR 5144~~	~~0.0 Buckhorn Creek RD~~	~~0.8 Mine]~~

BULLITT COUNTY

ROAD	FROM	TO
* US 31E	0.0 Spencer CO LN	5.5 Jefferson CO LN

BUTLER COUNTY

ROAD	FROM	TO
* Green River Parkway	18.2 Warren CO LN	35.1 Ohio CO LN
Weight Limit - Bridge B00061 over Green River @ milepoint 32.64		
TY I = 20 tons, TY II = 39 tons, TY III = 48 tons, TY IV = 54 tons		
* US 231	17.4 Tipple [~~14.3 KY 70~~]	18.2 Tipple
~~[Weight Limit - Bridge over Indian Camp Creek @ milepoint 16.32~~		
~~TY I = 20 tons, TY II = 39 tons, TY III = 40 tons, TY IV = 51 tons~~		
~~Weight Limit - Bridge over West Fork Indian Camp Creek @ milepoint 17.11~~		
~~TY I = 20 tons, TY II = 39 tons, TY III = 40 tons, TY IV = 51 tons~~		
~~* KY 70~~	~~0.0 Muhlenberg CO LN~~	~~6.8 Haul RD~~
~~Weight Limit - Bridge over Panther Creek @ milepoint 4.19~~		
~~TY I = 20 tons, TY II = 33 tons, TY III = 38 tons, TY IV = 60 tons~~		
~~14.4 US 231~~		~~22.8 Charlie Shepherd Road~~
~~Weight Limit - Bridge over Welch Creek @ milepoint 20.37~~		
~~TY I = 20 tons, TY II = 38 tons, TY III = 44 tons, TY IV = 60 tons~~		
~~* KY 1117~~	~~7.0 Haul RD~~	~~8.0 Mine~~
~~* Charlie Shepherd RD~~		
~~CR 5023~~	~~0.0 KY 70~~	~~1.3 Mine]~~

CALDWELL COUNTY

ROAD	FROM	TO
Western Kentucky Parkway	5.6 Lyon CO LN	21.8 Hopkins CO LN
Weight Limit - Bridge B00029 over I. C. R.R. @ milepoint 11.36		
TY I = 20 tons, TY II = 40 tons, TY III = 41 tons, TY IV = 58 tons		
Weight Limit - Bridge B00033 over Tradewater River @ milepoint 21.75		
TY I = 20 tons, TY II = 42 tons, TY III = 45 tons, TY IV = 60 tons		

CAMPBELL COUNTY

ROAD	FROM	TO
KY 471	0.0 US 27	0.7 I-275

~~[CARTER COUNTY~~

~~ROAD~~	~~FROM~~	~~TO~~
	~~10.6 US 60~~	~~11.5 I-64~~
~~Weight Limit - Bridge over I-64 @ milepoint 11.50~~		
~~TY I = 20 tons, TY II = 40 tons, TY III = 46 tons, TY IV = 60 tons~~		
~~* KY 7~~	~~0.0 Elliott CO LN~~	~~10.9 US 60]~~

CHRISTIAN COUNTY

ROAD	FROM	TO
* US 41	28.5 KY 1296	31.6 Hopkins CO LN
Weight Limit - Bridge B0002 over Campbells Creek @ milepoint 29.51		
TY I = 20 tons, TY II = 39 [~~38~~] tons, TY III = 45 [~~39~~] tons, TY IV = 60 [~~54~~] tons		
Weight Limit - Bridge B0001 over CSX [~~L & N~~] RR @ milepoint 30.88		
TY I = 20 tons, TY II = 33 tons, TY III = 37 tons, TY IV = 52 tons		
* KY 1296	2.7 Campbell Cemetery RD	5.2 US 41
* Campbell Cemetery Road		
CR 5418	0.0 KY 1296	0.3 Mine

CLARK COUNTY

ROAD	FROM	TO
* Mountain Parkway	0.0 I-64	11.9 Powell CO LN
Weight Limit - Bridge B00055 over I-64 @ milepoint 0.13		
TY I = 20 tons, TY II = 40 tons, TY III = 42 tons, TY IV =49 tons		
Weight Limit - Bridge over C & O RR @ milepoint 3.65		

TY I = 20 tons, TY II = 42 tons, TY III = 46 tons, TY IV = 57 tons

*	US 60	0.0 Fayette CO LN	6.7 KY 627
		7.0 KY 89	7.2 KY 15
*	KY 15	0.0 Powell CO LN	13.1 US 60

~~[Weight Limit - Bridge over Lulbegrud Creek @ milepoint 0.01~~
~~TY I = 15 tons, TY II = 15 tons, TY III = 15 tons, TY IV = 15 tons~~
~~Weight Limit - Bridge over Upper Howard's Creek @ milepoint 2.98~~
~~TY I = 20 tons, TY II = 21 tons, TY III = 24 tons, TY IV = 38 tons]~~
Weight Limit - Bridge B0011 over Big Stoner Creek @ milepoint 7.00
TY I = 20 tons, TY II = 21 tons, TY III = 24 tons, TY IV = 40 tons
~~[Weight Limit - Bridge over C&O Railroad @ milepoint 11.08~~
~~TY I = 20 tons, TY II = 20 tons, TY III = 21 tons, TY IV = 27 tons]~~

*	KY 89	15.9 US 60	16.0 KY 627
*	KY 418	5.7 KY 1924	5.8 KY 627
*	KY 627	0.1 KY 418	6.4 KY 1958
		7.8 US 60	8.1 KY 89
		9.3 I-64	14.8 Bourbon CO LN

~~[Weight Limit - Bridge over Woodruff Creek @ milepoint 13.20~~
~~TY I = 20 tons, TY II = 28 tons, TY III = 31 tons, TY IV = 40 tons]~~

*	KY 1924	0.0 Dale Power Plant	1.8 KY 418
*	KY 1958	0.0 KY 627	2.8 I-64

CLAY COUNTY

	ROAD	FROM	TO
*	Daniel Boone Parkway	10.6 Laurel CO LN	35.9 Leslie CO LN

Weight Limit - Bridge over Little Goose Creek Rd. @ milepoint 10.81
TY I = 20 tons, TY II =41 tons, TY III = 47 tons, TY IV = 60 tons
Weight Limit - Bridge over Urban Road @ milepoint 13.90
TY I = 20 tons, TY II = 41 tons, TY III = 47 tons, TY IV = 60 tons
Weight Limit - Bridge over Hooker Road @ milepoint 16.14
TY I = 20 tons, TY II = 41 tons, TY III = 45 tons, TY IV = 60 tons
Weight Limit - Bridge over Red Bird River @ milepoint 33.58
TY I = 20 tons, TY II = 42 tons, TY III = 45 tons, TY IV = 57 tons

*	US 421	0.0 Leslie CO LN	24.0 KY 11 ~~[32.8 Jackson CO LN]~~

Weight Limit - Bridge over Horse Creek @ milepoint 16.58
TY I = 20 tons, TY II = 28 ~~[35]~~ tons, TY III = 37 tons, TY IV = 55 ~~[50]~~ tons
Weight Limit - Bridge B000108 over Little Goose Creek @ milepoint 18.59
TY I = 20 tons, TY II = 37 tons, TY III = 38 tons, TY IV = 50 tons
Weight Limit - Bridge over Island Creek @ milepoint 20.49
TY I = 20 tons, TY II = 28 tons, TY III = 31 tons, TY IV = 44 tons
Weight Limit - Bridge over Branch of Island Creek @ milepoint 21.20
TY I = 20 tons, TY II = 28 tons, TY III = 32 tons, TY IV = 56 tons
~~[Weight Limit - Bridge over Sexton Creek @ milepoint 28.41~~
~~TY I = 20 tons, TY II = 28 tons, TY III = 32 tons, TY IV = 54 tons]~~

*	KY 11	7.8 ~~[5.5]~~ Tipple	8.9 US 421 (South)
		~~[8.9 US 421 (North)~~	~~26.6 Owsley CO LN~~

~~Weight Limit - Bridge over Wildcat Creek @ milepoint 15.57~~
~~TY I = 20 tons, TY II = 37 tons, TY III = 44 tons, TY IV = 60 tons]~~

*	KY 66	3.1 Mine	19.1 Daniel Boone Parkway

Weight Limit - Bridge over Phelps Fork Creek @ milepoint 4.95
TY I = 20 tons, TY II = 33 ~~[28]~~ tons, TY III = 38 ~~[32]~~ tons, TY IV = 60 ~~[49]~~ tons

*	KY 80	0.0 Laurel CO LN ~~[5.5 Paw Paw RD]~~	7.5 US 421
*	KY 1524	0.0 US 421	1.1 KY 2000
*	KY 2000	0.0 KY 1524	1.9 Carpenter Branch RD ~~[4.6 Sand Hill RD~~
~~*~~	~~KY 2432~~	~~0.0 South Curb Cedar St.~~	~~0.4 KY 2438~~
~~*~~	~~KY 2438~~	~~0.0 US 421~~	~~0.1 KY 2432~~

~~Weight Limit - Bridge over Goose Creek & L & N RR @ milepoint 0.01~~
~~TY I = 20 tons, TY II = 41 tons, TY III = 42 tons, TY IV = 50 tons~~

~~*~~	~~Sand Hill Road~~		
	~~CR 5129~~	~~0.0 KY 2000~~	~~1.5 Jim Cove Hollow RD~~
~~*~~	~~Jim Cove Hollow RD~~		
	~~CR 5136~~	~~1.0 Sand Hill RD~~	~~2.2 Mine~~
~~*~~	~~Sevier Road~~		
	~~CR 5180~~	~~0.0 US 421~~	~~0.2 Tipple Access RD~~

~~Weight Limit - Bridge over Goose Creek~~
~~TY I = 20 tons, TY II = 32 tons, TY III = 33 tons, TY IV = 60 tons]~~

*	Lynn Log Fork RD		

	CR 5194	0.0 US 421	0.4 [~~0.3~~] Mine
*	Carpenter Branch Road		
	CR 5199	0.0 KY 2000	1.0 Mine
[~~* Cedar Street (Manchester)~~			
	~~CR 5227AA~~	~~0.0 KY 2432~~	~~0.2 Tipple Access~~]
*	Paw Paw RD		
	CR 5271	0.0 KY 80	0.3 Tipple

DAVIESS COUNTY

	ROAD	FROM	TO
*	Audobon Parkway	15.9 Henderson County Line	23.5 US 60 Bypass

Weight Limit - Bridge B00059 over Worthington RD @ milepoint 22.71
TY I = 20 tons, TY II = 37 tons, TY III = 41 tons, TY IV = 56 tons

*	Green River Parkway	59.5 Ohio CO LN	70.7 US 60 Bypass
*	US 60	10.2 US 60 Bypass	10.6 KY 331
		13.9 US 231 NB	28.0 Hancock CO LN

Weight Limit - Westbound Bridge B0001 over L & N RR @ milepoint 16.66
TY I = 20 tons, TY II = 44 [~~40~~] tons, TY III = 48 [~~44~~] tons, TY IV = 60 tons
Weight Limit - Eastbound Bridge B0004 over Power Plant Entrance @ milepoint 16.66
TY I = 20 tons, TY II = 35 tons, TY III = 38 tons, TY IV = 54 tons
Weight Limit - Bridge B0007 over Pup Creek @ milepoint 20.31
TY I = 20 tons, TY II = 38 tons, TY III = 44 [~~49~~] tons, TY IV = 60 tons

*	US 60B	0.0 US 60	10.2 US 60

Weight Limit - Bridge over US 431 @ milepoint 4.22
TY I = 20 tons, TY II = 43 tons, TY III = 45 tons, TY IV = 51 tons
Weight Limit - Bridge over L & N Railroad @ milepoint 4.84
TY I = 20 tons, TY II = 35 tons, TY III = 38 tons, TY IV = 50 tons
Weight Limit - Bridge over Sutherland Road @ milepoint 5.08
TY I = 20 tons, TY II = 39 tons, TY III = 45 tons, TY IV = 60 tons
Weight Limit - Bridge over Horse Fork Creek @ milepoint 5.65
TY I = 20 tons, TY II = 32 tons, TY III = 37 tons, TY IV = 60 tons
Weight Limit - Bridge over I C RR @ milepoint 7.71
TY I = 20 tons, TY II = 35 tons, TY III = 37 tons, TY IV = 49 tons
Weight Limit - Bridge over L&N RR & KY 2710 @ milepoint 9.77
TY I = 20 tons, TY II = 36 [~~37~~] tons, TY III = 37 [~~38~~] tons, TY IV = 44 [~~43~~] tons

*	US 231	0.0 Ohio CO LN	11.3 US 60 Bypass

Weight Limit - Bridge over Panther Creek @ milepoint 3.91
TY I = 20 tons, TY II = 40 tons, TY III = 46 tons, TY IV = 60 tons
[~~Weight Limit - Bridge over Panther Creek @ milepoint 8.84~~
~~TY I = 20 tons, TY II = 40 tons, TY III = 46 tons, TY IV = 60 tons~~
~~Weight Limit - Bridge over overflow @ milepoint 8.94~~
~~TY I = 20 tons, TY II = 40 tons, TY III = 46 tons, TY IV = 60 tons~~]
Weight Limit - Bridge over overflow @ milepoint 9.22
TY I = 20 tons, TY II = 41 [~~40~~] tons, TY III = 49 [~~46~~] tons, TY IV = 60 tons
Weight Limit - Bridge over Owensboro Beltline @ milepoint 11.29
TY I = 20 tons, TY II = 36 tons, TY III = 42 tons, TY IV = 60 tons

		[~~14.9 US 60 Bridge at Ohio River~~	~~15.7 Indiana State Line~~

~~Weight Limit - Bridge over Ohio River @ milepoint 14.90~~
~~TY I = 20 tons, TY II = 32 tons, TY III = 37 tons, TY IV = 41 tons~~]

*	US 431	0.0 McLean CO LN	11.4 US 60 Bypass

Weight Limit - Bridge B0050 over Panther Creek @ milepoint 8.04
TY I = 20 tons, TY II = 32 tons, TY III = 38 tons, TY IV = 60 tons
Weight Limit - Bridge over Panther Creek @ milepoint 8.54
TY I = 20 tons, TY II = 23 tons, TY III = 27 tons, TY IV = 45 tons
Weight Limit - Bridge over Panther Creek Branch @ milepoint 9.03
TY I = 20 tons, TY II = 40 tons, TY III = 46 tons, TY IV = 60 tons
Weight Limit - Bridge B00046 over Drainage Ditch @ milepoint 9.83
TY I = 20 tons, TY II = 22 tons, TY III = 24 tons, TY IV = 39 tons
Weight Limit - Bridge B00045 over Drainage Ditch @ milepoint 9.86
TY I = 20 tons, TY II = 22 tons, TY III = 24 tons, TY IV = 39 tons
Weight Limit - Bridge B00044 over Drainage Ditch @ milepoint 10.05
TY I = 20 tons, TY II = 22 tons, TY III = 24 tons, TY IV = 39 tons
Weight Limit - Bridge B00043 over Drainage Ditch @ milepoint 10.12
TY I = 20 tons, TY II = 22 tons, TY III = 24 tons, TY IV = 39 tons
Weight Limit - Bridge B00042 over Drainage Ditch @ milepoint 10.13
TY I = 20 tons, TY II = 22 tons, TY III = 24 tons, TY IV = 39 tons
Weight Limit - Bridge B00041 over Drainage Ditch @ milepoint 10.15

TY I = 20 tons, TY II = 22 tons, TY III = 24 tons, TY IV = 39 tons
Weight Limit - Bridge B00040 over Drainage Ditch @ milepoint 10.02
TY I = 20 tons, TY II = 22 tons, TY III = 24 tons, TY IV = 39 tons
~~[* KY 54 2.5 US 60 Bypass 11.9 Windy Hill RD~~
~~Weight Limit - Bridge over Barnett Creek @ milepoint 5.77~~
~~TY I = 20 tons, TY II = 42 tons, TY III = 49 tons, TY IV = 60 tons~~
~~Weight Limit - Bridge over Caney Creek @ milepoint 7.88~~
~~TY I = 20 tons, TY II = 42 tons, TY III = 49 tons, TY IV = 60 tons~~
~~Weight Limit - Bridge over Panther Creek overflow @ milepoint 10.35~~
~~TY I = 20 tons, TY II = 33 tons, TY III = 38 tons, TY IV = 60 tons~~
~~Weight Limit - Bridge over Panther Creek @ milepoint 10.55~~
~~TY I = 20 tons, TY II = 45 tons, TY III = 48 tons, TY IV = 60 tons]~~

*	KY 81	0.0 McLean County Line	11.9 US 60 Bypass

Weight Limit - Bridge B0057 @ milepoint 2.52
TY I = 20 tons, TY II = 28 tons, TY III = 31 tons, TY IV = 36 tons
Weight Limit - Bridge over Panther Creek @ milepoint 6.50
TY I = 20 tons, TY II = 25 tons, TY III = 29 tons, TY IV = 45 tons

*	KY 140	2.8 KY 1207 ~~[0.9 Lon Jackson Road]~~	3.4 US 431
*	KY 144	0.0 US 60	9.3 Mine ~~[9.1 KY 951]~~

Weight Limit - Bridge B00136 over CSX ~~[L & N]~~ RR @ milepoint 0.16
TY I = 20 tons, TY II = 45 tons, TY III = 47 tons, TY IV = 60 tons

*	KY 331	0.0 US 60 (East) (Via Industrial Dr. & Medley-Roost Rd.)	2.6 Dock
*	KY 554	1.9 Mine	4.8 KY 81
*	KY 951	0.0 KY 144	5.1 ~~[3.7]~~ Mine

~~[Weight Limit - Pup Creek Bridge @ milepoint 1.97~~
~~TY I = 20 tons, TY II = 37 tons, TY III = 40 tons, TY IV = 53 tons]~~

*	KY 1207	3.6 Mine	5.5 KY 140
*	KY 1389	8.4 Mine ~~[1.9 KY 1831~~	10.7 Hancock CO LN ~~9.2 Mine~~

~~Weight Limit - Bridge over Pup Creek @ milepoint 4.00~~
~~TY I = 20 tons, TY II = 31 tons, TY III = 35 tons, TY IV = 55 tons~~

~~*~~	~~KY 1831~~	~~0.0 US 60~~	~~2.8 KY 1389]~~
*	Free Silver RD		
	CR 5045	0.0 Mine	0.3 Pup Creek RD
*	Pup Creek RD		
	CR 5046	0.0 KY 951	1.6 KY 951 ~~[0.5 Mine]~~
*	Iceland RD		
	CR 5076	0.0 US 60	0.2 Dock
~~[*~~	~~Windy Hill RD~~		
	~~CR 5136~~	~~0.0 KY 54~~	~~1.8 Mine]~~
*	Ben Ford RD		
	CR 5238	0.0 KY 1207 ~~[0.5 Mine]~~	2.0 US 431

~~[ELLIOTT COUNTY~~

	~~ROAD~~	~~FROM~~	~~TO~~
~~*~~	~~KY 7~~	~~7.2 KY 32~~	~~19.3 Carter CO LN~~

~~Weight Limit - Bridge over Little Sandy River @ milepoint 10.32~~
~~TY I = 20 tons, TY II = 28 tons, TY III = 28 tons, TY IV = 40 tons~~
~~Weight Limit - Bridge over Little Sandy River @ milepoint 13.61~~
~~TY I = 20 tons, TY II = 26 tons, TY III = 29 tons, TY IV = 38 tons~~

~~*~~	~~KY 32~~	~~8.6 KY 7 South~~	~~12.3 Mine~~

~~Weight Limit - Bridge over Middle Fork @ milepoint 10.65~~
~~TY I = 20 tons, TY II = 32 tons, TY III = 33 tons, TY IV = 47 tons]~~

ESTILL COUNTY

	ROAD	FROM	TO
~~[*~~	~~KY 52~~	~~7.6 KY 89~~	~~21.0 Lee CO LN]~~
*	KY 82	0.0 KY 89	5.0 Powell CO LN
*	KY 89	11.4 KY 52	17.9 KY 82

Weight Limit - Bridge over Sweet Lick Creek @ milepoint 12.08 ~~[14]~~
TY I = 20 tons, TY II = 28 tons, TY III = 29 tons, TY IV = 49 tons
Weight Limit - Bridge over Calloway Creek @ milepoint 15.38 ~~[44]~~
TY I = 20 tons, TY II = 35 tons, TY III = 39 tons, TY IV = 58 tons

*	KY 1840	0.0 Stump Road	0.4 KY 89
*	Stump RD		
	CR 5356	0.0 KY 1840	0.8 Tipple

FAYETTE COUNTY

	ROAD	FROM	TO
*	US 60	0.0 Woodford CO LN	4.7 KY 4 (West)
	Weight Limit - Bridge B00121 over South Elkhorn Creek @ milepoint 1.30		
	TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons		
		10.2 KY 4 (East)	19.3 Clark CO LN
*	KY 4	4.6 US 60 (West)	12.7 US 60 (East)
	Weight Limit - Bridge B00022 & P over US 60, Versailles Road @ milepoint 4.61		
	TY I = 20 tons, TY II = 43 tons, TY III = 44 tons, TY IV = 58 tons		
	Weight Limit - Bridge B00021 & P over Viley Pike @ milepoint 5.48		
	TY I = 20 tons, TY II = 43 tons, TY III = 45 tons, TY IV = 60 tons		
	Weight Limit - Bridge B00032 over CSX RR @ milepoint 6.01		
	TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons		
	Weight Limit - Bridge B00039 over CSX RR @ milepoint 6.76		
	TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons		
	Weight Limit - Bridge B00037 & P over US 421 @ milepoint 7.24		
	TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons		
	Weight Limit - Bridge B00038 & P over Southern RR @ milepoint 8.03		
	TY I = 20 tons, TY II = 39 tons, TY III = 40 tons, TY IV = 51 tons		
*	KY 922	1.0 KY 4	2.9 I-75

FLEMING COUNTY

	ROAD	FROM	TO
*	US 68	0.0 Robertson CO LN	5.4 Mason CO LN
*	KY 11	0.0 Bath CO LN	17.3 Mason CO LN
	Weight Limit - Bridge over Fleming Creek @ milepoint 7.80		
	TY I = 20 tons, TY II = 39 [~~40~~] tons, TY III = 40 [~~39~~] tons, TY IV = 48 tons		
	Weight Limit - Bridge over Cassidy Creek @ milepoint 8.77		
	TY I = 20 tons, TY II = 37 [~~38~~] tons, TY III = 39 [~~40~~] tons, TY IV = 50 tons		

FLOYD COUNTY

	ROAD	FROM	TO
*	US 23	0.0 Pike CO LN	24.0 Johnson CO LN [~~23.2 KY 3~~]
	Weight Limit - Bridge over CSX RR @ milepoint 21.29		
	TY I = 20 tons, TY II = 40 tons, TY III = 40 tons, TY IV = 40 tons		
*	KY 3	0.0 US 23 & KY 80	2.5 KY 1428
		10.0 US 23	12.0 Johnson CO LN
*	KY 7	0.0 Knott CO LN	10.4 Mine [~~12.8 Magoffin CO LN~~]
	Weight Limit - Bridge over Right Fork Beaver Creek @ milepoint 8.01		
	TY I = 20 tons, TY II = 33 tons, TY III = 36 tons, TY IV = 44 tons		
*	KY 80	0.0 Knott CO LN	14.4 US 23 & KY 3
*	KY 114	0.0 Magoffin County Line	12.4 KY 1428 [~~11.4 US 23~~]
	Weight Limit - Bridge over Middle Creek @ milepoint 10.60		
	TY I = 20 tons, TY II = 43 tons, TY III = 46 [~~47~~] tons, TY IV = 56 tons		
*	KY 122	8.5 KY 80	26.1 KY 979
	Weight Limit - Bridge over Left Fork of Beaver Creek @ milepoint 23.55		
	TY I = 20 tons, TY II = 40 tons, TY III = 44 tons, TY IV = 57 tons		
*	KY 194	0.0 KY 1428 at Emma	1.7 [~~0.5~~] Mine
	Weight Limit - Bridge over Cow Creek @ milepoint 1.27		
	TY I = 20 tons, TY II = 41 tons, TY III = 48 tons, TY IV = 60 tons		
*	KY 302	2.6 Mine	2.9 Johnson County Line
*	KY 404	0.0 Magoffin CO LN	8.1 KY 114
	Weight Limit - Bridge over Middle Creek @ milepoint 8.07		
	TY I = 20 tons, TY II = 40 tons, TY III = 41 tons, TY IV = 51 tons		
*	KY 550	0.0 Knott CO LN	0.2 KY 7 South
	Weight Limit - Bridge over Right Fork of Beaver Creek @ milepoint 0.06		
	TY I = 20 tons, TY II = 40 [~~37~~] tons, TY III = 44 [~~38~~] tons, TY IV = 57 [~~48~~] tons		
		0.2 KY 7 North	0.7 Tipple
		[~~2.7 Turner Branch Road~~	~~4.6 KY 80~~]
*	KY 680	0.0 KY 122	0.1 Goose Creek RD [~~0.9 KY 1929~~]
		2.6 KY 777	2.9 KY 777
		5.0 KY 122	7.5 Mine
		10.0 Mine	10.5 KY 979
		[~~3.8 Little Branch of Hamilton Branch RD~~	~~54~~
~~KY 979~~]			
*	KY 777	[~~0.0 Knott County Line~~	~~0.1 CR 5037C~~]
		4.9 Head Turkey Creek RD	8.8 [~~9.0~~] KY 80

*	KY 850	4.3 Pitts Fork RD	7.5 KY 404
*	KY 979	0.0 KY 122	19.2 [~~19.3~~] US 23
	Weight Limit - Bridge over Clear Creek @ milepoint 1.68		
	TY I = 20 tons, TY II = 40 tons, TY III = 47 tons, TY IV = 60 tons		
	Weight Limit - Bridge B00091 over Toler Creek @ milepoint 17.43		
	TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons		
*	KY 1101	0.0 Johnson RD	1.0 KY 122 at Drift
[~~*~~	~~KY 1210~~	~~4.8 Mine~~	~~7.8 KY 404~~
	~~Weight Limit - Bridge over Middle Creek @ milepoint 7.76~~		
	~~TY I = 20 tons, TY II = 33 tons, TY III = 38 tons, TY IV = 60 tons~~]		
*	KY 1426	5.6 Mine [~~1.3 Keathley BR RD~~]	7.9 KY 2030
		11.4 Mine	14.3 US 23
*	KY 1428	2.6 KY 3381	12.5 KY 3 [~~8.8 KY 194~~]
	Weight Limit - Bridge over Big Sandy River @ milepoint 5.82		
	TY I = 20 tons, TY II = 39 tons, TY III = 42 tons, TY IV = 42 tons		
	Weight Limit - Cow Creek Bridge @ milepoint 8.70 [~~71~~]		
	TY I = 20 tons, TY II = 29 [~~36~~] tons, TY III = 37 [~~38~~] tons, TY IV = 50 [~~48~~] tons		
		14.1 Mine	15.6 KY 114
		[~~9.8 Mine~~	~~16.1 KY 321~~]
*	KY 1929	2.0 Neds Fork RD	4.5 KY 680
*	KY 2030	5.0 Little Muddy Creek RD	7.8 KY 1426
*	KY 2557	0.0 Betsy Layne BR RD	0.3 US 23
[~~*~~	~~KY 3188~~	~~0.8 Kanawha Mine~~	~~1.3 KY 80~~]
*	KY 3379	0.8 [~~5.0~~] Mine	7.0 KY 979
[~~*~~	~~KY 3380~~	~~0.0 KY 979~~	~~0.7 Andy Branch RD~~]
*	KY 3381	0.8 Crum Branch RD	2.9 KY 1428
*	Daniel's Creek RD		
	CR 5014	0.0 US 23	0.5 Mine
*	Ivel Coal Company RD		
	CR 5020	0.0 US 23	0.1 Tipple
*	Ivy Creek RD		
	CR 5032	0.0 US 23	3.0 Haul RD
*	Left Fork Ivy Creek Road		
	CR 5033	0.0 CR 5032	2.1 Mine
[~~*~~	~~Bushy Fork Road~~		
	~~CR 5046~~	~~0.0 KY 194~~	~~0.8 Pike CO LN~~]
*	Sugarloaf Branch RD		
	CR 5048	0.0 KY 1428	0.6 Mine
*	Long Branch of John's Creek Road		
	CR 5049	0.0 KY 302	1.7 Mine
*	Bull Creek Road		
	CR 5055	0.0 KY 3	0.4 Cabin Coal Tipple
*	Crum Branch RD		
	CR 5100	0.0 KY 3381	0.6 Mine
*	Betsy Layne Branch Road		
	CR 5111	0.0 KY 2557	0.9 Somerset Coal Mine
*	Betsy Layne Branch Road		
	CR 5113	0.0 KY 2557	0.9 Mine
*	Cedar Hill Road		
	CR 5118	0.0 KY 1426	0.6 Tipple
*	Tackett Branch RD		
	CR 5129	0.0 KY 979	1.0 Mine
[~~*~~	~~Frasure Branch Road~~		
	~~CR 5134~~	~~0.0 KY 979~~	~~0.8 Mine~~
~~*~~	~~Little Branch/Hamilton Creek RD~~		
	~~CR 5136~~	~~0.0 KY 680~~	~~0.4 Mine~~]
*	Rocky Branch RD		
	CR 5137	0.0 Mink Branch RD	0.4 Mine [~~0.2 Left Fork Rocky BR RD~~]
[~~*~~	~~Left Fork Rocky Branch RD~~		
	~~CR 5137A~~	~~0.0 Rocky Branch RD~~	~~0.2 Mine~~]
*	Mink Branch Road		
	CR 5138	0.0 KY 979	0.9 Rocky Branch RD
	Weight Limit - Bridge over Big Mud Creek		
	TY I = 22 tons, TY II = 22 tons, TY III = 22 tons, TY IV = 22 tons		
*	Dry Branch/Mud Creek Road		
	CR 5139	0.0 KY 979	1.2 Joseph Mining Mine
*	Ned Fork Road		

CR 5140	0.0 KY 1929	1.1 Premium Elkhorn Shannon Mine
[~~* Branham Creek Road~~		
~~CR 5142~~	~~0.0 KY 3379~~	~~0.6 Pike CO LN~~
~~* Keathley Branch Road~~		
~~CR 5144~~	~~0.0 KY 1426~~	~~0.8 Mine~~
~~* Left Fork/Tinker Fork Road~~		
~~CR 5147~~	~~0.0 Branham Creek RD~~	~~0.2 Wellmore Kodiak Mine~~
~~* Andy Branch Road~~		
~~CR 5148~~	~~0.0 KY 3380~~	~~0.2 Mine~~
~~* Rod Morg Branch Road~~		
~~CR 5153~~	~~0.0 KY 979~~	~~0.7 Mine]~~
* Mitchell Branch RD		
CR 5154	0.0 KY 979	0.5 Mine
* Tackett Branch RD		
CR 5156	0.0 KY 979	0.9 Buzzard Rock RD
* Buzzard Rock Road		
CR 5157	0.0 Tackett Fork RD	0.5 Pike CO LN
* Buckhorn Hollow RD		
CR 5159	0.0 Ky 979	0.5 Mine
* Reynold's Branch RD		
CR 5187	0.0 KY 979	0.2 Mine
* Spewing Camp Branch		
CR 5190	0.0 KY 122	2.5 Mine
Weight Limit - Bridge over Left Fork of Beaver Creek		
TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons		
* Little Muddy Creek Road		
CR 5197	0.0 KY 2030	2.5 Upper Wolfpen BR RD ~~[3.0 Bobo Mine]~~
* Upper Wolfpen Branch Road		
CR 5197B	0.0 Little Muddy Creek Road	0.7 ~~[1.0]~~ Mine
* Morgan Fork RD		
CR 5198	0.0 Little Muddy Creek RD	1.1 Mine
[~~* Mud Creek RD~~		
~~CR 5202~~	~~0.0 Little Muddy Creek RD~~	~~0.4 Mine~~
~~* Hite Road~~		
~~CR 5220~~	~~1.0 Mine~~	~~1.8 Hite RD KY 122~~
~~* Hite Road KY 122 Connector Road~~		
~~CR 5220A~~	~~0.0 KY 122~~	~~0.1 Hite RD]~~
* Stonecoal Branch RD		
CR 5234	0.0 KY 1101	1.4 Mine
* Simpson Branch RD		
CR 5239	0.0 KY 1101	1.3 Mine
* Step Branch RD		
CR 5247	0.0 KY 122	0.1 Mine
* Grassy Road		
CR 5266 E	0.0 KY 7	0.2 Tipple
* Head of Turkey Creek RD		
CR 5268	0.0 KY 777	2.0 Mine
* Goose Creek RD		
CR 5273	0.0 KY 680	1.2 Mine
[~~* Vine Street (Eastern)~~		
~~CR 5283C~~	~~0.0 KY 80~~	~~0.1 Pitts Fork RD~~
~~Weight Limit - Bridge over Right Fork of Beaver Creek~~		
~~TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons]~~		
* Pitts Fork Road		
CR 5288	0.0 KY 850	0.9 ~~[0.3]~~ Mine

FRANKLIN COUNTY

ROAD	FROM	TO
* US 60	0.0 Shelby CO LN	6.5 US 127
Weight Limit - Bridge over South Benson Creek @ milepoint 2.72		
TY I = 20 tons, TY II = 23 tons, TY III = 26 tons, TY IV =41 tons		
	12.0 KY 676	14.0 Woodford CO LN
* US 127	5.2 KY 676	6.1 US 60
* KY 676	0.0 US 127	5.3 US 60

GREENUP COUNTY

	ROAD	FROM	TO
*	US 23	0.0 Boyd CO LN	7.6 KY 503
*	KY 207	11.2 Collins Crossing RD	12.4 KY 503 North
*	KY 503	5.5 KY 207	9.1 US 23 [~~9.3 KY 3105 (Old US 23)~~]
[~~* Rockhouse Fork RD~~			
	~~CR 5150~~	~~0.0 Boyd CO LN~~	~~1.0 Mine~~]

HANCOCK COUNTY

	ROAD	FROM	TO
*	US 60	0.0 Daviess CO LN	7.3 KY 271 South [~~5.6 Mine~~]
*	KY 69	0.0 Ohio CO LN	4.6 KY 144
	Weight Limit - Bridge B0007 @ mile 3.23		
	TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons		
	Weigth Limit - Bridge B0008 @ milepoint 4.18		
	TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons		
*	KY 144	0.0 Daviess CO LN	3.0 KY 69
	Weight Limit - Bridge over Horse Fork @ milepoint 2.92		
	TY I = 20 tons, TY II = 41 tons, TY III = 43 tons, TY IV = 60 tons		
*	KY 271	0.0 KY 1389	6.0 KY 334
*	KY 334	14.7 Power Plant	16.4 KY 271
*	KY 1389	0.0 Daviess CO LN	KY 271
*	KY 3092	0.0 KY 271	2.0 KY 334

HARLAN COUNTY

	ROAD	FROM	TO
*	US 119	0.0 Bell CO LN	24.4 Mine
		26.4 Tipple	28.2 Mine
*	US 421	0.0 Virginia State LN	17.9 US 119
	Weight Limit - Bridge over Cranks Creek @ milepoint 2.70		
	TY I = 20 tons, TY II = 29 tons, TY III = 30 tons, TY IV = 43 tons		
	Weight Limit - Bridge over Fork of Crummies Creek @ milepoint 7.36		
	TY I = 20 tons, TY II = 29 [~~31~~] tons, TY III = 32 tons, TY IV = 42 [~~41~~] tons		
	Weight Limit - Bridge over KY 840, L&N RR, Clover Fork @ milepoint 17.51		
	TY I = 20 tons, TY II = 43 [~~42~~] tons, TY III = 45 [~~43~~] tons, TY IV = 51 [~~50~~] tons		
		23.9 KY 221 West	27.6 Leslie CO LN
*	KY 38	0.0 US 421	29.5 Virginia State LN
	Weight Limit - Bridge over Clover Fork Cumberland River @ milepoint 8.21		
	TY I = 20 tons, TY II = 45 tons, TY III = 47 tons, TY IV = 55 tons		
	Weight Limit - Bridge over Yocum Creek @ milepoint 8.60		
	TY I = 8 tons, TY II = 8 tons, TY III = 8 tons, TY IV = 8 tons		
	Weight Limit - Bridge over Fugett Creek @ milepoint 17.11		
	TY I = 20 tons, TY II = 31 tons, TY III = 36 tons, TY IV = 59 tons		
*	KY 72	2.5 Tipple	4.2 Tom's Branch RD
		[~~1.9 KY 2005~~	~~4.9 Rockhouse BR RD~~
	~~Weight Limit - Bridge over Puckett Creek @ milepoint 4.73~~		
	~~TY I = 20 tons, TY II = 26 tons, TY III = 27 tons, TY IV = 41 tons~~		
	~~Weight Limit - Bridge over Puckett Creek @ milepoint 4.84~~		
	~~TY I = 20 tons, TY II = 32 tons, TY III = 38 tons, TY IV = 60 tons~~]		
		7.1 KY 1216 [~~5.4 Tipple~~]	11.3 US 421
	[~~Weight Limit - Bridge over Catron Creek @ milepoint 5.59~~		
	~~TY I = 20 tons, TY II = 30 tons, TY III = 34 tons, TY IV = 48 tons~~		
	~~Weight Limit - Bridge over Catron Creek @ milepoint 6.98~~		
	~~TY I = 20 tons, TY II = 22 tons, TY III = 25 tons, TY IV = 34 tons~~		
~~*~~	~~KY 179~~	~~0.0 KY 38~~	~~0.6 Mine~~
		~~7.1 Tipple Road~~	~~7.2 Mine~~]
*	KY 215	0.0 KY 38	1.7 Pounding Mill BR RD [~~0.2 Tipple~~]
	Weight Limit - Bridge B00017 over Yocum Creek @ milepoint 1.055		
	TY I = 20 tons, TY II = 37 tons, TY III = 43 tons, TY IV = 60 tons		
	Weight Limit - Bridge B00018 over Yocum Creek @ milepoint 1.40		
	TY I = 20 tons, TY II = 27 tons, TY III = 29 tons, TY IV = 39 tons		
*	KY 221	0.0 Bell CO LN	8.9 US 421 (South)
		8.9 US 421 (North)	11.4 KY 2009 [~~21.6 KY 2008~~
~~*~~	~~KY 987~~	~~8.9 Mine~~	~~18.5 US 421~~
	~~Weight Limit - Bridge over Martins Fork @ milepoint 14.89~~		
	~~TY I = 20 tons, TY II = 34 tons, TY III = 39 tons, TY IV = 60 tons~~		
	~~Weight Limit - Bridge over Crummies Creek @ milepoint 18.52~~		

~~TY I = 20 tons, TY II = 34 tons, TY III = 37 tons, TY IV = 41 tons]~~

* KY 990	0.0 US 421	1.3 Coalgood Tipple
~~[* KY 991~~	~~0.0 Begin State Maintenance~~	~~1.5 KY 987~~
~~Weight Limit - Bridge over Martin's Fork @ milepoint 1.44~~		
~~TY I = 20 tons, TY II = 41 tons, TY III = 45 tons, TY IV = 59 tons]~~		
* KY 1137	0.0 US 421	3.2 Mine Access RD
* KY 1216	0.0 Mine	0.7 KY 72
~~[* KY 1556~~	~~1.1 Mine~~	~~2.1 US 421]~~
* KY 1601	~~[0.0 Jones Creek RD~~	~~1.5 Cawood Branch RD~~
~~Weight Limit - Bridge over Jones Creek @ milepoint 1.12~~		
~~TY I = 20 tons, TY II = 37 tons, TY III = 43 tons, TY IV = 60 tons]~~		
	2.3 Tipple and Mine	2.4 KY 38
~~[* KY 2005~~	~~2.6 Lick Branch Culvert~~	~~5.1 KY 72~~
~~Weight Limit - Bridge over Yocum Creek @ milepoint 5.08~~		
~~TY I = 20 tons, TY II = 38 tons, TY III = 40 tons, TY IV = 60 tons]~~		
* KY 2006	0.0 Clover Lick RD	4.2 Tipple
~~[* KY 2008~~	~~0.0 Leslie CO LN~~	~~1.4 KY 221]~~
* KY 2009	0.0 KY 221	2.7 Leslie CO LN
Weight Limit - Bridge over Fork of Laurel Fork Creek @ milepoint 1.51		
TY I = 20 tons, TY II = 26 tons, TY III = 30 tons, TY IV = 51 tons		
* KY 2425	0.0 Crawford Branch	0.4 KY 72
* KY 2430	0.0 KY 38	0.1 ~~[1.3]~~ Mine
* KY 3449	0.0 Forester's Creek RD	1.1 Kentucky Harlan Tipple
* KY 3451	1.4 ~~[0.0]~~ Mine	2.2 US 119
Weight Limit - Bridge over Ewing Creek @ milepoint 1.60		
TY I = 20 tons, TY II = 32 ~~[25]~~ tons, TY III = 38 ~~[29]~~ tons, TY IV = 60 ~~[49]~~ tons		
Weight Limit - Bridge over Cumberland River @ milepoint 2.15		
TY I = 20 tons, TY II = 23 tons, TY III = 25 tons, TY IV = 32 tons		
~~[* KY 3457~~	~~0.0 KY 38~~	~~0.5 End of State Maintenance~~
~~* KY 3465~~	~~0.0 KY 221~~	~~1.7 End of State Maintenance~~
~~* Totz Road~~		
~~CR 5007B~~	~~0.0 US 119~~	~~0.1 Totz Washer]~~
* Clover Lick Creek RD		
CR 5027	0.0 KY 2006	0.4 Mine
* Pounding Mill Branch RD		
CR 5108H	0.0 KY 215	0.8 Mine
~~[* Leonard Lane~~		
~~CR 5032~~	~~0.0 KY 38~~	~~0.2 Mine~~
~~* Mill Branch RD~~		
~~CR 5033~~	~~0.0 KY 38~~	~~0.3 Mine~~
~~* Jones Creek RD~~		
~~CR 5102~~	~~0.0 KY 1601~~	~~0.7 Mine~~
~~* Kelly Branch Road~~		
~~CR 5122F~~	~~0.0 Mine~~	~~0.2 KY 38~~
~~* Slack Cemetery Road~~		
~~CR 5140~~	~~0.0 US 421 (North)~~	~~0.4 Tipple]~~
* Grays Branch Road		
CR 5206K	0.0 US 421 @ Grays Knob	0.4 Tipple
Weight Limit - Bridge over Martins Fork		
TY I = 20 tons, TY II = 20 tons, TY III = 20 tons, TY IV = 20 tons		
* Rockhouse ~~[Branch]~~ Road		
CR 5256	0.2 Tipple ~~[0.0 KY 72]~~	0.8 Mine
* River Road		
CR 5326E	0.0 KY 38	0.1 Brookside Tipple
~~[* Abner Branch RD~~		
~~CR 5338~~	~~0.0 KY 3465~~	~~2.2 Leslie CO LN]~~
* Ages Creek RD		
CR 5326M	0.0 Tipple	0.3 Tipple

HARRISON COUNTY

ROAD	FROM	TO
* US 27	0.0 Bourbon CO LN	19.5 Pendleton CO LN

Weight Limit - Bridge over South Fork Licking River @ milepoint 5.65
TY I = 20 tons, TY II = 43 tons, TY III = 47 tons, TY IV = 60 tons
Weight Limit - Bridge over L&N RR @ milepoint 6.28
TY I = 20 tons, TY II = 34 tons, TY III = 37 tons, TY IV = 42 tons
Weight Limit - Bridge over Indian Creek @ milepoint 7.09

TY I = 20 tons, TY II = 45 tons, TY III = 46 tons, TY IV = 54 tons
Weight Limit - Bridge B00065 over Sycamore Creek @ milepoint 9.09
TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons
Weight Limit - Bridge over Two Lick Creek @ milepoint 10.40
TY I = 20 tons, TY II = 39 tons, TY III = 41 tons, TY IV = 50 tons
Weight Limit - Bridge over Curry Creek @ milepoint 13.27
TY I = 20 tons, TY II = 31 tons, TY III = 35 tons, TY IV = 51 tons
Weight Limit - Bridge over Richland Creek @ milepoint 19.18
TY I = 20 tons, TY II = 34 tons, TY III = 40 tons, TY IV = 60 tons

HENDERSON COUNTY

	ROAD	FROM	TO
*	Audubon PKWY	0.0 Pennyrile PKWY	15.9 Davis CO LN
	Weight Limit - Bridge over Green River @ milepoint 15.78		
	TY I = 20 tons, TY II = 37 tons, TY III = 44 tons, TY IV = 54 tons		
*	Pennyrile PKWY	65.3 Webster CO LN	78.4 US 41
*	US 41	0.0 Webster CO LN	0.2 KY 2097
		10.9 KY 425	13.0 KY 812
		13.4 Pennyrile Parkway	21.2 Indiana State Line
	Weight Limit - Bridge B00049 over Van Wyk RD @ milepoint 15.01		
	TY I = 20 tons, TY II = 40 tons, TY III = 45 tons, TY IV = 60 tons		
	Weight Limit - Bridge over Canoe Creek @ milepoint 15.17		
	TY I = 20 tons, TY II = 40 tons, TY III = 45 tons, TY IV = 60 tons		
	Weight Limit - Bridge over Henderson Bypass @ milepoint 15.54		
	TY I = 20 tons, TY II = 40 tons, TY III = 43 tons, TY IV = 56 tons		
	Weight Limit - South End Ohio River Bridge @ milepoint 19.24		
	TY I = 20 tons, TY II = 28 tons, TY III = 31 tons, TY IV = 37 tons		
	Weight Limit - Ohio River Bridge @ milepoint 19.24		
	TY I = 20 tons, TY II = 34 tons, TY III = 39 tons, TY IV = 51 tons		
*	KY 136	18.9 Riverport Road	19.5 KY 425 and US 60
*	KY 416	7.8 Pennyrile Parkway	8.0 KY 2096
		16.7 Private Haul RD ~~[15.8 KY 1078]~~	16.9 Audubon Parkway
*	KY 425	0.0 US 60	5.5 Pennyrile PKWY
*	KY 812	5.6 Mine	7.4 US 41
~~[*~~	~~KY 1078~~	~~0.8 Mine~~	~~2.1 KY 416]~~
*	KY 2096	0.0 KY 416	3.1 KY 2097
*	KY 2097	0.0 US 41	0.8 KY 2096 Anaconda Aluminum Plant RD
*	Ammonia Plant Road		
	CR 5305	0.0 KY 136	1.2 Dock
*	Riverport Road		
	CR 5360	0.0 KY 136	0.7 Riverport Dock

HOPKINS COUNTY

	ROAD	FROM	TO
*	Western Kentucky Parkway		
		21.8 Caldwell CO LN	24.4 KY 109
		38.3 Pennyrile PKWY	43.4 Muhlenberg CO LN
	Weight Limit - Bridge over Pennyrile Parkway @ milepoint 38.31		
	TY I = 20 tons, TY II = 40 tons, TY III = 44 tons, TY IV = 57 tons		
*	Pennyrile Parkway	29.6 US 41 (South)	55.0 Webseter CO LN
	Weight Limit - Bridge B00016 on exit ramp to U.S. 41 @ milepoint 45.2		
	TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons		
	Weight Limit - Bridge B00012 over KY 138 @ milepoint 54.07		
	TY I = 20 tons, TY II = 40 ~~[45]~~ tons, TY III = 44 ~~[47]~~ tons, TY IV = 58 ~~[60]~~ tons		
*	US 41	0.0 Christian CO LN	2.3 Pennyrile Parkway (South)
	Weight Limit - Bridge over Drakes Creek @ milepoint 0.49		
	TY I = 20 tons, TY II = 31 tons, TY III = 37 tons, TY IV = 52 tons		
		~~[3.3 KY 1751~~	~~11.8 Webster CO LN~~
	~~Weight Limit - Bridge over Otter Creek @ milepoint 6.13~~		
	~~TY I = 20 tons, TY II = 38 tons, TY III = 44 tons, TY IV = 60 tons]~~		
*	US 41A	7.1 KY 813	10.7 KY 112
		~~[0.0 US 41~~	~~29.4 Webster CO LN~~
	~~Weight Limit - Bridge over Crab Orchard Creek @ milepoint 0.82~~		
	~~TY I = 20 tons, TY II = 34 tons, TY III = 39 tons, TY IV = 58 tons~~		
	~~Weight Limit - Bridge over IC RR & Pleasant Run Creek @ milepoint 3.42~~		
	~~TY I = 20 tons, TY II = 35 tons, TY III = 36 tons, TY IV = 48 tons~~		
	~~Weight Limit - Bridge over L&N RR @ milepoint 6.59~~		

~~TY I = 20 tons, TY II = 28 tons, TY III = 30 tons, TY IV = 35 tons~~
~~Weight Limit - Bridge over Pond Creek @ milepoint 22.86~~
~~TY I = 20 tons, TY II = 27 tons, TY III = 29 tons, TY IV = 46 tons]~~

*	US 62	16.1 KY 281 1.7 KY 109	29.4 Webster CO LN 22.2 Muhlenberg CO LN

Weight Limit - Bridge over Copperas Creek @ milepoint 5.76 [~~70~~]
TY I = 20 tons, TY II = 32 [~~36~~] tons, TY III = 37 tons, TY IV = 60 [~~56~~] tons
Weight Limit - Bridge over Cane Run Creek @ milepoint 7.99 [~~94~~]
TY I = 20 tons, TY II = 42 [~~36~~] tons, TY III = 49 [~~37~~] tons, TY IV = 60 [~~56~~] tons
Weight Limit - Bridge B00057 over Fox Run Creek Branch @ milepoint 10.25
TY I = 20 tons, TY II = 33 tons, TY III = 49 tons, TY IV = 60 tons
Weight Limit - Bridge over Pleasant Run @ milepoint 12.56 [~~51~~]
TY I = 20 tons, TY II = 42 [~~39~~] tons, TY III = 49 [~~41~~] tons, TY IV = 60 [~~56~~] tons
Weight Limit - Bridge B00055 over Pleasant Run Branch @ milepoint 12.93
TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 52 tons
Weight Limit - Bridge B00061 over BR of Pleasant Run Creek @ milepoint 14.00
TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons
Weight Limit - Bridge over CSX [~~L&N~~] RR, Fork Pleasant Run @ milepoint 14.94 [~~89~~]
TY I = 20 tons, TY II = 42 [~~38~~] tons, TY III = 46 [~~42~~] tons, TY IV = 60 tons
Weight Limit - Bridge B00048 over US 41 @ milepoint 15.70 [~~64~~]
TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons
~~[Weight Limit - Bridge over Pleasant Run Creek @ milepoint 16.39~~
~~TY I = 20 tons, TY II = 39 tons, TY III = 41 tons, TY IV = 56 tons]~~
Weight Limit - Bridge over Drakes Creek @ milepoint 16.77 [~~72~~]
TY I = 20 tons, TY II = 39 [~~38~~] tons, TY III = 43 [~~41~~] tons, TY IV = 59 [~~56~~] tons
Weight Limit - Bridge B00052 over Drakes Creek Branch @ milepoint 17.25
Weight Limit - Bridge over Pond River Overflow @ milepoint 21.45 [~~39~~]
TY I = 20 tons, TY II = 38 tons, TY III = 44 tons, TY IV = 60 tons
Weight Limit - Bridge over Pond River Overflow @ milepoint 21.83 [~~78~~]
TY I = 20 tons, TY II = 38 tons, TY III = 44 tons, TY IV = 60 tons
Weight Limit - Pond River Bridge B00049 @ milepoint 22.19 [~~14~~]
TY I = 15 tons, TY II = 15 tons, TY III = 15 tons, TY IV = 15 tons

*	KY 70	4.5 Peter Howton Road	7.1 KY 109 [~~18.7 US 41A~~

~~Weight Limit - Bridge over Richland Creek @ milepoint 11.77~~
~~TY I = 20 tons, TY II = 22 tons, TY III = 22 tons, TY IV = 22 tons~~
~~Weight Limit - Bridge over L&N RR @ milepoint 18.53~~
~~TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons]~~

		19.9 Pennyrile PKWY	22.4 KY 1221 [~~26.4 Muhlenberg CO LN~~]
*	KY 109	2.1 US 62	17.2 KY 814

Weight Limit - Bridge over Western Kentucky Parkway @ milepoint 3.81
TY I = 20 tons, TY II = 40 tons, TY III = 43 tons, TY IV = 56 tons
Weight Limit - Bridge B00078 over Lick Creek Fork @ milepoint 8.42
TY I = 20 tons, TY II = 32 tons, TY III = 48 tons, TY IV = 60 tons
Weight Limit - Bridge B00074 @ milepoint 13.37
TY I = 20 tons, TY II = 33 tons, TY III = 50 tons, TY IV = 60 tons
~~[Weight Limit - Bridge over IC RR @ milepoint 4.50~~
~~TY I = 20 tons, TY II = 40 tons, TY III = 45 tons, TY IV = 60 tons~~
~~Weight Limit - Bridge over IC RR @ milepoint 6.49~~
~~TY I = 20 tons, TY II = 40 tons, TY III = 45 tons, TY IV = 60 tons~~
~~Weight Limit - Bridge over Lick Creek @ milepoint 7.24~~
~~TY I = 20 tons, TY II = 40 tons, TY III = 42 tons, TY IV = 58 tons]~~

*	KY 112	9.6 KY 1337	9.8 US 41A
*	KY 260	2.0 Pennyrile PKWY	2.1 KY 2664
*	KY 262	0.0 KY 630	0.1 Tipple [~~2.6 Bean Cemetery RD~~]
*	KY 281	0.0 US 41A	0.7 Pennyrile Parkway

Weight Limit - Bridge B00081 over L&N RR @ milepoint 0.25
TY I = 20 tons, TY II = 44 tons, TY III = 47 tons, TY IV = 58 tons

*	KY 502	0.0 KY 109	6.2 KY 1034

Weight Limit - Bridge over Clear Creek Branch @ milepoint 1.06
TY I = 20 tons, TY II = 39 tons, TY III = 45 tons, TY IV = 60 tons
Weight Limit - Bridge over Clear Creek Overflow @ milepoint 2.77
TY I = 20 tons, TY II = 35 tons, TY III = 41 tons, TY IV = 60 tons
Weight Limit - Bridge over Clear Creek @ milepoint 2.90
TY I = 20 tons, TY II = 37 tons, TY III = 43 tons, TY IV = 60 tons
Weight Limit - Bridge over Clear Creek Overflow @ milepoint 3.07
TY I = 20 tons, TY II = 37 tons, TY III = 43 tons, TY IV = 60 tons
Weight Limit - Bridge over Clear Creek @ milepoint 3.23

TY I = 20 tons, TY II = 22 tons, TY III = 22 tons, TY IV = 22 tons

*	KY 630	0.0 KY 262	2.0 US 41A
*	KY 813	2.5 Bailey Street ~~[0.8 Claude Young RD]~~	2.8 US 62
		5.4 Drakes Creek RD	6.1 ~~[5.6]~~ Mine
*	KY 814	0.0 KY 109	1.4 Webster CO LN
~~[*~~	~~KY 879~~	~~0.0 KY 112~~	~~0.2 Southard Church Road~~
		~~(Extended weights shall be available only for Types III and IV vehicles.)]~~	
*	KY 1034	4.2 KY 502	8.7 KY 630

Weight Limit - Bridge over Pond Creek @ milepoint 7.02
TY I = 20 tons, TY II = 23 tons, TY III = 29 tons, TY IV = 41 tons
Weight Limit - Bridge over New Pond Creek @ milepoint 7.06
TY I = 20 tons, TY II = 23 tons, TY III = 29 tons, TY IV = 41 tons

*	KY 1221	0.0 Frank Lama RD	4.1 KY 70
~~[*~~	~~KY 1751~~	~~0.0 US 41A~~	~~1.4 US 41~~

~~Weight Limit - Bridge over L&N RR @ milepoint 1.14~~
~~TY I = 20 tons, TY II = 40 tons, TY III = 44 tons, TY IV = 60 tons]~~

*	KY 2086	0.0 Walnut Grove RD	1.2 KY 109
*	KY 2171	0.0 US 41A	3.1 Pennyrile Parkway
~~[*~~	~~KY 2644~~	~~0.0 US 62~~	~~0.9 C.B. Williams (E. Russ Hill) RD]~~
*	KY 2647	0.0 KY 2648	0.6 McIntosh Chapel RD
*	KY 2648	0.0 Clarence Prowse RD	0.2 KY 2647 (McIntosh Chapel RD)
*	KY 2664	0.0 KY 260	1.6 End of State Maintenance
*	Airport RD		
	CR 5130	0.0 Seebree Avenue	0.8 Private Haul RD ~~[1.6 Mine]~~
*	Hecla Street		
	CR 5134A	0.0 CR 5134G	0.8 CR 5130
*	Seebree Avenue		
	CR 5134G	0.0 KY 112	0.4 ~~[0.3]~~ Airport RD
*	Farmers Crossing Road		
	CR 5161	0.0 Drakes Creek RD	2.9 Mine
~~[*~~	~~Oglesby RD~~		
	~~CR 5163~~	~~0.0 Mt. Caramel Pond RD~~	~~0.7 Mine~~
~~*~~	~~Mt. Caramel Pond RD~~		
	~~CR 5165~~	~~0.0 KY 813~~	~~1.5 Oglesby RD~~
~~*~~	~~Claude Young Road~~		
	~~CR 5169~~	~~0.0 KY 813~~	~~1.7 Orton Bridge RD~~
~~*~~	~~Orton Bridge Road~~		
	~~CR 5170~~	~~1.0 Claude Young RD~~	~~1.3 Private Haul Road]~~
*	Goat Lane		
	CR 5179	0.0 US 62	0.4 Drakes Creek RD
*	Drakes Creek RD		
	CR 5180	0.0 Farmers Crossing RD	0.2 KY 813
		1.8 Goat Lane	1.9 KY 813
		~~[1.3 Goat Lane~~	~~1.5 KY 813]~~
*	Stone's Chapel Road		
	CR 5187	0.0 Charolais Mine	0.2 CR 5189
*	McIntosh Chapel Road		
	CR 5189	0.0 Stone's Chapel Road	1.7 KY 2647
*	Clarence Prowse Road		
	CR 5190	0.0 KY 2648	0.7 US 41
*	Buttermilk Road		
	CR 5268	0.0 US 62	2.5 Mine
~~[*~~	~~McGregor RD~~		
	~~CR 5269~~	~~0.0 US 62~~	~~2.4 Mine]~~
*	Walnut Grove Road		
	CR 5301	0.0 Mine	0.6 KY 2086
*	Lee Johnson RD		
	CR 5329	0.0 KY 70	0.3 Mine
*	Manitou/Richland RD		
	CR 5393	2.6 Mine	4.6 Private Haul RD
		~~[0.0 KY 70~~	~~4.7 KY 630]~~

JACKSON COUNTY

	ROAD	FROM	TO
*	US 421	~~[0.0 Clay CO LN]~~ 4.6 KY 30 East	8.0 Kelly RD

Weight Limit - Bridge over Flat Lick Creek @ milepoint 6.26
TY I = 20 tons, TY II = 30 tons, TY III = 37 tons, TY IV = 58 tons

*	KY 30	0.0 Laurel CO LN	12.5 US 421 (South)
	Weight Limit - Bridge over Moores Creek @ milepoint 0.59		
	TY I = 20 tons, TY II = 32 tons, TY III = 35 tons, TY IV = 50 tons		
	Weight Limit - Bridge over Pond Creek @ milepoint 2.64		
	TY I = 20 tons, TY II = 32 tons, TY III = 35 tons, TY IV = 50 tons		
	Weight Limit - Bridge over Pond Lick Creek @ milepoint 5.86		
	TY I = 20 tons, TY II = 41 tons, TY III = 49 tons, TY IV = 60 tons		
	[~~12.5 US 421 (North)~~		~~20.9 Owsley CO LN~~
	~~Weight Limit - Sturgeon Creek Bridge @ milepoint 18.80~~		
	~~TY I = 20 tons, TY II = 38 tons, TY III = 43 tons, TY IV = 60 tons~~		
*	~~KY 587~~	~~5.1 Brushy Fork RD~~	~~10.7 Owsley CO LN~~
*	~~Brushy Fork RD~~		
	~~CR 5041~~	~~0.0 KY 587~~	~~1.2 Owsley CO LN~~]

JEFFERSON COUNTY

	ROAD	FROM	TO
*	US 31E	0.0 Bullitt CO LN	6.1 KY 1066
		16.7 US 42 [~~16.4 Liberty Street~~]	17.8 US 31W @ Second Street
*	US 31W	3.2 Kosmos Cement CO	7.4 KY 841
		18.5 Wilson Avenue	22.1 US 31E @ Second Street
*	US 42	0.0 US 31E	0.8 US 60
	Weight Limit - Bridge B00347 over Beargrass Creek @ milepoint 0.23		
	TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons		
*	US 60	0.0 US 42 (Westbound)	17.4 Shelby CO LN
	Weight Limit - Bridge over Beargrass Creek @ milepoint 0.11		
	TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons		
	Weight Limit - Bridge over Floyd's Fork @ milepoint 13.56		
	TY I = 20 tons, TY II = 40 tons, TY III = 44 tons, TY IV = 58 tons		
	Weight Limit - Bridge over Longrun Creek @ milepoint 15.79		
	TY I = 20 tons, TY II = 35 [~~37~~] tons, TY III = 40 [~~39~~] tons, TY IV = 60 tons		
*	KY 841	0.0 US 31W	10.2 I-65 [~~6.1 Consumer~~]
	Weight Limit - Bridge over New Cut Road @ milepoint 6.032		
	TY I = 20 tons, TY II = 45 tons, TY III = 50 tons, TY IV = 54 tons		
*	KY 864	4.3 KY 1065	4.5 KY 1065
*	KY 1065	1.0 New Cut Road (KY 1865)	11.9 US 31E
	Weight Limit - Bridge over Northern Ditch @ milepoint 1.40		
	TY I = 20 tons, TY II = 27 tons, TY III = 37 tons, TY IV = 40 tons		
	Weight Limit - Bridge over I-65 @ milepoint 4.75		
	TY I = 20 tons, TY II = 40 tons, TY III = 45 tons, TY IV = 60 tons		
*	KY 1230	7.5 Port Access RD	7.7 Smith Lane
*	KY 1865	0.9 KY 841	1.3 KY 1065
*	KY 1934	1.1 River Port Drive [~~5.7 Ralph AVE~~]	3.3 KY 2051
		5.7 Ralph AVE	7.1 KY 1834 Cane Run RD [~~8.4 US 31W~~]
*	KY 2051	2.0 Cane Run RD	4.8 Consumer
		[~~5.1 Consumer~~	~~6.4 KY 1934~~]
*	KY 2054	0.7 KY 1934	1.6 Dixie Highway (US 31W)
*	KY 2056	0.4 Consumer	1.6 KY 1934 Cane Run RD
[*	~~Baxter Avenue (Louisville)~~		
		~~Liberty Street~~	~~US 60 (Main Street)~~]
*	Ralph Avenue (Louisville)		
	CS 1RA	0.5 Consumer	1.8 KY 1934
*	Dixie Highway	0.5 Hill Street	0.9 Wilson Avenue
*	Wilson Avenue	0.0 US 31W	0.3 Dixie Highway
*	Smith Riverport RD		
	CS 47sr	0.0 KY 1230	0.9 KY 1934

JOHNSON COUNTY

	ROAD	FROM	TO
*	US 23	8.8 US 460 [~~4.3 KY 1428~~]	18.4 Lawrence CO LN
*	US 460	0.0 Magoffin CO LN	8.3 US 23
*	KY 3	0.0 Floyd CO LN	4.6 Martin CO LN
*	KY 40	8.7 US 23	11.1 KY 1107
*	KY 302	0.0 Floyd County Line	0.1 KY 3
*	KY 581	0.0 KY 40	0.5 KY 1145
*	KY 1107	3.3 KY 40	3.9 Mine
*	KY 1428	3.4 US 23	3.8 Tipple
[*	~~KY 1559~~	~~4.0 CR 5066~~	~~5.7 US 23~~

[*	~~Old Salem Slaughter Road~~		
	~~CR 5066~~	~~0.0 KY 1559~~	~~0.4 Mine~~]
*	Lackey Branch RD		
	CR 5128	0.0 KY 3	0.5 Tipple
[*	~~Old KY 3 RD~~		
	~~CR 5163~~	~~0.0 KY 3~~	~~0.3 Martin CO LN~~]

KNOTT COUNTY

	ROAD	FROM	TO
*	KY 7	0.0 Letcher CO LN [~~2.5 KY 1498~~]	16.0 Floyd CO LN
	Weight Limit - Bridge over Beaver Fork @ milepoint 6.10		
	TY I = 20 tons, TY II = 39 tons, TY III = 44 tons, TY IV = 60 tons		
*	KY 15	0.0 Letcher CO LN	9.4 Perry CO LN
	Weight Limit - Bridge over Carr Fork Lake @ milepoint 5.64		
	TY I = 20 tons, TY II = 37 tons, TY III = 44 tons, TY IV = 60 tons		
*	KY 80	0.0 Perry CO LN	20.1 Floyd CO LN
*	KY 160	0.0 KY 15	12.5 KY 80 [~~14.5 Mine~~]
	Weight Limit - Bridge over Carr Fork Lake @ milepoint 1.74		
	TY I = 20 tons, TY II = 46 tons, TY III = 48 [~~47~~] tons, TY IV = 58 [~~57~~] tons		
*	KY 550	0.0 Perry County Line	9.6 Ogden Creek-Best Road
	Weight Limit - Bridge over Montgomery Creek @ milepoint 4.12		
	TY I = 20 tons, TY II = 30 tons, TY III = 37 tons, TY IV = 57 tons		
		22.8 Blue Springs Branch RD	26.6 Floyd CO LN
	Weight Limit - Bridge over Jones Fork @ milepoint 25.30		
	TY I = 20 tons, TY II = 28 tons, TY III = 32 tons, TY IV = 45 tons		
*	KY 582	3.7 KY 1393 [~~0.0 KY 160~~]	5.0 Willard Branch RD
		11.8 Brighton Fork of Bill Dees BR	12.7 KY 7
	Weight Limit - Bridge over Right Fork Beaver Creek @ milepoint 12.69		
	TY I = 20 tons, TY II = 28 tons, TY III = 31 tons, TY IV = 44 tons		
*	KY 777	0.0 KY 80	0.1 Floyd CO LN
*	KY 899	0.0 KY 160	2.1 KY 1393
*	KY 1087	1.4 KY 1102	3.4 [~~1.7~~] Mine
		13.2 KY 1098	13.8 KY 80
*	KY 1088	6.9 Haul RD	9.4 KY 15
	Weight Limit - Bridge over Yellow Creek @ milepoint 9.12		
	TY I = 20 tons, TY II = 27 [~~31~~] tons, TY III = 31 [~~37~~] tons, TY IV = 52 [~~60~~] tons		
	Weight Limit - Bridge over Carr Creek @ milepoint 9.36		
	TY I = 20 tons, TY II = 34 [~~36~~] tons, TY III = 38 [~~40~~] tons, TY IV = 54 [~~57~~] tons		
*	KY 1098	9.7 Mine [~~0.0 Breathitt CO LN~~]	12.0 KY 1087
	[~~Weight Limit - Bridge over Laurel Fork Quicksand Creek @ milepoint 6.94~~		
	~~TY I = 20 tons, TY II = 29 tons, TY III = 33 tons, TY IV = 56 tons~~]		
*	KY 1102	1.1 Sandlick Branch RD	2.7 KY 80
*	KY 1231	0.0 KY 15	8.0 KY 550
	Weight Limit - Bridge over Troublesome Creek @ milepoint 7.97		
	TY I = 20 tons, TY II = 31 tons, TY III = 35 tons, TY IV = 55 tons		
*	KY 1393	0.0 KY 582	2.8 KY 899
*	KY 1410	0.0 KY 160	4.7 Letcher CO LN
	Weight Limit - Bridge over Carr Fork @ milepoint 0.01		
	TY I = 20 tons, TY II = 45 tons, TY III = 48 tons, TY IV = 57 tons		
*	KY 1498	0.0 KY 7	1.0 Mine
*	KY 2759	0.0 KY 550	1.2 KY 160
*	KY 3209	0.0 KY 80	0.4 KY 1087
	Weight Limit - Bridge over Ball Fork @ milepoint 0.05		
	TY I = 20 tons, TY II = 39 tons, TY III = 44 tons, TY IV = 60 tons		
[*	~~KY 3391~~	~~0.0 KY 1231~~	~~1.8 Irishman Creek RD~~]
*	Potato Branch Road		
	CR 5005	0.0 KY 7	0.2 [~~0.5~~] Mine
[*	~~Right Fork of Fourmile Branch RD~~		
	~~CR 5030~~	~~0.0 Fourmile BR RD~~	~~0.1 Mine~~]
*	Big Springs Branch Road		
	CR 5032	0.0 KY 550	0.1 Tipple
*	Plum Branch RD		
	CR 5037C	0.0 KY 777	0.5 Mine
*	Hunter Branch RD		
	CR 5038	0.0 KY 80	0.5 Mine
*	Left Fork of Hollybush Creek RD		

CR 5113	0.0 KY 3393	1.0 Mine
* Mullins Branch RD		
CR 5114	0.0 KY 7	2.4 [~~2.8~~] Left Fork Hollybush RD
* Righthand Fork of Bill Dees Branch RD		
CR 5115	0.0 KY 582	0.5 [~~1.3~~] Mine
* Bates Branch Road		
CR 5117	0.0 KY 7	1.4 Wheelwright Mine
* Puncheon Branch RD		
CR 5119	0.0 KY 7	2.4 Crager Fork RD
* Crager Fork RD		
CR 5121	0.0 Puncheon BR RD	0.7 Mine
* Arnold Fork Road		
CR 5122	0.0 KY 1498	2.0 [~~0.7~~] Mine
* Mudlick Branch Road		
CR 5123	0.0 Arnold Fork Road	0.4 [~~0.2~~] Mine
* Willard Branch RD		
CR 5133	0.0 KY 582	0.5 [~~0.4~~] Mine
* Wolfpen Branch RD		
CR 5139	0.0 KY 1410	1.0 Mine
[~~* Runnells Branch Road~~		
~~CR 5156~~	~~0.0 KY 160~~	~~0.5 Left FK Runnells BR RD~~
~~* Left Fork of Runnells Branch Road~~		
~~CR 5156A~~	~~0.0 Runnells Branch RD~~	~~0.3 Golden Oak Mine~~
~~* Cave Branch RD~~		
~~CR 5202~~	~~0.0 KY 160~~	~~1.1 Mine~~
~~* Irishman Creek Road~~		
~~CR 5203~~	~~0.0 KY 1231~~	~~0.3 Tipple~~
~~* Alum Cave Branch RD~~		
~~CR 5205~~	~~0.0 Irishman Creek RD~~	~~0.4 Mine~~]
* HEC Mine Road		
CR 5207A	0.0 KY 1231	0.3 Mine
[~~* Defeated Creek Road~~		
~~CR 5212~~	~~0.0 KY 15~~	~~3.2 Meade & Shepherd Mine~~]
* Lick Branch Road		
CR 5250	0.0 KY 550	0.6 Mine
* Walkers Branch Road		
CR 5251	0.0 KY 550	1.7 Mine
[~~* Right Fork RD~~		
~~CR 5261~~	~~0.0 KY 1231~~	~~0.7 Mine~~]
* Sandlick Branch Road		
CR 5336	0.0 KY 1102	1.1 Mine

KNOX COUNTY

ROAD	FROM	TO
* US 25E	5.3 Mine [~~7.2 KY 1304~~]	15.6 CR 5305E
* KY 6	8.5 Mine	14.7 KY 11
* KY 11	0.0 Whitley CO LN	10.1 US 25E
Weight Limit - Bridge over Little Poplar Creek @ milepoint 2.17		
TY I = 20 tons, TY II = 38 [~~36~~] tons, TY III = 42 [~~37~~] tons, TY IV = 56 [~~45~~] tons		
* KY 225	13.9 Tipple [~~9.2 Little Brushy Creek RD~~]	14.8 KY 2421
* KY 1304	0.0 US 25E	1.4 Powell Branch RD
* KY 1809	0.0 Whitley CO LN	5.0 Stony Fork RD
	6.1 KY 11	6.3 KY 11
* KY 2421	0.0 KY 225	0.9 KY 11
* Powell Branch RD		
CR 5010	0.0 KY 1304	0.5 Mine
[~~* Little Brush Creek Road~~		
~~CR 5166~~	~~0.0 KY 225~~	~~2.5 Hubbe Creek RD~~
~~Weight Limit - Bridge over Brush Creek~~		
~~TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons~~		
~~* Lay Branch Road~~		
~~CR 5169~~	~~0.0 Little Brush CK RD~~	~~0.9 Mine~~
~~* Swan Pond Road~~		
~~CR 5209~~	~~0.0 KY 11~~	~~2.1 Mine~~
~~* Stoney Fork Road~~		
~~CR 5210~~	~~0.0 KY 1809~~	~~2.4 Mine~~]
* O. Prichard Hollow RD		

	CR 5212	0.0 KY 1809	0.6 Mine
*	Hubbs Road		
	CR 5214	0.0 KY 1809	1.2 Mine [~~3.5 Little Brushy Creek RD~~]
	Weight Limit - Bridge over Hubbs Creek east of Bryant's Store		
	TY I = 20 tons, TY II = 24 tons, TY III = 28 tons, TY IV = 47 tons		
	Weight Limit - Bridge over Hubbs Creek @ Bain Branch		
	TY I = 3 tons, TY II = 3 tons, TY III = 3 tons, TY IV = 3 tons		
*	Sugartree Road		
	CR 5216	0.0 Hubbs Road	0.5 Mine
*	Goldens Creek RD		
	CR 5222	0.0 Whitley CO LN	1.0 Mine
[~~* Little Indian Creek RD~~			
	~~CR 5245~~	~~0.0 KY 6~~	~~0.2 Mine~~
~~* Old US 25E Loop Number 6~~			
	~~CR 5304~~	~~0.6 US 25E~~	~~1.0 Bailey Branch RD~~
~~* Bailey Branch RD~~			
	~~CR 5305~~	~~0.0 Old US 25E Loop 6~~	~~0.5 Tipple~~]
*	Bailey Branch Loop		
	CR 5305E	0.0 US 25E	0.3 CR 5305F
*	Bailey Hollow		
	CR 5305F	0.0 CR 5305E	0.2 Tipple

LAUREL COUNTY

	ROAD	FROM	TO
*	Daniel Boone Parkway	0.0 US 25	10.6 Clay CO LN
	Weight Limit - Bridge over Little Laurel River @ milepoint 3.40		
	TY I = 20 tons, TY II = 42 tons, TY III = 45 tons, TY IV = 60 tons		
	Weight Limit - Bridge over Sallys Branch Rd. @ milepoint 4.18		
	TY I = 20 tons, TY II = 43 [~~42~~] tons, TY III = 47 [~~42~~] tons, TY IV = 60 tons		
	Weight Limit - Bridge over KY 1305 @ milepoint 6.42		
	TY I = 20 tons, TY II = 40 tons, TY III = 42 tons, TY IV = 49 tons		
	Weight Limit - Bridge over Lick Creek Road @ milepoint 7.64		
	TY I = 20 tons, TY II = 40 tons, TY III = 41 tons, TY IV = 49 tons		
	Weight Limit - Bridge over KY 488 @ milepoint 8.57		
	TY I = 20 tons, TY II = 40 tons, TY III = 45 tons, TY IV = 60 tons		
*	US 25	13.6 KY 80 & Daniel Boone Parkway	16.3 KY 490
*	KY 30	1.4 KY 490	9.8 Jackson CO LN
*	KY 80	0.0 Pulaski CO LN	11.1 US 25
	Weight Limit - Bridge over I-75 @ milepoint 10.59		
	TY I = 20 tons, TY II = 40 tons, TY III = 43 tons, TY IV = 53 tons		
		21.2 KY 1803	24.7 Clay CO LN
	Weight Limit - Bridge over Hooppoole Creek @ milepoint 22.22		
	TY I = 20 tons, TY II = 28 tons, TY III = 31 tons, TY IV = 44 tons		
*	KY 192	20.9 [~~20.1~~] US 25	22.0 Daniel Boone PKWY
*	KY 490	0.0 US 25	0.9 KY 30
	Weight Limit - Bridge over L&N RR @ milepoint 0.10		
	TY I = 20 tons, TY II = 29 tons, TY III = 32 tons, TY IV = 45 tons		
*	KY 1803	2.1 Mine	4.3 KY 80 at Lida
	Weight Limit - Bridge over Laurel River @ milepoint 3.52		
	TY I = 20 tons, TY II = 31 tons, TY III = 36 tons, TY IV = 60 tons		

LAWRENCE COUNTY

	ROAD	FROM	TO
*	US 23	0.0 Johnson CO LN	28.9 Boyd CO LN
*	KY 3	14.9 KY 3 Spur [~~5.6 Dredge~~]	17.1 US 23
	[~~Weight limit - Bridge over Levisa & Tug Forks @ milepoint 14.87~~		
	~~TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons~~]		
*	KY 3S	0.0 KY 3	0.1 West Virginia State LN
*	KY 32	28.5 KY 2565	29.2 KY 3
*	KY 645	0.0 US 23	5.2 Martin CO LN
*	KY 2565	0.0 US 23	3.0 KY 32
*	KY 3398	2.3 US 23	2.3 Tipple

LEE COUNTY

	ROAD	FROM	TO
*	KY 11	1.6 KY 587 [~~0.0 Owsley CO LN~~]	9.4 KY 498
	Weight Limit - Bridge over South Fork Kentucky River @ milepoint 3.91		

TY I = 20 tons, TY II = 28 tons, TY III = 37 [31] tons, TY IV = 44 tons
Weight Limit - Bridge B0005 over the North Fork of the KY River @ milepoint 4.17
TY I = 20 tons, TY II = 45 tons, TY III = 48 tons, TY IV = 53 tons

*	KY 52	[0.0 Estill CO LN	7.3 KY 498]
		12.9 KY 11	16.7 Dunigan BR RD [24.5 Breathitt CO LN]
*	KY 399	1.8 KY 587 South [0.0 Owsley CO LN]	1.9 KY 587 north
[*	KY 498	0.0 KY 52	2.5 KY 11]
*	KY 587	5.2 KY 587 South [0.0 Jackson CO LN]	12.3 KY 11

Weight Limit - Bridge over Sturgeon Creek @ milepoint 5.32
TY I = 20 tons, TY II = 40 tons, TY III = 44 [45] tons, TY IV = 59 tons

*	Dunigan Branch RD		
	CR 5115	0.0 KY 52	0.1 Tipple
*	Ernestville Road		
	CR 5223	0.0 KY 587	2.1 Owsley CO LN

LESLIE COUNTY

	ROAD	FROM	TO
*	Daniel Boone Parkway	35.9 Clay CO LN	51.0 Perry CO LN
*	US 421	0.0 Harlan CO LN	7.2 Stone Coal Branch RD
		[20.6 KY 2431	21.7 KY 80 East]
		27.3 Puncheon Camp Branch Road	35.4 Clay CO LN
*	KY 66	0.0 Clay CO LN	2.8 Clay CO LN

Weight Limit - Bridge over Red Bird River @ milepoint 2.705
TY I = 20 tons, TY II = 31 tons, TY III = 33 tons, TY IV = 45 tons

*	KY 80	2.9 Hurricane Creek RD [0.0 US 421]	9.7 Perry CO LN

Weight Limit - Bridge over Cutshin Creek @ milepoint 5.15
TY I = 20 tons, TY II = 25 tons, TY III = 29 tons, TY IV = 44 tons
Weight Limit - Bridge over Wooton Creek @ milepoint 6.12
TY I = 20 tons, TY II = 24 tons, TY III = 28 tons, TY IV = 47 tons
Weight Limit - Bridge over MacIntosh Creek @ milepoint 8.84
TY I = 18 tons, TY II = 19 tons, TY III = 23 tons, TY IV = 40 tons

*	KY 699	0.0 KY 80	3.2 KY 2057 at Similax

Weight Limit - Bridge over Cutshin Creek @ milepoint 1.96
TY I = 20 tons, TY II = 33 tons, TY III = 36 tons, TY IV = 44 tons

*	KY 1807	0.0 KY 80	3.6 Mine Access RD at end of State Maintenance
[*	KY 2008	5.1 Mine	8.2 Harlan CO LN]
*	KY 2009	0.0 Harlan CO LN	5.4 Bledsoe Tipple

Weight Limit - Bridge over Greasy Creek @ milepoint 3.58
TY I = 8 tons, TY II = 8 tons, TY III = 8 tons, TY IV = 8 tons

*	KY 2057	0.0 KY 4699 at Similax	2.9 Mine
[*	KY 2431	0.0 US 421	0.1 Leslie CO High School (Wendover RD)

Weight Limit - Bridge over Middle Fork Kentucky River @ milepoint 0.01
TY I = 20 tons, TY II = 26 tons, TY III = 28 tons, TY IV = 31 tons

*	Wendover Road		
	CR 5001	0.0 KY 2431	1.6 Hurricane Creek RD]
*	Hurricane Creek Road		
	CR 5002	0.0 KY 80	0.7 CR 5006
		[2.2 Camp Creek RD	3.3 Wendover RD
*	Camp Creek Road		
	CR 5005	0.0 Hurricane Creek RD	0.7 Tipple Access]
*	Big Branch - Hurricane Creek Road		
	CR 5006	0.0 CR 5002	1.2 Mine
*	Bailey Branch Road		
	CR 5027	0.0 KY 1807	0.3 Mine
[*	Abner Branch Road		
	CR 5133	0.0 KY 2008	1.3 Harlan CO LN]
*	Stone Coal Branch RD		
	CR 5214	0.0 US 421	0.3 Mine
*	Laurel Creek RD		
	CR 5331	0.0 US 421	0.4 Mine

LETCHER COUNTY

	ROAD	FROM	TO
*	US 23	0.0 Virginia State LN	7.1 Pike CO LN

Weight Limit - Bridge over Elkhorn Creek @ milepoint 5.83
TY I = 20 tons, TY II = 28 tons, TY III = 25 tons, TY IV = 40 tons

*	US 119	[2.3 KY 3404	7.0 Scotia Mine Tipple]

		17.3 [17.6] KY 15	27.8 US 23 at Payne Gap [28.1 US 23]
	Weight Limit - North Fork KY River Bridge @ milepoint 17.39 [62]		
	TY I = 20 tons, TY II = 45 tons, TY III = 48 tons, TY IV = 57 tons		
*	KY 7	0.0 Perry CO LN	27.6 Knott CO LN [25.2 KY 317]
	Weight Limit - Bridge over Line Fork @ milepoint 0.170		
	TY I = 20 tons, TY II = 22 tons, TY III = 28 tons, TY I IV = 33 tons		
	Weight Limit - Bridge over CSX RR and North Fork KY River @ milepoint 2.610		
	TY I = 20 tons, TY II = 28 tons, TY III = 33 tons, TY IV = 49 tons		
	Weight Limit - Bridge over Elk Creek @ milepoint 5.283		
	TY I = 20 tons, TY II = 33 [35] tons, TY III = 39 [36] tons, TY IV = 60 [50] tons		
	Weight Limit - Bridge over Caudill Branch @ milepoint 8.04		
	TY I = 20 tons, TY II = 41 tons, TY III = 48 [43] tons, TY IV = 60 [59] tons		
	[Weight Limit - Bridge over Rockhouse Creek @ milepoint 19.476		
	TY I = 20 tons, TY II = 30 tons, TY III = 30 tons, TY IV = 30 tons]		
	Weight Limit - Bridge over Rockhouse Creek @ milepoint 22.31		
	TY I = 20 tons, TY II = 35 tons, TY III = 41 tons, TY IV = 60 tons		
	Weight Limit - Bridge over Rockhouse Creek @ milepoint 24.78		
	TY I = 20 tons, TY II = 33 tons, TY III = 37 tons, TY IV = 50 tons		
*	KY 15	0.0 US 119	9.3 KY 7
	Weight Limit - Bridge B00105 over North Fork KY River and RR Bridge @ milepoint 0.10		
	TY I = 20 tons, TY II = 41 tons, TY III = 42 tons, TY IV = 47 tons		
	Weight Limit - Bridge B00104 over North Fork KY River @ milepoint 0.41		
	TY I = 20 tons, TY II = 45 [46] tons, TY III = 49 tons, TY IV = 56 tons		
	[Weight Limit - Depot Street Connector Bridge @ milepoint 1.33		
	TY I = 20 tons, TY II = 39 tons, TY III = 48 tons, TY IV = 60 tons]		
		9.3 KY 7	10.7 Knott CO LN
[*	KY 15X	2.6 KY 931	2.8 KY 15]
*	KY 113	0.0 KY 805	4.1 Mine
	Weight Limit - Bridge over North Fork of KY River @ milepoint 1.49		
	TY I = 16 tons, TY II = 17 tons, TY III = 19 tons, TY IV = 24 tons		
	Weight Limit - Bridge over Millstone Creek @ milepoint 2.48		
	TY I = 20 tons, TY II = 40 tons, TY III = 42 tons, TY IV = 58 tons		
	Weight Limit - Bridge over Left Fork Millstone Creek @ milepoint 3.25		
	TY I = 20 tons, TY II = 35 tons, TY III = 36 tons, TY IV = 37 tons		
*	KY 160	15.4 KY 588	21.8 KY 15
*	KY 317	0.0 KY 805	3.8 Mine
		6.8 KY 1469	8.9 KY 7
*	KY 343	0.0 KY 317	1.5 #2 Hollow Road
	Weight Limit - Bridge over Wright Fork @ milepoint 0.46		
	TY I = 20 tons, TY II = 22 tons, TY III = 22 tons, TY IV = 22 tons		
	Weight Limit - Bridge over Wright Fork @ milepoint 0.65		
	TY I = 20 tons, TY II = 22 tons, TY III = 22 tons, TY IV = 22 tons		
*	KY 510	5.0 Koyle Branch RD	7.9 KY 463
*	KY 588	3.9 Tipple	5.0 KY 160
*	KY 803	0.0 113	1.2 0.15 mile south of Lick Fork RD
*	KY 805	0.0 US 119	9.2 US 23
	Weight Limit - Bridge over Potters Fork @ milepoint 6.98		
	TY I = 20 tons, TY II = 29 tons, TY III = 32 tons, TY IV = 44 tons		
	Weight Limit - Bridge over Potters Fork @ milepoint 8.18		
	TY I = 20 tons, TY II = 33 tons, TY III = 38 tons, TY IV = 60 tons		
	Weight Limit - Bridge over Potters Fork @ milepoint 8.92		
	TY I = 20 tons, TY II = 36 tons, TY III = 37 tons, TY IV = 51 tons		
*	KY 931	8.6 Brown BR RD	10.2 KY 15
		16.4 Clay Hollow RD	18.4 KY 7
	[Weight Limit - Bridge over Sandlick Creek @ milepoint 10.94		
	TY I = 20 tons, TY II = 35 tons, TY III = 36 tons, TY IV = 53 tons]		
*	KY 1103	3.3 Defeated Creek RD	6.0 Private Haul RD
*	KY 1410	0.0 Knott CO LN	1.6 KY 7
*	KY 1469	0.0 KY 317	2.3 Mine
*	KY 1862	6.0 Mine	10.0 KY 931
*	KY 2034	4.0 Company Branch RD	4.9 Crafts Colly Creek RD
[*	KY 3404	0.0 Mine	0.8 US 119
*	KY 3409	0.0 Port Creek Cram RD	0.3 Mine]
*	Wright Fork Crafts Colly Creek RD CR 5008	0.0 KY 2034	1.9 Private Haul RD
*	Clay Hollow Road CR 5010	0.0 KY 931	0.2 Golden Oak Mine

*	Stinking Branch RD		
	CR 5012	0.0 KY 1682	0.7 Mine
*	Millstone - Democrat RD		
	CR 5020	0.0 KY 7	2.7 Mine
*	Millstone - Deane RD		
	CR 5038	0.0 KY 803	0.9 Mine
*	Wright Branch RD		
	CR 5046	0.0 CR 5020	0.7 Mine
[*	~~Beaver Dam Branch RD~~		
	~~CR 5047~~	~~0.0 KY 7~~	~~1.6 Mine]~~
*	Lower Appletree RD		
	CR 5052	0.0 KY 7	0.8 Mine
*	Razorblade Branch RD		
	CR 5053	0.0 KY 7	0.4 Mine
*	Bottom Fork Road (Fleming)		
	CR 5068L	0.2 #2 Hollow RD	0.7 Mine
*	#2 Hollow Road (Fleming)		
	CR 5068M	0.0 KY 343	0.6 Mine
*	John's Fork-Joe's Branch RD		
	CR 5097	0.0 US 23	3.0 Mine
[*	~~US 119 - Eolia - Virginia State LN RD~~		
	~~CR 5188~~	~~0.0 Virginia ST LN~~	~~0.1 Black Mountain W RD~~
*	~~Black Mountain West RD~~		
	~~CR 5195~~	~~0.0 US 119 - Eolia - VA ST~~	~~3.5 Mine]~~
*	Brown Branch Road		
	CR 5225	0.0 KY 931	0.2 Mine
*	Big Branch-Tolson Branch Road		
	CR 5258	0.0 KY 588	3.6 Mine
*	Defeated Creek Road		
	CR 5265	5.1 Southeast Mine	5.6 KY 1103
	Weight Limit - Bridge over Line Fork Creek		
	TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons		
*	Koyle Branch RD		
	CR 5268	0.0 KY 510	0.8 Mine
*	Bee Tree Branch Road		
	CR 5311	0.0 KY 160	1.0 Lake Coal Mine
*	Caudill Creek Road		
	CR 5354	0.0 KY 7	2.3 Golden Oak Mine
*	Crases Branch Road		
	CR 5357	0.0 KY 7	0.9 Mine

LINCOLN COUNTY

	ROAD	FROM	TO
*	US 27	0.0 Pulaski CO LN	18.0 US 150 Bypass
*	US 150	0.0 Boyle CO LN	4.3 US 150 Bypass
*	US 150B	0.0 US 150	1.1 US 27

LIVINGSTON COUNTY

	ROAD	FROM	TO
*	US 62	0.8 Barge Dock [~~0.0 Marshall CO LN~~]	2.9 Lyon CO LN
	[~~Weight Limit - Bridge over Kentucky Lake Dam Lock @ milepoint 0.31~~		
	~~TY I = 20 tons, TY II = 37 tons, TY III = 38 tons, TY IV = 53 tons~~		
	~~Weight Limit - Bridge over I.C. Gulf R.R. @ milepoint 0.64~~		
	~~TY I = 20 tons, TY II = 35 tons, TY III = 41 tons, TY IV = 53 tons~~]		
	Weight Limit - Bridge over Reed's Haul Road @ milepoint 0.97		
	TY I = 20 tons, TY II = 44 tons, TY III = 46 tons, TY IV = 56 tons		
	Weight Limit - Bridge over Cumberland River @ milepoint 2.78		
	TY I = 20 tons, TY II = 26 tons, TY III = 29 tons, TY IV = 38 tons		
*	KY 453	0.5 Barge Dock	4.2 I-24
	Weight Limit - Bridge over IC RR @ milepoint 1.92		
	TY I = 20 tons, TY II = 45 tons, TY III = 47 tons, TY IV = 60 tons		
	Weight Limit - Bridge over Reed's Haul RD and RR @ milepoint 3.08		
	TY I = 20 tons, TY II = 44 tons, TY III = 46 tons, TY IV = 55 tons		

[~~LOGAN COUNTY~~

	ROAD	FROM	TO
*	~~US 79~~	~~11.8 US 431 South~~	~~12.1 US 431 North]~~

LYON COUNTY

	ROAD	FROM	TO
*	Western Kentucky Parkway	0.0 I-24 ~~[3.7 US 62]~~	5.6 Caldwell CO LN
*	US 62	0.0 Livingston CO LN	12.2 Western Kentucky Parkway

McCREARY COUNTY

	ROAD	FROM	TO
*	US 27	4.6 KY 92 ~~[0.0 Tennessee State LN]~~	22.3 Pulaski CO LN
*	KY 92	16.6 US 27	25.7 Whitley CO LN

Weight Limit - Bridge over Marsh Creek @ milepoint 22.69
TY I = 20 tons, TY II = 37 tons, TY III = 42 tons, TY IV = 60 tons

McLEAN COUNTY

	ROAD	FROM	TO
*	US 431	9.3 Barrett Hill RD ~~[8.3 KY 1080]~~	11.6 Daviess CO LN

~~[Weight Limit - Bridge over Buck Creek @ milepoint 9.13~~
~~TY I = 20 tons, TY II = 33 tons, TY III = 38 tons, TY IV = 60 tons]~~

*	KY 81	12.8 KY 136	18.3 Daviess CO LN

Weight Limit - Bridge over Myer Creek @ milepoint 13.68
TY I = 20 tons, TY II = 37 tons, TY III = 50 tons, TY IV = 60 tons

*	KY 136	11.1 KY 1792	12.9 KY 81

Weight Limit - Bridge over Long Falls Creek @ milepoint 11.26
TY I = 20 tons, TY II = 36 tons, TY III = 40 tons, TY IV = 57 tons

*	KY 140	0.0 KY 256	0.1 KY 1792
~~[*~~	~~KY 1080~~	~~2.6 US 431~~	~~3.2 Mine]~~
*	KY 1792	0.0 KY 140	2.6 KY 136

Weight Limit - Bridge over Porters Drainage Ditch @ milepoint 0.92
TY I = 20 tons, TY II = 27 tons, TY III = 32 tons, TY IV = 52 tons

*	Barrett Hill RD		
	CR 5014	0.0 US 431	2.9 Ohio CO LN
*	Cane Run Road		
	CR 5203	0.0 KY 256	0.2 Mine

MADISON COUNTY

	ROAD	FROM	TO
*	KY 876	7.2 I-75	8.1 KY 52

MAGOFFIN COUNTY

	ROAD	FROM	TO
*	Mountain PKWY	63.1 Morgan CO LN	75.6 US 460

Weight Limit - Bridge over Licking River @ milepoint 74.51
TY I = 20 tons, TY II = 39 tons, TY III = 42 tons, TY IV = 52 tons

*	US 460	12.5 Mountain PKWY	20.4 Johnson CO LN
*	KY 7	6.8 Mine ~~[0.0 Floyd CO LN]~~	8.2 KY 404
		9.3 KY 542	23.9 Mountain Parkway

~~[Weight Limit - Bridge over Licking River @ milepoint 5.79~~
~~TY I = 20 tons, TY II = 31 tons, TY III = 36 tons, TY IV = 58 tons]~~

*	KY 30	1.9 Spruce Pine Fork RD ~~[1.0 Mine]~~	8.9 Mountain Parkway

Weight Limit - Bridge over Middle Fork @ milepoint 7.55
TY I = 20 tons, TY II = 36 tons, TY III = 38 tons, TY IV = 49 tons

*	KY 114	0.0 US 460	5.0 Floyd CO LN
*	KY 404	0.0 KY 7	2.7 Floyd CO LN
*	KY 542	0.0 Breathitt CO LN	5.8 KY 7

Weight Limit - Bridge over Licking River @ milepoint 5.81
TY I = 20 tons, TY II = 35 tons, TY III = 39 tons, TY IV = 58 tons

*	KY 867	4.7 KY 1635	5.7 KY 7
~~[*~~	~~KY 1397~~	~~1.8 Mine~~	~~3.0 KY 30]~~
*	KY 1635	0.0 Tiptop-Bettsmann RD	5.7 KY 867

~~[* Bootree Branch of Oakley Creek RD~~

	~~CR 5223~~	~~0.0 KY 1635~~	~~0.2 Mine]~~
*	Tiptop Betts Branch RD		
	CR 5225B	0.0 KY 1635	0.7 Breathitt CO LN
*	Spruce Pine Fork RD		
	CR 5231	0.0 KY 30	0.5 Mine

~~[MARSHALL COUNTY~~

~~ROAD~~	~~FROM~~	~~TO~~

~~* US 62 | 11.0 US 641 | 12.1 Livingston CO LN~~
~~Weight Limit - Bridge over Tennessee River Dam Gates @ milepoint 11.94~~
~~TY I = 20 tons, TY II = 35 tons, TY III = 37 tons, TY IV 48 tons]~~

MARTIN COUNTY

	ROAD	FROM	TO
*	KY 3	0.0 Johnson CO LN	10.0 KY 645
		11.4 KY 40	12.6 Mine
*	KY 40	5.3 KY 1224	10.2 KY 3 [~~9.1 KY 645~~]
	Weight Limit - Bridge over Rockhouse Fork @ milepoint 6.945		
	TY I = 20 tons, TY II = 35 tons, TY III = 39 tons, TY IV = 55 tons		
	Weight Limit - Bridge over Rockcastle Creek @ milepoint 10.14		
	TY I = 20 tons, TY II = 41 tons, TY III = 47 tons, TY IV = 60 tons		
		11.9 KY 645 (West) [~~10.8 KY 645 (East)~~]	
			20.3 West Virginia ST LN
*	KY 292	0.0 Pike CO LN	14.6 Mine
	Weight Limit - Bridge over Wolfe Creek @ milepoint 11.99		
	TY I = 20 tons, TY II = 33 tons, TY III = 36 tons, TY IV = 45 tons		
*	KY 645	0.0 Lawrence CO LN	6.6 KY 3 (North)
		6.6 KY 3 (South)	7.6 KY 40
*	KY 1224	4.7 CR 5343	5.2 KY 40
*	KY 1439	6.5 Tipple [~~5.1 Middle Fork of Wolf Creek~~]	
			6.6 Whitecabin BR RD
		7.0 Mine	10.7 KY 2032 [~~11.2 KY 1714~~]
*	KY 1714	8.2 Little Peter Cave Branch RD [~~5.2 KY 1439~~]	
			10.8 KY 292
*	KY 2032	0.0 KY 1439	4.0 KY 40
*	Saw Mill Hollow RD		
	CR 5026	0.0 KY 3	0.3 Mine
*	White Cabin Branch RD		
	CR 5121	0.0 KY 1439	0.6 [~~0.7~~] Haul Rd
		5.0 CR 5205	11.7 KY 1439
*	Middle Fork of Wolf Creek Road		
	CR 5205	0.0 KY 3	4.8 [~~4.2~~] Mine
		5.2 Mine [~~5.0 Haul Road~~]	11.7 KY 1439
[~~*	Ventors Branch RD~~		
	~~CR 5212~~	~~0.0 KY 3~~	~~0.6 Mine~~]
*	Airport Road		
	CR 5223	0.0 KY 3	3.0 Mine
*	Lower Wolfe Branch Road		
	CR 5343	0.0 KY 1224	0.5 Mine

MASON COUNTY

	ROAD	FROM	TO
*	US 62	12.7 US 68	14.0 KY 546
		17.0 KY 11	18.0 Ohio State LN [~~17.3 KY 10~~]
	Weight Limit - Bridge over Ohio River @ milepoint 17.51		
	TY I = 20 tons, TY II = 23 tons, TY III = 25 tons, TY IV = 37 tons		
*	US 68	0.0 Fleming CO LN	11.9 US 62
*	KY 9	0.0 Bracken CO LN	9.3 US 62
*	KY 10	4.0 KY 546	10.2 Spring Creek RD
	Weight Limit - Bridge over Bull Fork @ milepoint 7.65		
	TY I = 20 tons, TY II = 39 tons, TY III = 42 tons, TY IV = 60 tons		
	[~~Weight Limit - Bridge over L&N RR @ milepoint 9.79~~		
	~~TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons~~]		
*	KY 11	0.0 Fleming CO LN	11.2 [~~11.3~~] US 62
	Weight Limit - Bridge B00064 over Mill Creek @ milepoint 0.16		
	TY I = 20 tons, TY II = 37 tons, TY III = 39 tons, TY IV = 59 tons		
[~~*	KY 546~~	~~0.0 Bracken CO LN~~	~~12.0 KY 11~~]
*	Spring Creek Road		
	CR 5012	0.0 KY 10	1.8 Cabin Creek PK
	Weight Limit - Bridge over Spring Creek 1.2 miles east of Plumville		
	TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons		
	Weight Limit - Bridge over Spring Creek @ Cabin Creek Pike		
	TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons		
*	Cabin Creek Pike		
	CR 5013	0.0 Spring Creek RD	0.7 Dravo Lime CO

MERCER COUNTY

	ROAD	FROM	TO
*	Bluegrass PKWY	52.3 Anderson CO LN	56.3 Anderson CO LN
*	KY 342	3.2 Dix Dam RD	4.6 KY 33

MONTGOMERY COUNTY

	ROAD	FROM	TO
*	US 460	7.3 KY 11 (North)	8.3 KY 686 [~~9.5 US 60~~]
*	KY 11	0.0 Powell CO LN	9.2 KY 686 [~~10.0 US 460 East~~]
		10.0 US 460 West	15.4 Bath CO LN
*	KY 686	0.0 US 460 West	2.7 KY 11

MORGAN COUNTY

	ROAD	FROM	TO
*	Mountain PKWY	57.7 Wolfe CO LN	63.1 Magoffin CO LN

Weight Limit - Bridge over KY 134 and Red River @ milepoint 60.40
TY I = 20 tons, TY II = 45 tons, TY III = 46 tons, TY IV = 60 tons
Weight Limit - Bridge over KY 134 and Johnson Creek @ milepoint 62.12
TY I = 20 tons, TY II = 41 tons, TY III = 41 tons, TY IV = 60 tons

MUHLENBERG COUNTY

	ROAD	FROM	TO
*	Western Kentucky Parkway	43.4 Hopkins CO LN	65.7 Ohio CO LN

Weight Limit - Bridge over Pond River Relief @ milepoint 43.60
TY I = 20 tons, TY II = 38 tons, TY III = 45 tons, TY IV = 60 tons
Weight Limit - Bridge over KY 175-IC RR - Unnamed Creek @ milepoint 48.05
TY I = 20 tons, TY II = 42 tons, TY III = 44 tons, TY IV = 60 tons
Weight Limit - Bridge over IC RR @ milepoint 55.51
TY I = 20 tons, TY II = 43 tons, TY III = 45 tons, TY IV = 60 tons
Weight Limit - Bridge over Green River @ milepoint 65.38
TY I = 20 tons, TY II = 34 tons, TY III = 39 tons, TY IV = 60 tons

*	US 62	0.0 Hopkins CO LN	10.5 KY 172 [~~26.0 Ohio CO LN~~]

Weight Limit - Bridge over Branch of Thompson Creek @ milepoint 3.68
TY I = 20 tons, TY I = 28 tons, TY III = 31 tons, TY IV = 40 tons
Weight Limit - Bridge over I.C. & Gulf R.R. @ milepoint 5.40
TY I = 20 tons, TY II = 42 tons, TY III = 45 tons, TY IV = 59 tons

		14.7 KY 189	26.0 Ohio CO LN

Weight Limit - Bridge over L&N RR & Little Cypress Creek Bridge @ milepoint 17.76
TY I = 20 tons, TY II = 42 tons, TY III = 47 tons, TY IV = 60 tons
Weight Limit - Bridge over I.C. RR @ milepoint 24.76
TY I = 20 tons, TY II = 29 tons, TY III = 30 tons, TY IV = 37 tons

*	US 431	11.5 KY 176 [~~8.0 KY 246~~]	24.2 Green River Power Plant RD
[~~*	KY 70	0.0 Hopkins County Line	15.4 US 431
		23.6 Barge Dock	23.8 Butler CO LN

~~Weight Limit - Bridge over Mud River @ milepoint 23.75~~
~~TY I = 20 tons, TY II = 39 tons, TY III = 41 tons, TY IV = 48 tons~~]

*	KY 176	0.0 US 62	11.7 [~~12.0~~] T V A Paradise Plant

Weight Limit - Bridge @ milepoint 1.01
TY I = 20 tons, TY II = 37 tons, TY III = 50 tons, TY IV = 60 tons
Weight Limit - Bridge over @ milepoint 2.38
TY I = 20 tons, TY II = 32 tons, TY III = 49 tons, TY IV = 60 tons
Weight Limit - Bridge over @ milepoint 4.29
TY I = 20 tons, TY II = 42 tons, TY III = 49 tons, TY IV = 60 tons
Weight Limit - Bridge over @ milepoint 6.38
TY I = 20 tons, TY II = 32 tons, TY III = 49 tons, TY IV = 60 tons

*	KY 181	15.2 Western KY Parkway	17.5 Tipple [~~19.0 KY 70~~]
*	KY 189	8.8 [~~14.0~~] US 62	15.3 KY 70 (North Junction)
[~~*	KY 246	1.9 Railroad ST	3.8 US 431
~~*	Green River Power Plant Road		
	~~CR 5045~~	~~0.0 US 431~~	~~0.7 KY Utilities Plant~~
~~*	Wherry RD		
	~~CR 5111~~	~~1.7 Mine~~	~~3.7 Riverside Church RD~~]
*	Riverside Church RD		
	CR 5112	0.0 Power Plant Haul RD	3.5 Mine
		[~~2.6 Wherry RD~~	~~3.6 Power Plant~~
~~*	Railroad ST (Beech Creek)~~		
	~~CR 5206D~~	~~0.0 KY 246~~	~~0.3 Mine~~]

*	Cypress Valley RD CR 5419	0.0 Haul RD	0.3 Locketown RD
*	Locketown RD CR 5420	0.0 Graham Ballfield RD	0.3 Cypress Valley RD
*	Graham Ballfield RD CR 5421	0.0 Locketown RD	0.4 [~~0.7~~] Mine

NELSON COUNTY

	ROAD	FROM	TO
*	Bluegrass PKWY	33.3 KY 55	39.3 Washington CO LN
*	US 31E	15.4 KY 245	27.6 Spencer CO LN
*	US 150	1.7 KY 245	1.9 Bluegrass PKWY
[~~* US 62~~		~~15.9 KY 245~~	~~25.0 KY 55~~
	~~Weight Limit - Bridge over East Fork of Simpson Creek @ milepoint 24.96~~ ~~TY I = 20 tons, TY II = 34 tons, TY III = 38 tons, TY IV = 54 tons~~		
~~* KY 55~~		~~3.1 Bluegrass Parkway~~	~~3.8 US 62~~
	~~Weight Limit - Bridge over East Fork of Simpson Creek @ milepoint 3.77~~ ~~TY I = 20 tons, TY II = 32 tons, TY III = 37 tons, TY IV = 60 tons]~~		
*	KY 245	0.0 US 150 [~~2.3 US 62~~]	3.3 US 31E

NICHOLAS COUNTY

	ROAD	FROM	TO
*	US 68	0.0 Bourbon CO LN	12.2 Robertson CO LN
	Weight Limit - Bridge over Stony Creek @ milepoint 9.72 TY I = 20 tons, TY II = 35 tons, TY III = 37 tons, TY IV = 60 tons		

OHIO COUNTY

	ROAD	FROM	TO
*	Western KY PKWY	74.6 US 231 [~~65.7 Muhlenberg CO LN~~]	76.8 Green River Parkway
	[~~Weight Limit - Bridge over KY 369 @ milepoint 72.43~~ ~~TY I = 20 tons, TY II = 39 tons, TY III = 43 tons, TY IV = 59 tons~~] Weight Limit - Bridge over US 231 @ milepoint 74.56 TY I = 20 tons, TY II = 45 tons, TY III = 47 tons, TY IV = 60 tons		
*	Green River PKWY	35.1 Butler CO LN	41.3 Western KY PKWY
		47.8 KY 69	59.5 Daviess CO LN
	Weight Limit - Bridge over Rough River @ milepoint 49.34 TY I = 20 tons, TY II = 45 tons, TY III = 47 tons, TY IV = 56 tons		
*	US 62	0.0 Muhlenberg CO LN	13.2 Mine
	Weight Limit - Bridge over Green River @ milepoint 0.01 TY I = 20 tons, TY II = 27 tons, TY III = 32 tons, TY IV = 38 tons [~~Weight Limit - Bridge over Lewis Creek @ milepoint 1.45~~ ~~TY I = 20 tons, TY II = 28 tons, TY III = 32 tons, TY IV = 40 tons~~] Weight Limit - Bridge over Branch of Three Lick Fork @ milepoint 11.91 TY I = 20 tons, TY II = 31 tons, TY III = 37 [~~36~~] tons, TY IV = 50 tons Weight Limit - Bridge over Three Lick Fork @ milepoint 12.03 TY I = 20 tons, TY II = 30 tons, TY III = 36 tons, TY IV = 54 tons Weight Limit - Bridge over Muddy Creek @ milepoint 12.30 TY I = 20 tons, TY II = 30 tons, TY III = 37 [~~36~~] tons, TY IV = 52 tons Weight Limit - Bridge @ milepoint 12.46 TY I = 20 tons, TY II = 35 tons, TY III = 50 tons, TY IV = 60 tons		
*	US 231	5.8 KY 269	13.2 KY 69
	Weight Limit - Bridge over Three Lick Fork Branch @ milepoint 9.78 TY I = 20 tons, TY II = 35 tons, TY III = 50 tons, TY IV = 60 tons Weight Limit - North Fork Muddy Creek Bridge @ milepoint 12.30 TY I = 20 tons, TY II = 32 tons, TY III = 37 tons, TY IV = 60 tons Weight Limit - Bridge @ milepoint 12.46 TY I = 20 tons, TY II = 35 tons, TY III = 50 tons, TY IV = 60 tons		
		23.6 KY 2115 [~~20.8 Buford RD~~]	24.3 Daviess CO LN
	[~~Weight Limit - Bridge over BR of North Fork of Barnett Creek @ milepoint 23.223~~ ~~TY I = 20 tons, TY II = 38 tons, TY III = 50 tons, TY IV = 60 tons~~ ~~Weight Limit - Bridge over North Fork of Barnett Creek @ milepoint 23.305~~ ~~TY I = 20 tons, TY II = 38 tons, TY III = 50 tons, TY IV = 60 tons~~]		
*	KY 69	7.6 KY 85 (South)	15.0 Green River PKWY
		[~~6.7 KY 85 (North)~~	~~7.6 KY 85 (South)~~
		~~13.7 US 231 (South)~~	~~15.0 Green River PKWY~~]
		35.7 Aetnaville-Haynesville RD	37.3 Hancock CO LN
*	KY 85	1.0 Landfill Entrance	1.9 Landfill Entrance #2

		7.2 KY 69 (East)	11.3 US 62
	Weight Limit - Bridge over Branch West Fork Lewis Creek @ milepoint 9.62		
	TY I = 20 tons, TY II = 30 tons, TY III = 37 ~~[36]~~ tons, TY IV = 58 tons		
*	KY 269	0.8 Schultztown-Cool Springs RD	5.6 US 231
*	KY 273	0.0 KY 69	1.6 Mine
*	KY 1903	0.0 US 62	0.7 Lewis Creek Dock
*	Aetnaville-Haynesville RD		
	CR 5064	0.0 Mine	1.3 KY 69
*	Sandefur Crossing RD		
	CR 5172	0.0 US 62	1.0 W.D. Leech RD
*	Roscoe Stewart RD		
	CR 5179	0.0 Springs RD	1.0 Mine
*	W.D. Leech RD		
	CR 5205	0.0 Sandefur Crossing RD	1.0 Mine
*	Springs RD		
	CR 5267	0.0 KY 269	1.2 Roscoe Stewart RD
~~[*~~	~~Buford RD~~		
	~~CR 5386~~	~~0.0 US 231~~	~~0.3 Mosley RD~~
~~*~~	~~Mosley RD~~		
	~~CR 5391~~	~~0.0 Buford RD~~	~~0.9 Mine]~~

OWSLEY COUNTY

	ROAD	FROM	TO
*	KY 11	14.2 KY 30 ~~[0.0 Clay CO LN]~~	17.3 Lee CO LN
	~~[Weight Limit - Bridge over Sexton Creek @ milepoint 1.80~~		
	~~TY I = 20 tons, TY II = 39 tons, TY III = 42 tons, TY IV = 55 tons~~		
	~~Weight Limit - Bridge over Island Creek @ milepoint 4.02~~		
	~~TY I = 20 tons, TY II = 42 tons, TY III = 44 tons, TY IV = 57 tons~~		
	~~Weight Limit - Bridge over White Oak Creek @ milepoint 6.18~~		
	~~TY I = 20 tons, TY II = 33 tons, TY III = 34 tons, TY IV = 47 tons~~		
~~*~~	~~KY 30~~	~~0.0 Jackson CO LN~~	~~6.8 KY 399~~
	~~Weight Limit - Bridge over Little Sturgeon Creek @ milepoint 3.42~~		
	~~TY I = 18 tons, TY II = 19 tons, TY III = 22 tons, TY IV = 37 tons~~		
	~~Weight Limit - Bridge over Little Sturgeon Creek @ milepoint 4.88~~		
	~~TY I = 20 tons, TY II = 37 tons, TY III = 43 tons, TY IV = 60 tons~~		
	~~Weight Limit - Bridge over Little Sturgeon Creek @ milepoint 5.15~~		
	~~TY I = 20 tons, TY II = 18 tons, TY III = 22 tons, TY IV = 34 tons~~		
~~*~~	~~KY 399~~	~~0.0 KY 30~~	~~1.9 Lee CO LN~~
~~*~~	~~KY 587~~	~~0.0 Jackson CO LN~~	~~0.5 Lee CO LN]~~

PENDLETON COUNTY

	ROAD	FROM	TO
*	US 27	0.0 Harrison CO LN	19.4 Campbell CO LN
	Weight Limit - Bridge over Blanket Creek near Four Oak @ milepoint 4.41		
	TY I = 20 tons, TY II = 39 tons, TY III = 46 tons, TY IV = 60 tons		
	Weight Limit - Bridge over L&N RR @ milepoint 7.57		
	TY I = 20 tons, TY II = 29 tons, TY III = 31 tons, TY IV = 53 tons		
	Weight Limit - Bridge over L&N RR-CR 5011-Kennedy Br. @ milepoint 15.78		
	TY I = 20 tons, TY II = 39 tons, TY III = 43 tons, TY IV = 60 tons		
*	KY 8	0.0 Campbell CO LN ~~[2.2 Black River Lime]~~	2.2 KY 154
~~[*~~	~~KY 154~~	~~4.5 KY 546~~	~~5.7 KY 8~~
~~*~~	~~KY 546~~	~~0.0 Campbell CO LN~~	~~4.3 Bracken CO LN]~~

PERRY COUNTY

	ROAD	FROM	TO
*	Daniel Boone Parkway	51.0 Leslie CO LN	59.1 KY 15
*	KY 7	0.0 KY 15	13.6 Letcher CO LN
	Weight Limit - Bridge over Maces @ milepoint 2.44		
	TY I = 20 tons, TY II = 38 tons, TY III = 39 tons, TY IV = 54 tons		
*	KY 15	0.0 Knott CO LN	25.2 Breathitt CO LN
	Weight Limit - Bridge over Main Street, Carr Fork, & L&N RR @ milepoint 0.20		
	TY I = 20 tons, TY II = 40 tons, TY III = 44 tons, TY IV = 57 tons		
	Weight Limit - Bridge over KY 80 and North Fork KY River @ milepoint 13.57		
	TY I = 20 tons, TY II = 45 tons, TY III = 46 tons, TY IV = 51 tons		
	Weight Limit - Bridge over First Creek & L&N RR @ milepoint 15.95		
	TY I = 20 tons, TY II = 41 tons, TY III = 42 tons, TY IV = 58 tons		

*	KY 28	11.9 KY 451 [~~11.4 Barwick Rd~~]	18.1 KY 15
	Weight Limit - Bridge over Grapevine Creek @ milepoint 15.02		
	TY I = 20 tons, TY II = 38 tons, TY III = 39 tons, TY IV = 55 [~~56~~] tons		
*	KY 80	0.0 Leslie CO LN	7.9 KY 15 Underpass
	Weight Limit - Bridge over Right Fork of Big Creek @ milepoint 1.57		
	TY I = 20 tons, TY II = 24 tons, TY III = 28 tons, TY IV = 47 tons		
	Weight Limit - Bridge over Big Creek @ mile point 5.27		
	TY I = 20 tons, TY II = 28 [~~27~~] tons, TY III = 24 [~~30~~] tons, TY IV = 40 [44] tons		
	Weight Limit - Bridge over L & N R.R. & Kentucky River @ milepoint 7.09		
	TY I = 20 tons, TY II = 33 [~~37~~] tons, TY III = 39 tons, TY IV = 44 [~~43~~] tons		
		7.9 D Boone Parkway & KY 15	15.9 Knott CO LN
*	KY 267	2.0 KY 15	3.2 Tipple
		9.3 KY 1146	10.7 Mine
*	KY 451	7.7 Daniel Boone PKWY	7.8 KY 80
		17.2 Lick Branch RD	20.0 KY 28
*	KY 463	1.4 Jackson Fork RD	6.5 KY 699
	Weight Limit - Bridge over Leatherwood Creek @ milepoint 6.34		
	TY I = 20 tons, TY II = 43 tons, TY III = 44 tons, TY IV = 60 tons		
*	KY 476	7.5 Dwarf-Engle Fork RD [~~0.0 KY 15~~]	22.3 Breathitt CO LN
	Weight Limit - Bridge over Troublesome Creek @ milepoint 8.72		
	TY I = 20 tons, TY II = 28 tons, TY III = 31 [~~36~~] tons, TY IV = 40 tons		
	Weight Limit - Bridge over Ball Fork @ milepoint 12.36		
	TY I = 20 tons, TY II = 30 tons, TY III = 37 tons, TY IV = 48 tons		
	Weight Limit - Bridge over Troublesome Creek @ milepoint 18.30		
	TY I = 20 tons, TY II = 25 tons, TY III = 28 tons, TY IV = 40 tons		
*	KY 550	2.5 KY 476 @ Darfork	3.7 Knott CO LN
	Weight Limit - Bridge over Lotts Creek @ milepoint 2.454		
	TY I = 20 tons, TY II = 34 tons, TY III = 37 tons, TY IV = 50 tons		
	Weight Limit - Bridge over Combs Branch @ milepoint 2.523		
	TY I = 18 tons, TY II = 19 [~~18~~] tons, TY III = 22 tons, TY IV = 36 tons		
	Weight Limit - Bridge over Troublesome Creek @ milepoint 3.155		
	TY I = 20 tons, TY II = 24 tons, TY III = 26 tons, TY IV = 34 tons		
*	KY 699	1.6 Blue Diamond Coal Camp RD	12.5 KY 7
	Weight Limit - Bridge over Leatherwood Creek @ milepoint 4.75		
	TY I = 20 tons, TY II = 33 tons, TY III = 35 tons, TY IV = 59 tons		
	Weight Limit - Bridge over Leatherwood Creek @ milepoint 8.01		
	TY I = 20 tons, TY II = 37 tons, TY III = 40 tons, TY IV = 60 tons		
	Weight Limit - Bridge over Big Leather Creek @ milepoint 10.77		
	TY I = 20 tons, TY II = 43 tons, TY III = 44 tons, TY IV = 60 tons		
*	KY 1067	0.0 KY 15	2.7 KY 2446
*	KY 1087	0.0 KY 476	0.7 Lick Branch RD
[*	~~KY 1088~~	~~0.0 KY 476~~	~~1.1 Mine~~]
*	KY 1095	0.0 Fusonia-Kodak RD	2.9 KY 15
	Weight Limit - Bridge over Carr Fork @ milepoint 2.55		
	TY I = 20 tons, TY II = 22 tons, TY III = 22 tons, TY IV = 22 tons		
*	KY 1096	0.0 KY 80	5.1 Tipple [~~5.9 Mine~~]
	Weight Limit - Bridge B00053 over Big Creek @ milepoint 0.02		
	TY I = 20 tons, TY II = 39 tons, TY III = 38 tons, TY IV = 46 tons		
	Weight Limit - Bridge over Big Creek @ milepoint 3.55		
	TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons		
*	KY 1146	4.0 KY 80	9.3 KY 267
*	KY 2446	0.5 Fifteen Mile Creek RD	3.2 Mine
*	KY 2447	0.0 KY 7 near Fusonia	0.2 End State Maintenance
	Weight Limit - Bridge over North Fork @ Kentucky River milepoint 0.01		
	TY I = 20 tons, TY II = 45 tons, TY III = 49 tons, TY IV = 55 tons		
*	KY 3348	0.0 Begin State Maintenance	3.9 KY 699
	Weight Limit - Bridge B00108 over Little Leatherwood Creek @ milepoint 1.44		
	TY I = 20 tons, TY II = 36 tons, TY III = 41 tons, TY IV = 60 tons		
	Weight Limit - Bridge over Little Leatherwood Creek @ milepoint 2.32		
	TY I = 20 tons, TY II = 40 tons, TY III = 49 tons, TY IV = 60 tons		
*	Wayne Davidson Road		
	CR 5005	0.3 Cumberland Elk Tipple	0.5 KY 15
*	Dwarf-Engle Fork Road		
	CR 5032	0.0 KY 476	0.5 Engle Fork RD [~~0.1 Highland Coal Mine~~]
*	Engle Fork Road		
	CR 5033	0.0 Dwarf-Engle Fork Road	0.3 Mine
[*	~~Coates Branch Road~~		

	~~CR 5044~~	~~0.0 Ky 476~~	~~0.5 Ball Branch Mine~~]
*	Lick Branch Road		
	CR 5045	0.0 KY 1087	0.6 Star Fire Mine
[~~* Cockroll Fork - Noble Branch RD~~			
	~~CR 5050~~	~~0.0 KY 476~~	~~1.7 Mine~~
~~*~~	~~Buckhorn Creek Road~~		
	~~CR 5070~~	~~0.0 KY 476~~	~~0.1 Breathitt CO LN~~
	~~Weight Limit - Bridge over Troublesome Creek~~		
	~~TY I = 16 tons, TY II = 16 tons, TY III = 16 tons, TY IV = 16 tons~~		
~~*~~	~~Jeff - Knott County LN RD~~		
	~~CR 5100~~	~~0.0 Old KY 15 Loop #1~~	~~1.6 Mine~~
~~*~~	~~Old KY 15 Loop #1 Road~~		
	~~CR 5102~~	~~0.0 KY 15~~	~~0.2 Kentucky Prince Tipple~~]
*	George Branch RD		
	CR 5115	0.0 KY	0.1 Tipple
*	Bible Avenue (Vicco)		
	CR 5118H	0.0 KY 1095	0.3 KY 15
*	Montgomery Creek RD		
	CR 5120	0.3 Mine	1.5 KY 1095
*	Fusonia-Fort Branch RD		
	CR 5123	4.4 Mine	4.9 KY 2447
*	Straight Creek RD		
	CR 5140	0.0 KY 3348	0.5 Mine
*	Beech Fork Road		
	CR 5146	0.0 KY 3196	0.5 Tipple
*	Old House Branch RD		
	CR 5148	0.0 KY 463	1.6 Mine
[~~* Jackson Fork Road~~			
	~~CR 5152~~	~~0.0 KY 463~~	~~0.4 Blue Diamond Mine~~]
*	Sam Campbell Branch Road (Old Pigeon Roose-Hull School RD)		
	CR 5219	0.0 KY 1096	0.7 Mine
*	Whitaker Fork Road		
	CR 5319	2.9 Clear Fork RD [~~CR 5320~~]	4.8 Tipple
*	Clear Fork Road		
	CR 5320	0.0 KY 28	2.3 CR 5319
*	Trace Branch-Tenmile Creek Road		
	CR 5326	0.0 KY 28	1.0 Mine
[~~* Barwick Road~~			
	~~CR 5330~~	~~0.0 KY 28~~	~~0.8 Breathitt CO LN~~]
*	Right Fork Spencer Creek Road		
	CR 5332	0.0 Spencer Creek-Napfor BR RD	1.0 Vires Coal Mine
*	Spencer Creek-Napfor Branch Road		
	CR 5333	0.0 KY 28	2.7 Napfor Branch RD [~~2.2 Mine~~]
*	Napier Branch Road		
	CR 5344	0.0 KY 451	0.8 Mine

PIKE COUNTY

	ROAD	FROM	TO
*	US 23	0.0 Letcher CO LN	35.1 Floyd CO LN
	Weight Limit - Levisa Fork Bridge @ milepoint 20.93		
	TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons		
*	US 119	0.0 US 23 (North of Pikeville)	29.7 W. Va. State LN
	Weight Limit - Bridge over Raccoon Creek @ milepoint 6.99		
	TY I = 18 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons		
	Weight Limit - Bridge over John's Creek @ milepoint 8.32		
	TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons		
	Weight Limit - Bridge over Bent Branch @ milepoint 9.99		
	TY I = 20 tons, TY II = 34 tons, TY III = 37 tons, TY IV = 60 tons		
	Weight Limit - Bridge over Bent Branch @ milepoint 10.23		
	TY I = 13 tons, TY II = 13 tons, TY III = 13 tons, TY IV = 13 tons		
	Weight Limit - Bridge over Bent Branch @ milepoint 10.88		
	TY I = 12 tons, TY II = 12 tons, TY III = 12 tons, TY IV = 12 tons		
	Weight Limit - Bridge over Bent Branch @ milepoint 11.25		
	TY I = 20 tons, TY II = 34 tons, TY III = 37 tons, TY IV = 60 tons		
	Weight Limit - Bridge over Bent Branch @ milepoint 11.40		
	TY I = 20 tons, TY II = 20 tons, TY III = 23 tons, TY IV = 40 tons		
	Weight Limit - Bridge over Bent Branch @ milepoint 11.63		

TY I = 14 tons, TY II = 14 tons, TY III = 14 tons, TY IV = 14 [~~11~~] tons
Weight Limit - Bridge over Fork of Big Creek @ milepoint 16.41
TY I = 20 tons, TY II = 18 tons, TY III = 21 tons, TY IV = 40 tons
Weight Limit - Bridge over Tug River @ West Virginia State Line @ milepoint 29.7
TY I = 20 tons, TY II = 45 tons, TY III = 45 tons, TY IV = 52 tons

*	US 460	0.0 US 23	25.4 Virginia State LN

Weight Limit - Bridge over Levisa Fork @ milepoint 5.65 [~~4.26~~]
TY I = 20 tons, TY II = 40 tons, TY III = 40 tons, TY IV = 47 tons

*	KY 80	0.0 US 460	4.3 Upper Branch RD [~~6.6 Wolfpen Branch RD~~]

Weight Limit - Bridge B00138 over Russell Fork of Big Sandy @ milepoint 3.07
TY I = 20 tons, TY II = 42 tons, TY III = 44 tons, TY IV = 58 tons
Weight Limit - Bridge over Russell Fork & CSX [~~Clinchfield~~] R.R. @ milepoint 3.60
TY I = 20 tons, TY II = 33 tons, TY III = 38 tons, TY IV = 58 tons

*	KY 122	2.3 Indian Creek RD	10.4 KY 2167 [~~11.9 Little Creek RD~~]

Weight Limit - Bridge over Robinson Creek @ milepoint 6.75
TY I = 20 tons, TY II = 34 tons, TY III = 38 tons, TY IV = 54 tons
Weight Limit - Bridge over Bear Fork north of Jones Chapel @ milepoint 8.28
TY I = 20 tons, TY II = 34 tons, TY III = 39 tons, TY IV = 60 tons

*	KY 194	10.2 Miller Creek-Cowpen RD	26.7 KY 632
		[~~6.1 Sycamore Creek RD~~	~~44.4 Mine~~]

Weight Limit - Bridge over John's Creek @ milepoint 25.15 [~~62~~]
TY I = 20 tons, TY II = 27 tons, TY III = 32 tons, TY IV = 52 tons

		39.6 KY 1499	43.9 Mine

Weight Limit - Third Fork Culvert @ milepoint 42.28 [~~71~~]
TY I = 15 tons, TY II = 15 tons, TY III = 15 tons, TY IV = 15 tons

		48.0 Mine	60.4 Old KY 319
		[~~50.0 Tipple~~	~~57.5 Mine~~

~~Weight Limit - Bridge over Peter Creek @ milepoint 51.37~~
~~TY I = 20 tons, TY II = 39 tons, TY III = 41 tons, TY IV = 60 tons~~]

		66.0 Lynntrough Branch RD	72.8 Virginia State LN
		[~~67.7 KY 2062~~	~~73.2 Virginia State LN~~]
*	KY 195	0.0 KY 197	3.2 Marrowbone Creek RD
		4.7 Big Branch RD	11.6 US 460

[~~Weight Limit - Bridge over Brushy Branch @ milepoint 3.27~~
~~TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons~~]
Weight Limit - Bridge B00056 over Wolf Pit Branch @ milepoint 9.93
TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons

*	KY 197	0.0 US 23	16.6 KY 80

Weight Limit - Bridge over Sycamore Creek @ milepoint 6.70
TY I = 20 tons, TY II = 32 tons, TY III = 37 [~~38~~] tons, TY IV = 46 tons
Weight Limit - Bridge over Elkhorn Creek @ milepoint 13.91
TY I = 20 tons, TY II = 32 tons, TY III = 35 tons, TY IV = 51 tons

[~~*	KY 199~~	~~8.2 KY 1056~~	~~11.6 US 119~~

~~Weight Limit - Bridge over Pond Creek @ milepoint 8.29~~
~~TY I = 20 tons, TY II = 39 tons, TY III = 41 tons, TY IV = 59 tons~~
~~Weight Limit - Bridge over Pond Creek @ milepoint 8.72~~
~~TY I = 20 tons, TY II = 22 tons, TY III = 22 tons, TY IV = 22 tons~~
~~Weight Limit - Pinson Fork Bridge @ milepoint 8.99~~
~~TY I = 20 tons, TY II = 27 tons, TY III = 28 tons, TY IV = 37 tons~~
~~Weight Limit - Bridge over Pond Creek @ milepoint 11.34~~
~~TY I = 20 tons, TY II = 31 tons, TY III = 32 tons, TY IV = 43 tons~~]

*	KY 292	0.0 Goody-AFLX-BURNWL RD	4.8 US 119 (South)
		4.8 US 119 (North)	12.7 Martin CO LN

Weight Limit - Bridge over Big Creek @ milepoint 12.70
TY I = 10 tons, TY II = 10 tons, TY III = 10 tons, TY IV = 10 tons

*	KY 319	0.0 KY 1056	7.0 US 119

Weight Limit - Bridge over Blackberry Fork @ milepoint 5.03
TY I = 20 tons, TY II = 22 tons, TY III = 22 tons, TY IV = 22 tons

*	KY 366	0.0 KY 1499 at Feds Creek	4.4 Jones Fork Creek
*	KY 468	0.0 US 119	13.6 KY 292
*	KY 610	0.0 US 23	8.9 KY 122

Weight Limit - Bridge over Beefhide Creek @ milepoint 1.60
TY I = 20 tons, TY II = 38 tons, TY III = 39 tons, TY IV = 60 tons
Weight Limit - Bridge over Shelby Creek @ milepoint 2.87
TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons
Weight Limit - Bridge over Shelby Creek @ milepoint 5.90
TY I = 20 tons, TY II = 34 tons, TY III = 37 tons, TY IV 60 tons

Weight Limit - Bridge over Shelby Creek @ milepoint 6.95
TY I = 20 tons, TY II = 31 tons, TY III = 37 tons, TY IV = 50 tons
Weight Limit - Bridge B00070 over Shelby Creek @ milepoint 7.79
TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons
Weight Limit - Bridge over Long Fork @ milepoint 8.08
TY I = 20 tons, TY II = 34 tons, TY III = 38 tons, TY IV = 55 tons

*	KY 612	0.0 KY 468	3.9 Mine

Weight Limit - Bridge over Long Fork-Big Creek @ milepoint 1.498
TY I = 13 tons, TY II = 13 tons, TY III = 13 tons, TY IV = 13 tons

		6.6 Mine	8.4 KY 292
*	KY 632	0.0 KY 194 @ Kimper	14.0 KY 194 @ Phelps

Weight Limit - Bridge B00111 over Johns Creek @ milepoint 1.19
TY I = 20 tons, TY II = 41 tons, TY III = 43 tons, TY IV = 60 tons
Weight Limit - Bridge over Peter Creek @ milepoint 14.00
TY I = 20 tons, TY II = 44 tons, TY III = 47 tons, TY IV = 60 tons

*	KY 881	0.0 US 119	4.5 [~~7.7~~] Mine
*	KY 1056	4.5 Left Fork Blackberry Creek RD [~~0.0 KY 199~~]	11.6 W.Vir. ST LN

Weight Limit - Bridge over Blackberry Creek @ milepoint 8.316
TY I = 10 tons, TY II = 10 tons, TY III = 10 tons, TY IV = 10 tons
Weight Limit - Bridge @ milepoint 10.09
TY I = 20 tons, TY II = 44 tons, TY III = 46 tons, TY IV = 54 tons

*	KY 1373	4.8 Card Creek-Card Knob Road	6.7 US 460
*	KY 1384	0.0 US 23 @ Boldman	3.8 Dog Fork RD [~~6.9 US 23 North~~]
*	KY 1426	1.4 Hoopwood Branch RD [~~2.0 KY 3417~~]	4.9 US 23
*	KY 1441	7.5 Frozen CR RD	10.1 US 119

Weight Limit - Bridge over Burning Fork Creek @ milepoint 10.00
TY I = 11 [~~20~~] tons, TY II = 11 [~~39~~] tons, TY III = 11 [~~43~~] tons, TY IV = 11 [~~59~~] tons

*	KY 1460	0.0 US 460	1.5 Upper Chloe Creek Road
*	KY 1469	4.5 KY 3414	14.4 [~~14.6~~] US 23

Weight Limit - Shelby Creek Bridge @ milepoint 13.09
TY I = 20 tons, TY II = 41 tons, TY III = 44 tons, TY IV = 57 tons
Weight Limit - Caney Creek Bridge @ milepoint 14.51
TY I = 20 tons, TY II = 31 tons, TY III = 37 tons, TY IV = 60 tons

*	KY 1499	0.0 US 460	6.1 KY 194

Weight Limit - Bridge over Levisa Fork @ milepoint 6.03
TY I = 20 [~~15~~] tons, TY II = 25 tons, TY III = 28 tons, TY IV = 41 tons

*	KY 1758	6.7 Daugherty Tipple	7.8 KY 632
*	KY 1789	0.0 US 460	0.3 Tipple
*	KY 2059	0.0 KY 194	2.4 Mine

~~[Weight Limit - Bridge over Knox Creek @ milepoint 1.10~~
~~TY I = 3 tons, TY II = 3 tons, TY III = 3 tons, TY IV = 3 tons~~

~~*~~	~~KY 2061~~	~~0.0 US 23~~	~~7.1 KY 194~~

~~Weight Limit - Bridge over Cowpen Creek @ milepoint 0.81~~
~~TY I = 18 tons, TY II = 18 tons, TY III = 22 tons, TY IV = 35 tons~~
~~Weight Limit - Bridge over Caney Fork of Johns Creek @ milepoint 6.72~~
~~TY I = 10 tons, TY II = 10 tons, TY III = 10 tons, TY IV = 10 tons~~
~~Weight Limit - Bridge over Johns Creek @ milepoint 7.11~~
~~TY I = 20 tons, TY II = 33 tons, TY III = 38 tons, TY IV = 60 tons]~~

*	KY 2062	0.0 KY 194	3.1 KY 194 @ Stopover
*	KY 2167	0.0 US 23	0.3 KY 122
*	KY 3154	0.0 Meathouse Branch RD	2.7 [~~2.8~~] US 119

Weight Limit - Bridge over Meathouse Fork @ milepoint 1.618
TY I = 10 tons, TY II = 10 tons, TY III = 10 tons, TY IV = 10 tons
Weight Limit - Bridge over Meathouse Fork @ milepoint 1.946
TY I = 10 tons, TY II = 10 tons, TY III = 10 tons, TY IV = 10 tons

*	KY 3226	0.0 [~~Gardiner Fork RD or~~] Rockhouse Creek-Greasy RD	3.3 US 460

Weight Limit - Bridge over Greasy Creek @ milepoint 1.127
TY I = 20 tons, TY II = 22 tons, TY III = 22 tons, TY IV = 22 tons

*	KY 3227	0.0 US 23	~~2.8~~ Clevingers Branch-Miller Creek RD
		7.6 Mine	8.0 KY 194

Weight Limit - Bridge over West End of John's Creek @ milepoint 7.91
TY I = 13 tons, TY II = 13 tons, TY III = 13 tons, TY IV = 13 tons

*	KY 3414	0.6 Nat's Fork-Sycamore BR RD	3.4 KY 1469
*	KY 3415	0.0 KY 122	2.8 Newsome Branch RD

Weight Limit- Bridge over Robinson Creek @ milepoint 1.20
TY I = 10 [20] tons, TY II = 10 [31] tons, TY III = 10 [37] tons, TY IV = 10 [60] tons
Weight Limit - Bridge over Robinson Creek @ milepoint 1.71
TY I = 20 tons, TY II = 27 tons, TY III = 31 tons, TY IV = 53 tons

[*	~~KY 3416~~	~~0.0 Long Branch RD at Pigeon~~	~~1.7 KY 1426~~
*	~~KY 3417~~	~~0.0 KY 1426~~	~~1.1 KY 1384]~~
*	KY 3419	9.0 Seng Camp Branch RD	12.0 KY 1056
		[~~4.9 KY 632~~	~~5.8 Kentucky Carbon Scales~~

~~Weight Limit - Bridge over Calloway Creek @ milepoint 4.94~~
~~TY I = 20 tons, TY II = 22 tons, TY III = 22 tons, TY IV = 22 tons~~

	~~10.4 Tipple~~	~~12.0 KY 1056]~~

Weight Limit - Bridge B00180 over Left Fork of Blackberry Creek @ milepoint 11.47
TY I = 20 tons, TY II = 29 tons, TY III = 31 tons, TY IV = 46 tons
Weight Limit - Bridge B00195 over Blackberry Creek @ milepoint 12.01
TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons

*	Frozen Creek Road		
	CR 5004	0.0 KY 1441	2.4 Mine
[*	~~Winn Branch Road~~		
	~~CR 5011~~	~~0.0 US 119~~	~~1.1 Mine~~

~~Weight Limit - Bridge over Little Ratliff Creek~~
~~TY I = 20 tons, TY II = 22 tons, TY III = 22 tons, TY IV = 22 tons]~~

*	Smith Fork RD		
	CR 5014	0.0 US 119	0.3 Mine
*	Scott Fork RD		
	CR 5015	0.0 US 119	0.3 Mine
*	Varney Branch Road		
	CR 5021	0.0 KY 194 South of Deskin	0.4 Utility Tipple
[*	~~Meathouse Branch Road~~		
	~~CR 5025~~	~~0.0 KY 3154~~	~~0.6 Mine]~~
*	Road Fork Big Creek RD		
	CR 5029	0.0 US 119	0.3 Mine
[*	~~Coburn Branch RD~~		
	~~CR 5038~~	~~0.0 KY 199~~	~~1.2 Mine]~~
*	Scant Branch RD		
	CR 5042	0.0 US 119	0.5 [~~0.8~~] Mine
*	Goody-Aflex-Burnwell Road		
	CR 5050	0.0 KY 292	1.0 [~~0.8~~] Mine
[*	~~Taylor Fork RD~~		
	~~CR 5065~~	~~0.0 KY 612~~	~~0.4 Neeben Fork RD~~
*	~~Neeben Fork RD~~		
	~~CR 5067~~	~~0.0 Taylor Fork Rd~~	~~0.3 Mine]~~
*	Bent Branch Road		
	CR 5074	0.0 KY 468	1.3 Gex Tipple

Weight Limit - Bridge over Big Creek
TY I = 18 tons, TY II = 18 tons, TY III = 20 tons, TY IV = 32 tons

[*	~~Swinge Camp Branch Road~~		
	~~CR 5075~~	~~0.0 KY 468~~	~~0.4 H Mar/Island Mines~~

~~Weight Limit - Bridge over Big Creek~~
~~TY I = 3 ton, TY II = 3 ton, TY III = 3 ton, TY IV = 3 ton~~

*	~~Halfway Branch Road~~		
	~~CR 5077~~	~~0.0 KY 468~~	~~0.2 Mine]~~
*	Rockhouse Fork Road		
	CR 5078	0.0 KY 468	1.2 Elkins Fork RD [~~0.4 Island Creek Mine~~]

Weight Limit - Bridge over Big Creek
TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons

[*	~~King Camp Branch~~		
	~~CR 5080~~	~~0.0 KY 881~~	~~0.5 Mine]~~
*	Rye Straw Branch RD		
	CR 5088	0.0 KY 881	0.4 Mine
*	Elkins Fork RD		
	CR 5090	0.0 Rockhouse Fork RD	1.0 Mine
*	Brushy Fork Road		
	CR 5095	0.0 KY 881	0.5 Addington Mine

Weight Limit - Bridge over Left Fork of Brushy Fork
TY I = 20 tons, TY II = 26 tons, TY III = 26 tons, TY IV = 26 tons

[*	~~Road Fork Ford Mountain RD~~		
	~~CR 5096~~	~~0.0 US 119~~	~~1.6 Mine~~

~~* Sycamore Creek RD~~		
~~CR 5104~~	~~0.0 KY 194~~	~~0.3 Road Fork Sycamore Creek RD~~
~~* Road Fork - Sycamore Creek RD~~		
~~CR 5106~~	~~0.0 Sycamore Creek RD~~	~~0.8 Mine~~
~~* Bruchy Run Johns Creek RD~~		
~~CR 5122~~	~~0.0 KY 194~~	~~0.9 Mine~~
~~* Lick Branch RD~~		
~~CR 5141~~	~~0.0 KY 468~~	~~0.5 Mine]~~
* Miller Creek Road		
CR 5123	2.7 Clivergers BR Miller Creek RD	3.0 Mine
Weight Limit - Bridge over Johns Creek		
TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons		
	3.9 Tipple	5.1 KY 194
* Clevingers Branch - Miller Creek RD		
CR 5124	0.0 KY 3227	1.7 Miller Creek Cowpen RD
* Hurricane Creek Road		
CR 5162	0.0 KY 194	1.4 Mine
[~~* Dicks Fork Road~~		
~~CR 5163~~	~~0.0 KY 194 @ Phyliss~~	~~0.6 Big Fist #4 Mine~~
~~* Lane Branch Road~~		
~~CR 5168~~	~~0.0 KY 632~~	~~1.2 McCoy Elkhorn Mine]~~
* Narrows Branch Road		
CR 5196	0.0 KY 319	0.6 Mine
* Hatfield Branch Road		
CR 5210	0.0 KY 319	0.8 Blackberry CR Mine
* Seng Camp Branch RD		
CR 5215	0.0 KY 3419	0.2 Mine
* Lynntrough Branch RD		
CR 5233	0.0 KY 194	0.3 Tipple
* Lower Elk Creek Road		
CR 5241	0.0 KY 2059	0.6 Race Fork Mine
* Prater Branch Road		
CR 5253	0.0 KY 194	0.8 Majestic Mine
* Jones Fork Road		
CR 5269	0.0 KY 366	1.8 Mine
* Old Mouth Card-Feds Creek Road		
CR 5282	0.0 US 460	0.3 Flannary Branch RD
* Flannary Branch Road		
CR 5283	0.0 Old Mouth Card-Feds CR RD	0.2 Mouth Card Mines
[~~* Card Creek-Card Knob Road~~		
~~CR 5285~~	~~0.0 KY 1373~~	~~0.7 Clark Elkhorn Mine]~~
* Island Creek Road		
CR 5287	0.3 Tipple	1.6 Mine
* Island Creek-Grapevine Road		
CR 5288	0.0 Island Creek Road	1.8 Millers CR RD
* Millers Creek Road		
CR 5290	0.0 Island Creek-Grapevine RD	2.1 [~~3.7~~] Mine
* Old KY 319		
CR 5294	2.4 Mine	3.8 KY 194
* Hopkins Creek Road		
CR 5322	0.0 US 460	1.0 Hopkins Creek Tipple
Weight Limit - Bridge over Levisa Fork		
TY I = 3 [~~20~~] tons, TY II = 3 [~~28~~] tons, TY III = 3 [~~37~~] tons, TY IV = 3 [~~40~~] tons		
* Powell Creek RD		
CR 5328	0.0 US 460	2.2 Mine
* Miller Fork RD		
CR 5348	0.0 US 460	0.8 Mine
* East Main ST (Elkhorn City)		
CR 5361U	0.0 Ohio Street	0.1 KY 80
* Clinchfield ST (Elkhorn City)		
CR 5361V	0.0 East Main ST	0.1 Tipple
* John Moore Branch Road		
CR 5363	0.0 KY 197	0.9 Federal Tipple
* Marrowbone Creek Road		
CR 5381	0.0 KY 195	1.2 [~~2.5~~] Mine
Weight Limit - Bridge over Marrowbone Creek @ milepoint 0.25		
TY I = 18 tons, TY II = 18 tons, TY III = 18 tons, TY IV = 18 tons		

~~[* Marrowbone Creek RD~~		
~~CR 5381~~	~~0.0 KY 195~~	~~2.5 Mine]~~
* Seng Branch RD		
CR 5383	0.0 KY 195	1.2 Mine
~~[* Bowling Fork Road~~		
~~CR 5384~~	~~0.0 KY 195~~	~~1.7 Nats Fork RD~~
~~* Nats Fork RD~~		
~~CR 5385~~	~~0.0 Bowling Fork RD~~	~~0.2 Mine]~~
* Flatwoods Access RD		
CR 5391A	0.0 US 23	2.0 Mine
* Big Branch RD		
CR 5419	0.0 KY 195	1.1 Mine
* Rockhouse Creek/Greasy Road		
CR 5422	0.0 KY 195	2.6 Mine
	4.7 Mine	6.3 KY 3226
* Joe Brown Road		
CR 5429	0.0 Rockhouse Creek Greasy RD	0.3 ~~[1.2]~~ Mine
~~[* Wolfpen Branch Road~~		
~~CR 5444~~	~~0.0 KY 80~~	~~0.8 Wellmore Mine]~~
* Old KY 610 Loop		
CR 5447	~~[0.0 US 23~~	~~0.2 Mine]~~
	1.2 Mine	1.4 US 23
* Ivy Fork RD		
CR 5468	0.0 CR 5617	0.6 Mine
* John Hollow RD		
CR 5470	0.0 US 23	0.7 Mine
* Marion Branch Road		
CR 5478	0.0 KY 1426	1.8 Chapperal Tipple
* Harmond Branch Road		
CR 5505	0.0 US 23	0.5 Mine
* Broad Borrom-Mossy Bottom RD		
CR 5519	0.0 US 23	2.5 Mine
* Dog Fork/Hurricane Creek Road		
CR 5522	0.0 KY 1384	1.3 Peter Fork Joline Mine
* Coal Run RD		
CR 5524	0.0 US 23	0.4 Lackens Branch RD ~~[0.6 Mine]~~
* Lackens Branch RD		
CR 5525	0.0 Coal Run RD	1.5 Mine
* Hopwood Branch RD		
CR 5529	0.0 KY 1426	0.6 Mine
* Raccoon Branch Road		
CR 5531	0.0 KY 1426	1.3 Jet/Cimaron Mine
~~[* Island Creek Road~~		
~~CR 5535~~	~~0.0 KY 1426~~	~~1.7 Ray Branch RD~~
~~* Ray Branch Road~~		
~~CR 5537~~	~~0.0 Island Creek RD~~	~~0.7 Mine~~
~~* Long Branch Cemetery RD~~		
~~CR 5538~~	~~0.0 Island Creek RD~~	~~1.1 Mine]~~
* Bear Fork - Tinker Fork Road		
CR 5547	0.0 Bear Fork Branch RD	0.5 Mine ~~[1.1 Floyd CO LN]~~
* Little Robinson - Floyd County Road		
CR 5550	0.0 Robinson Creek RD	0.6 Floyd CO LN
* Newson Branch RD		
CR 5552	0.0 KY 3415	0.5 Mine
* Little Fork/Robinson Creek Road		
CR 5553	0.0 KY 3415	1.4 Apache Mining Mine
* Robinson Creek Road		
CR 5554	0.0 KY 3415	1.0 Little Robinson Floyd RD
* Turkeypen Branch RD		
CR 5560	0.0 KY 122	0.6 ~~[1.5]~~ Mine
* Indian Creek RD		
CR 5561	0.0 KY 122	~~2.0~~ Mine
* Left Fork Long Fork RD		
CR 5569	0.0 KY 3413	0.2 Bucklick Fork RD
* Bucklick Fork Rd		
CR 5570	0.0 Left Fork Long Fork RD	1.2 Mine
* Petty's Fork RD		

	CR 5572	0.0 KY 3414	1.4 Mine
*	Burk Branch RD		
	CR 5578	0.0 KY 610	0.9 Tipple
*	Newsome Branch RD		
	CR 5592	0.0 US 23	0.9 Mine
*	Rob Fork Road		
	CR 5593	0.0 US 23	0.5 Damron Fork Tipple
[*	~~Gillespie Branch Road~~		
	~~CR 5606~~	~~0.0 KY 3226~~	~~0.9 Mine~~
*	~~Lucy Branch Road~~		
	~~CR 5607~~	~~0.0 KY 3226~~	~~0.3 Mine~~
*	~~Esco RD~~		
	~~CR 5609~~	~~0.0 US 23~~	~~0.6 Tipple~~
*	~~Bear Fork Branch Road~~		
	~~CR 5616~~	~~0.0 KY 122~~	~~1.5 Bear FK Tinker FK RD~~]
*	Upper Chloe Creek RD		
	CR 5617	0.0 KY 1460	1.3 CR 5468
[*	~~Hartley RD~~		
	~~CR 5621~~	~~0.0 KY 1469~~	~~0.3 Mine~~]

POWELL COUNTY

	ROAD	FROM	TO
*	Mountain Parkway	11.9 Clark CO LN	36.0 Wolfe CO LN

Weight Limit - Bridges B00018 and P over Lulbegrud Creek @ milepoint 11.90
TY I = 20 tons, TY II = 35 tons, TY III = 36 [~~38~~] tons, TY IV = 47 tons
Weight Limit - Bridge B00020 over Brush Branch @ milepoint 14.42
TY I = 20 tons, TY II = 40 tons, TY III = 40 tons, TY IV = 60 tons
Weight Limit - Bridge B00021 over Brush Branch @ milepoint 15.02
TY I = 20 tons, TY II = 40 tons, TY III = 40 tons, TY IV = 60 tons
Weight Limit - Bridge over Red River @ milepoint 18.22
TY I = 20 tons, TY II = 35 tons, TY III = 38 tons, TY IV = 47 tons
Weight Limit - Bridge over Red River @ milepoint 24.83
TY I = 20 tons, TY II = 40 tons, TY III = 40 tons, TY IV = 52 tons
Weight Limit - Bridge over Cane Creek @ milepoint 26.12
TY I = 20 tons, TY II = 45 [~~46~~] tons, TY III = 46 tons, TY IV = 60 tons
Weight Limit - Bridge B0007 over KY 613 @ milepoint 27.38
TY I = 20 tons, TY II = 25 [~~45~~] tons, TY III = 29 [~~47~~] tons, TY IV = 49 [~~60~~] tons
Weight Limit - Bridges B0008 and P over North Fork Red River @ milepoint 27.94
TY I = 20 tons, TY II = 44 tons, TY III = 45 tons, TY IV = 56 tons
Weight Limit - Bridge over Middle Fork Red River @ milepoint 31.96
TY I = 20 tons, TY II = 36 tons, TY III = 38 tons, TY IV = 47 tons
Weight Limit - Bridge over KY 11 & 15 @ milepoint 32.08
TY I = 20 tons, TY II = 43 tons, TY III = 43 tons, TY IV = 56 tons

*	KY 11	21.0 KY 15 @ Clay City	25.0 Montgomery CO LN
*	KY 15	0.0 Wolfe CO LN	3.5 KY 11

Weight Limit - Bridge over Mountain Parkway @ milepoint 2.894
TY I = 20 tons, TY II = 42 tons, TY III - 45 tons, TY IV = 57 tons

		4.1 Mountain PKWY [~~3.5 KY 11~~]	8.9 Clark CO LN
*	KY 82	0.0 Estill CO LN	2.1 KY 15

PULASKI COUNTY

	ROAD	FROM	TO
*	Cumberland PKWY	72.1 Russell CO LN	88.5 US 27

Weight Limit - Bridge B00074 over Fishing Creek @ milepoint 84.31
TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons

*	US 27	0.0 McCreary CO LN	30.7 Lincoln CO LN [~~16.9 KY 80 Bypass~~]

Weight Limit - Bridge over Cumberland River @ milepoint 9.19
TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons
Weight Limit - Bridge over Pitman Creek @ milepoint 10.06
TY I = 20 tons, TY II = 35 tons, TY III = 40 tons, TY IV = 55 tons

*	KY 80	21.6 KY 80 Bypass	40.4 Laurel CO LN

Weight Limit - Bridge over Buck Creek @ milepoint 31.553
TY I = 20 tons, TY II = 45 tons, TY III = 49 tons, TY IV = 57 tons

*	KY 80B	0.0 US 27	2.3 KY 80
[*	~~KY 192~~	~~0.0 KY 80 Business Route~~	~~15.0 Old Whitley RD~~

~~Weight Limit - Bridge over Pitman Creek @ milepoint 4.13~~
~~TY I = 20 tons, TY II = 39 tons, TY III = 41 tons, TY IV = 60 tons~~

~~Weight Limit - Bridge over Buck Creek @ milepoint 10.57~~
~~TY I = 20 tons, TY II = 36 tons, TY III = 37 tons, TY IV = 49 tons]~~

*	KY 1247	0.0 US 27	0.3 Cooper Power Plant RD

Weight Limit - Bridge over Southern RR @ milepoint 0.08
TY I = 20 tons, TY II = 42 [~~41~~] tons, TY III = 43 tons, TY IV = 53 tons

[~~* Old Whitley Road~~
~~CR 5216 0.0 KY 192 3.8 Cumberland River RD~~
~~* Cumberland River Road~~
~~CR 5225 0.0 Old Whitley RD 0.8 Mine]~~

*	Cooper Power Plant Road		
	CR 5349	0.0 KY 1247	0.6 E KY Power Plant

ROBERTSON COUNTY

	ROAD	FROM	TO
*	US 68	0.0 Nicholas CO LN	1.4 Fleming CO LN

RUSSELL COUNTY

	ROAD	FROM	TO
*	Cumberland PKWY	57.8 Adair CO LN	72.1 Pulaski CO LN

SHELBY COUNTY

	ROAD	FROM	TO
*	US 60	0.0 Jefferson CO LN	23.0 Franklin CO LN

~~[Weight Limit - Bridge over L & N R.R. @ milepoint 2.64~~
~~TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons]~~
Weight Limit - Bridge over Little Bullskin Creek @ milepoint 5.02
TY I = 20 tons, TY II = 21 tons, TY III = 25 tons, TY IV = 43 tons
Weight Limit - Bridge over Clear Creek @ milepoint 11.16 [~~17~~]
TY I = 20 tons, TY II = 42 tons, TY III = 47 tons, TY IV = 60 tons

SIMPSON COUNTY

	ROAD	FROM	TO
*	US 31W	0.0 Tennessee State Line	14.0 Warren CO LN

SPENCER COUNTY

	ROAD	FROM	TO
*	US 31E	0.0 Nelson CO LN	2.4 Bullitt CO LN

TAYLOR COUNTY

	ROAD	FROM	TO
*	US 68	4.6 Warehouse LN (Consumer)	4.9 KY 55
*	KY 55	0.0 Adair CO LN	10.3 US 68

Weight Limit - Bridge over Green River @ milepoint 2.17
TY I = 20 tons, TY II = 32 tons, TY III = 34 tons, TY IV = 40 tons

UNION COUNTY

	ROAD	FROM	TO
*	US 60	1.4 KY 109	5.7 KY 109

Weight Limit - Bridge over Branch of Cypress Creek @ milepoint 3.66
TY I = 20 tons, TY II = 36 tons, TY III = 39 tons, TY IV = 57 tons

*	KY 56	0.0 Illinois State LN	2.7 KY 109

Weight Limit - Bridge over Ohio River @ milepoint 0.02
TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 49 [~~40~~] tons

*	KY 109	0.0 Webster CO LN	13.7 KY 56

Weight Limit - Bridge over Cypress Creek @ milepoint 8.13
TY I = 20 tons, TY II = 34 [~~36~~] tons, TY III = 38 tons, TY IV = 55 tons
Weight Limit - Bridge over Geiger Creek Branch @ milepoint 9.72
TY I = 20 tons, TY II = 37 tons, TY III = 41 [~~38~~] tons, TY IV = 60 tons

*	KY 492	1.9 Davis Mine RD	2.5 KY 109
*	KY 1508	0.0 KY 109	3.6 [~~2.7 Pyro~~] Dock
		5.3 Canipe Dock	6.0 Private Haul Road

Weight Limit - Bridge over Unnamed Stream @ milepoint 5.61
TY I = 20 tons, TY II = 40 tons, TY III = 46 tons, TY IV = 60 tons

*	Davis Mine Road		
	CR 5227	0.0 KY 109	0.3 Private Haul Road

WARREN COUNTY

	ROAD	FROM	TO
*	Green River Parkway	3.6 US 31W	18.2 Butler CO LN
	Weight Limit - Bridge over US 31-W @ milepoint 3.57		
	TY I = 20 tons, TY II = 44 tons, TY III = 45 tons, TY IV = 59 tons		
*	US 31W	0.0 Simpson CO LN	9.0 Green River PKWY
	Weight Limit - Bridge over Seaboard System Railroad @ milepoint 7.99		
	TY I = 20 tons, TY II = 40 tons, TY III = 47 [~~42~~] tons, TY IV = 60 tons		

WASHINGTON COUNTY

	ROAD	FROM	TO
*	Bluegrass Parkway	39.3 Nelson CO LN	44.8 Anderson CO LN

WEBSTER COUNTY

	ROAD	FROM	TO
*	Pennyrile PKWY	55.0 Hopkins CO LN	65.3 [~~65.6~~] Henderson CO LN
*	US 41	[~~0.0 Hopkins CO LN~~	~~2.8 KY 147~~]
		7.0 KY 494	12.1 Henderson CO LN
	Weight Limit - Bridge B00096 over Mock Roy Creek @ milepoint 9.85		
	TY I = 20 tons, TY II = 36 tons, TY III = 50 tons, TY IV = 60 tons		
*	US 41A	0.0 Hopkins CO LN	19.5 KY 56 East
*	KY 56	5.3 US 41A	12.5 US 41 (South)
	Weight Limit - Bridge B00010 over Culvert @ milepoint 7.00		
	TY I = 20 tons, TY II = 37 tons, TY III = 50 tons, TY IV = 60 tons		
	Weight Limit - Bridge B00011 over Mock Roy Creek @ milepoint 11.62		
	TY I = 20 tons, TY II = 37 tons, TY III = 50 tons, TY IV = 60 tons		
		12.5 US 41 (North)	14.4 Old Eastwood Ferry RD
*	KY 109	2.9 KY 670	14.7 Union CO LN
	Weight Limit - Bridge over Crab Orchard Creek @ milepoint 7.33		
	TY I = 20 tons, TY II = 39 [~~37~~] tons, TY III = 43 [~~38~~] tons, TY IV = 59 [~~52~~] tons		
	Weight Limit - Bridge over Caney Fork @ milepoint 10.72		
	TY I = 20 tons, TY II = 36 [~~37~~] tons, TY III = 40 [~~38~~] tons, TY IV = 54 [~~52~~] tons		
[~~* KY 132~~		~~7.6 KY 109~~	~~16.4 US 41A~~
	~~Weight Limit - Bridge B0062 @ milepoint 10.49~~		
	~~TY I = 20 tons, TY II = 22 tons, TY III = 23 tons, TY IV = 39 tons~~		
	~~Weight Limit - Bridge B0063 @ milepoint 11.15~~		
	~~TY I = 20 tons, TY II = 22 tons, TY III = 23 tons, TY IV = 39 tons~~		
	~~Weight Limit - Bridge over Crab Orchard Creek @ milepoint 12.55~~		
	~~TY I = 20 tons, TY II = 39 tons, TY III = 45 tons, TY IV = 60 tons~~		
		~~23.6 Mine~~	~~25.9 KY 494~~
~~*~~	~~KY 147~~	~~0.0 US 41~~	~~3.5 Onton-Wrightsburg RD~~]
*	KY 270	8.4 Mine	8.9 Slover Creek RD
*	KY 494	1.2 Mine [~~0.0 KY 123~~]	2.2 US 41
*	KY 670	0.0 KY 109	2.7 US 41A
*	KY 814	0.0 Hopkins CO LN	0.6 US 41A
[~~* KY 1525~~		~~0.8 Mine Entrance~~	~~2.6 KY 109~~
~~*~~	~~Onton-Wrightsburg RD~~		
	~~CR 5024~~	~~0.0 KY 147~~	~~3.1 Dock~~]
*	Old Eastwood Ferry Road		
	CR 5034	0.0 KY 56	0.3 [~~0.5~~] Dock
*	Bruce RD		
	CR 5254	0.0 Luttontown-Lisman	0.9 Slover Creek RD
[~~* Luttontown-Lisman RD~~			
	~~CR 5255~~	~~1.7 Bruce RD~~	~~2.5 Bill Dorris RD~~]
*	Bill Dorris RD		
	CR 5256	0.4 Tipple	1.4 Luttontown-Lisman RD
*	Slover Creek RD		
	CR 5257	0.0 Bruce RD	0.9 KY 270

WHITLEY COUNTY

	ROAD	FROM	TO
*	US 25W	0.0 Tennessee ST LN	14.1 KY 26 [~~15.9 KY 2987~~]
	Weight Limit - Bridge over Elk Fork Creek @ milepoint 0.53		
	TY I = 20 tons, TY II = 28 tons, TY III = 37 [~~36~~] tons, TY IV = 40 tons		
	Weight Limit - Bridge over Clear Creek @ milepoint 5.04		
	TY I = 20 tons, TY II = 30 tons, TY III = 32 tons, TY IV = 40 tons		
	Weight Limit - Bridge over Clear Fork Creek @ milepoint 6.23		

TY I = 20 tons, TY II = 30 tons, TY III = 32 tons, TY IV = 41 tons
Weight Limit - Bridge over L&N RR @ milepoint 11.02
TY I = 20 tons, TY II = 40 tons, TY III = 42 tons, TY IV = 60 tons

*	KY 11	0.0 KY 92	2.6 Knox CO LN
*	KY 26	0.0 US 25W (South)	10.5 Batontown School RD [~~12.3 KY 6~~]
*	KY 92	0.0 McCreary CO LN	21.3 KY 1064 at Louden [~~29.0 Pearl Siler RD~~]

Weight Limit - Bridge over Pleasant Run @ milepoint 0.23
TY I = 20 tons, TY II = 32 tons, TY III = 37 tons, TY IV = 60 tons
Weight Limit - Bridge over Pleasant Run @ milepoint 1.51
TY I = 20 tons, TY II = 29 tons, TY III = 32 tons, TY IV = 46 tons
Weight Limit - Bridge over Jellico Creek @ milepoint 2.99
TY I = 20 tons, TY II = 23 tons, TY III = 26 tons, TY IV = 38 tons
Weight Limit - Bridge over Briar Creek @ milepoint 8.39
TY I = 14 tons, TY II = 14 tons, TY III = 14 tons, TY IV = 14 tons
Weight Limit - Bridge over I-75 @ milepoint 11.00
TY I = 20 tons, TY II = 39 tons, TY III = 41 tons, TY IV = 53 tons
~~[Weight Limit - Bridge over Cumberland River @ milepoint 22.018~~
~~TY I = 15 tons, TY II = 15 tons, TY III = 15 tons, TY IV = 15 tons]~~

		24.7 KY 11	28.0 KY 904

Weight Limit - Bridge over Golden Fork @ milepoint 26.66
TY I = 20 tons, TY II = 33 [~~32~~] tons, TY III = 36 tons, TY IV = 52 [~~51~~] tons
Weight Limit - Bridge over Harpes Creek @ milepoint 27.89
TY I = 20 tons, TY II = 30 [~~38~~] tons, TY III = 34 [~~40~~] tons, TY IV = 53 [~~60~~] tons

*	KY 628	1.5 Mine	5.2 US 25W

Weight Limit - Bridge over Possum Creek @ milepoint 3.91
TY I = 10 [~~20~~] tons, TY II = 10 [~~42~~] tons, TY III = 10 [~~43~~] tons, TY IV = 10 [~~60~~] tons
Weight Limit - Bridge over I-75 @ milepoint 4.91
TY I = 20 tons, TY II = 39 tons, TY III = 42 tons, TY IV = 50 tons

~~[*~~	~~KY 779~~	~~8.0 Flat Creek RD~~	~~12.7 KY 11~~

~~Weight Limit - Bridge over Cumberland River @ milepoint 11.83~~
~~TY I = 15 tons, TY II = 15 tons, TY III = 15 tons, TY IV = 15 tons]~~

*	KY 904	0.0 KY 92 @ Suttons Mill	13.5 KY 92 @ Siler

Weight Limit - Bridge over Cumberland River @ milepoint 0.09
TY I = 15 tons, TY II = 15 tons, TY III = 15 tons, TY IV = 15 tons
Weight Limit - Bridge over Poplar Creek @ milepoint 13.44
TY I = 20 tons, TY II = 38 tons, TY III = 43 tons, TY IV = 55 tons

~~[*~~	~~KY 1064~~	~~9.3 KY 779~~	~~11.9 CR 5037~~
~~*~~	~~KY 1595~~	~~0.7 Bell CO LN~~	~~4.6 KY 92~~

~~Weight Limit - Bridge over Poplar Creek @ milepoint 4.491~~
~~TY I = 20 tons, TY II = 33 tons, TY III = 38 tons, TY IV = 60 tons]~~

*	KY 1804	0.0 US 25W	2.7 Sandy Flats RD
		~~[2.9 Keswick Gatliff RD~~	~~5.1 Buck Creek RD~~

~~Weight Limit - Bridge over Cane Creek @ milepoint 3.04~~
~~TY I = 12 tons, TY II = 12 tons, TY III = 12 tons, TY IV = 12 tons]~~

*	KY 1809	0.0 KY 92	1.4 Knox CO LN

Weight Limit - Bridge over Golden Creek @ milepoint 0.21
TY I = 20 tons, TY II = 36 tons, TY III = 40 tons, TY IV = 56 tons

~~[*~~	~~KY 2987~~	~~0.0 US 25W~~	~~0.3 End of State Maintenance]~~
*	Goldens Creek RD		
	CR 5171	0.0 KY 1809	0.7 Knox CO LN
~~[*~~	~~Keswick Gatliff Road~~		
	~~CR 5227~~	~~0.0 KY 1804~~	~~8.0 KY 904~~

~~Weight Limit - Bridge over Bennetts Branch~~
~~TY I = 20 tons, TY II = 28 tons, TY III = 33 tons, TY IV = 56 tons~~

~~*~~	~~Buck Creek RD~~		
	~~CR 5253~~	~~0.0 KY 1804~~	~~1.2 Mine]~~
*	Old Williamsburg - Jellico RD		
	CR 5260	2.1 Jasper - Redmond ST	2.5 Clear Ck - Mt Ash RD
*	Jasper - Redmond ST (Mountain Ash)		
	CR 5261C	0.0 US 25 W	0.3 Old Williamsburg - Jellico RD
*	Savoy - Clear Creek - Mountain Ash RD		
	CR 5262	7.0 Mine	8.2 Old Williamsburg - Jellico RD
*	Little Patterson Creek RD		
	CR 5265	0.0 KY 904	1.8 Mine
~~[*~~	~~Sandy Flats RD~~		
	~~CR 5274~~	~~0.0 KY 1804~~	~~1.5 Mine~~
~~*~~	~~Happy Hollow Rd~~		

~~CR 5306 | 0.0 KY 92 | 1.8 Mine]~~
* Jellico Creek RD
CR 5333 | 0.0 KY 92 | 2.0 Mine
~~[* Ryans Creek RD~~
~~CR 5335 | 0.0 CR 5333 | 1.0 CR 5336~~
~~* Bucks Branch RD~~
~~CR 5336 | 0.0 Mine | 1.0 CR 5335]~~

WOLFE COUNTY

	ROAD	FROM	TO
*	Mountain PKWY	36.0 Powell CO LN	57.7 Morgan CO LN
	Weight Limit - Bridge B00046 over Swiftcamp Creek and Harvest RD @ milepoint 43.77		
	TY I = 20 tons, TY II = 38 tons, TY III = 39 tons, TY IV = 47 tons		
	Weight Limit - Bridge B0047 over KY 191 @ milepoint 46.22		
	TY I = 20 tons, TY II = 45 tons, TY III = 46 tons, TY IV = 60 tons		
	Weight Limit - Bridge B00051 over KY 1812 @ milepoint 49.67		
	TY I = 20 tons, TY II = 40 tons, TY III = 41 tons, TY IV = 53 tons		
	Weight Limit - Bridge B00041 over Gilmore Creek @ milepoint 55.17		
	TY I = 20 tons, TY II = 41 tons, TY III = 41 tons, TY IV = 54 tons		
	Weight Limit - Bridge over KY 205 @ milepoint 57.19		
	TY I = 20 tons, TY II = 43 tons, TY III = 43 tons, TY IV = 60 tons		
*	KY 11	0.0 Lee CO LN	5.3 Powell CO LN
*	KY 15	0.0 Breathitt CO LN	9.5 KY 191 ~~[12.9 Mountain PKWY]~~
	Weight Limit - Bridge B0035 over Holly Creek @ milepoint 1.79		
	TY I = 20 tons, TY II = 45 tons, TY III = 46 tons, TY IV = 60 tons		
*	KY 15S	0.0 KY 15	1.1 Mountain PKWY
	Weight Limit - Bridge over Mountain Parkway @ milepoint 1.05		
	TY I = 20 tons, TY II = 45 tons, TY III = 47 tons, TY IV = 60 ~~[58]~~ tons		
*	KY 191	0.0 KY 15	3.0 Mountain PKWY ~~[9.7 KY 1010]~~
	Weight Limit - Bridge over Swift Camp Creek @ milepoint 0.240		
	TY I = 20 tons, TY II = 22 tons, TY III = 24 tons, TY IV = 31 tons		
	~~[Weight Limit - Bridge over Stillwater Creek @ milepoint 4.481~~		
	~~TY I = 20 tons, TY II = 28 tons, TY III = 31 tons, TY IV = 42 tons~~		
	~~Weight Limit - Bridge over Lacey Creek @ milepoint 9.482~~		
	~~TY I = 20 tons, TY II = 28 tons, TY III = 31 tons, TY IV = 31 tons~~		
~~*~~	~~KY 205~~	~~0.0 Breathitt CO LN~~	~~6.4 Mountain PKWY~~
~~*~~	~~KY 651~~	~~0.0 Sandy Ridge RD~~	~~2.1 KY 15~~
~~*~~	~~KY 1010~~	~~6.1 Buchanan Fork RD~~	~~7.1 KY 191~~
~~*~~	~~KY 1419~~	~~0.0 Breathitt CO LN~~	~~1.0 Mine~~
~~*~~	~~KY 1812~~	~~0.0 Breathitt CO LN~~	~~6.3 KY 191~~
~~*~~	~~Chapel Branch RD~~		
	~~CR 5002~~	~~0.0 KY 1010~~	~~0.6 CR 5004~~
~~*~~	~~P&M Haul RD~~		
	~~CR 5004~~	~~0.0 CR 5002~~	~~0.9 Mine~~
~~*~~	~~Sandy Ridge RD~~		
	~~CR 5220~~	~~0.0 KY 651~~	~~3.6 Mine~~
~~*~~	~~Cleaton Green River RD~~		
	~~CR 5022~~	~~0.0 KY 1010~~	~~1.4 Mine]~~

WOODFORD COUNTY

	ROAD	FROM	TO
*	Bluegrass Parkway	61.9 Anderson CO LN	71.1 US 60
*	US 60	0.0 Franklin CO LN	13.0 Fayette CO LN

Section 6. ~~[5.]~~ Restricted Bridge Use. A person shall not operate, or knowingly cause to be operated, on any bridge listed in Section 4 of this administrative regulation any vehicle whose gross vehicle weight exceeds the weight limits specified for that bridge.

Section 7. ~~[6.]~~ Bridge Posted Weight Limits. In accordance with KRS 189.230(3), the Department of Highways shall post the gross vehicle weight limits for each bridge listed in Section 5 ~~[4]~~ of this administrative regulation.

Section 8. ~~[7.]~~ Additional Bridge Restrictions. A person shall not operate, or knowingly cause to be operated, on any bridge on the extended weight coal haul road system any vehicle whose gross vehicle weight exceeds the limits specified by a notice posted pursuant to KRS 189.230(3).

Section 9. ~~[8.]~~ Local Resolutions. Resolutions of local governing bodies issued pursuant to KRS 177.9771(9) making recommendations to the Secretary of Transportation shall be submitted to: Secretary of Transportation, Transportation Cabinet, 501 High Street, State Office Building, Frankfort, Kentucky 40622. The resolution shall set forth a specific description of the road or road segments under consideration. The resolution shall further set forth with specificity those conditions which give rise to inherent and definite hazards or create special conditions which the Secretary of the Transportation Cabinet needs to consider.

Section 10. [9.] Incorporation by Reference. A copy of the AASHTO Manual for Maintenance Inspection of Bridges, 1983 edition and 1984 and 1985 Interim Revisions is hereby incorporated by reference as part of this administrative regulation. A copy of the AASHTO Manual for Maintenance Inspection of Bridges, 1983 edition and 1984 and 1985 Interim Revisions may be viewed at the Transportation Cabinet, Department of Highways, Division of Maintenance, 7th Floor, State Office Building, 501 High Street, Frankfort, Kentucky. Office hours are 8 a.m. until 4:30 p.m., eastern time on weekdays. Copies of the AASHTO Manual for Maintenance Inspection of Bridges, 1983 edition and 1984 and 1985 Interim Revisions may be obtained from the American Association of State Highway and Transportation Officials, 444 North Capitol Street, N.W., Suite 225, Washington, D.C. 20001.

J.M. YOWELL, P.E., State Highway Engineer
JERRY D. ANGLIN, Deputy Secretary and Commissioner
DON C. KELLY, P.E., Secretary

APPROVED BY AGENCY: January 13, 1995

FILED WITH LRC: February 6, 1995 at 9 a.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on March 29, 1995 at 1:30 p.m. local prevailing time in the Fourth Floor Hearing Room of the State Office Building, 501 High Street, Frankfort, Kentucky. Any person who intends to attend this meeting must in writing by March 24, 1995 so notify this agency. If no notification of intent to attend the hearing is received by this date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given the opportunity to comment on the administrative regulation. A transcript of the public comment hearing will not be made unless a written request for a transcript is made and then only at the requestor's expense. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by March 24, 1995. This request does not have to be in writing. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. Written comments will be accepted until the close of business on March 29, 1995. Send written notification of intent to attend the public comment hearing or written comments on the administrative regulation to: Sandra G. Pullen, Staff Assistant, Transportation Cabinet, 1003 State Office Building, 501 High Street, Frankfort, Kentucky 40622, (502) 564-4890.

REGULATORY IMPACT ANALYSIS

Contact person: Sandra G. Pullen

(1) Type and number of entities affected: The 6,000 coal transporters operating in Kentucky as well as all other persons using the highways included in the Extended Weight Coal Haul Road System.

(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: The administrative regulation is to be implemented statewide but the largest concentration of roads are located in the coal fields of eastern and western Kentucky. The general perception of the public is that if there are more highways in the Extended Weight Coal Haul Road System, there will be more mining jobs created and therefore an improvement in the economy. This hypothesis has neither been proven nor disproven. However, it is quite true that the more roads there are in the system, the fewer trucks that will be needed to transport the coal which is mined. This means fewer jobs for the coal transporters and a down-turn in their economy.

(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: It will cost less for the coal owners to have the coal transported in those areas with road segments in the system. However, there is insufficient Road Fund money to maintain the extended weight roads at what is generally considered to be an acceptable level of service. Therefore, more maintenance is required on all of the vehicles routinely using the roads in the Extended Weight Coal Haul Road System, thus increasing the price 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: Savings incurred as a result of being allowed to transport coal at extended weights over additional roads. At the same time a number of roads are being deleted from the system causing an additional cost for the coal transporters who have been operating on those routes. The savings and cost to the industry as a whole should balance. However, individual companies can see a large swing in their cost/savings.

2. Second and subsequent years: Same as 1.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: The road segments added to the extended weight system will require more maintenance.

1. First year: The cost of additional maintenance for roads added to the system will be thousands of dollars. Almost all the highways which are being deleted from the system will still have to have additional maintenance or reconstruction because of the earlier transportation of coal at extended weights. Therefore, there will be no off-setting savings for the Transportation Cabinet.

2. Continuing costs or savings: Same as 1.

3. Additional factors increasing or decreasing costs: The life span of bridges which are used at these extended weights is considerably shortened. Therefore, the cost to the Transportation Cabinet over the life of the extended weight coal haul road system will be additional millions of dollars.

(b) Reporting and paperwork requirements: None

(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: Road Fund - Department of Vehicle Regulation, Division of Motor Vehicle Enforcement and Department of Highways.

(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: It is generally perceived that including roads in the Extended Weight Coal Haul Road System has a positive effect on the economy of a coal producing region, and a neutral to negative effect elsewhere. Conversely, removing roads from the Extended Weight Coal haul Road System (unless all mines in the area are permanently closed) is generally perceived as having a negative impact on the economy in a coal producing region.

(b) Kentucky: See (a).

(7) Assessment of alternative methods; reasons why alternatives were rejected: KRS 177.9771 mandates the annual update of the extended weight coal haul road system listing. Therefore, legally there was no alternative to the annual update. However, KY 205 was removed from the Extended Weight Coal Haul Road System because of the extremely unsafe condition of the highway. The Transportation Cabinet chose to remove the road from the Extended Weight Coal Haul Road System rather than having to close the road to all traffic.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The roads on the Extended Weight Coal Haul Road System will suffer much more damage than the other state-maintained highways. A road which is not in good condition is much more unsafe than one in good condition.

(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: 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:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments: Most of the impacts of the administrative regulation, both positive and negative are mandated by KRS 177.9771. Unless there is a change in state law, there are very few effects generated by the implementation of the administrative regulation.

(11) TIERING: Is tiering applied? Yes. The entire administrative regulation is a tiering of weight and axles allowed on certain roads.

TRANSPORTATION CABINET
Department of Highways
Division of Design
(Proposed Amendment)

603 KAR 9:010. Railroad crossing [~~alteration and~~] closure procedure.

RELATES TO: KRS 177.120-177.130

STATUTORY AUTHORITY: KRS 177.120

NECESSITY AND FUNCTION: KRS 177.120 requires the Transportation Cabinet to promulgate administrative regulations that contain standards governing the closure of [~~establishment, vacation, relocation, and separation of grades at~~] public railway/highway grade crossings. This administrative regulation sets forth procedures the Transportation Cabinet shall follow regarding the production of a list of railroad crossings which shall be considered for closure, the evaluation of the candidate list with respect to possible closure, and the ultimate decision to recommend closure [~~or other appropriate changes to highway facilities crossing railroad rights-of-way~~]. KRS 177.120 considers that public safety will be enhanced by the closure of redundant and inherently dangerous crossings.

Section 1. Candidate Lists. (1) The Transportation Cabinet shall compose a list of candidate railroad crossings for possible closure or other appropriate action drawn from the following sources:

(a) Responses to a letter sent to each county or local government in the Commonwealth through which railroad rights-of-way pass requesting a list of railroad crossings suggested for closure;

(b) Responses to a letter sent to each railroad company operating in the Commonwealth requesting a list of railroad crossings suggested for closure;

(c) Recommendations from other public or private agencies or individuals; and

(d) Railroad crossings which the Transportation Cabinet considers candidates for closure.

(2) The Transportation Cabinet may consider any railroad crossing as a candidate for closure when:

(a) An alternate railroad crossing is available within one-quarter (1/4) track mile in urban areas and the railroad crossing has a current average daily traffic count of 500 vehicles or less;

(b) An alternate railroad crossing is available within one (1) track mile in rural areas and the railroad crossing has a current average daily traffic count of 150 vehicles or less; or

(c) The railroad crossing has sight distance obstructions or other layout characteristics which create unsafe conditions and closure of the railroad crossing is an economically preferable alternative to correcting the deficiencies at the site , and an alternate crossing is available as required in paragraphs (a) and (b) of this subsection.

(3) The Transportation Cabinet shall consider action other than closure when the conditions set forth in subsection (2)(c) of this section are not met at a particular crossing, but when there are unusual safety concerns about the crossing.

Section 2. Evaluation. (1) The Transportation Cabinet's recommendation regarding a candidate railroad crossing shall include one (1) or more of the following factors:

(a) Highway traffic flow through the railroad crossing;

(b) Highway operating speeds through the railroad crossing;

(c) Train traffic through the railroad crossing;

(d) Train speed through the railroad crossing;

(e) Character, function and type of highway traffic through the railroad crossing;

(f) The necessity of the crossing for provision of emergency services;

(g) Accident history at the railroad crossing for the past five (5) years;

(h) Railroad crossing geometry including sight distance, acute crossing angle, high profile, etc.;

(i) Type of warning device currently in place at the railroad crossing;

(j) Condition of alternate railroad crossing surface;

(k) Condition of alternate railroad crossing;

(l) Distance and time to alternate railroad crossing;

(m) Character of adjacent road network;

(n) Reasonable access to public and private lands;

(o) Use of the railroad crossing by pedestrians and bicycles;

(p) Frequency of roadway blockage by trains;

(q) Community impacts of train whistle;

(r) Economic importance of the railroad crossing;

(s) Development projections in the vicinity of the railroad crossing ; or

(t) Funding availability, or potential availability, for action other than closure.

(2)(a) The Transportation Cabinet may consider a number of railroad crossings as a group in evaluating the merits of closing a given railroad crossing. If many railroad crossings of a rail line exist close together, the cabinet may recommend that one (1) or more of the railroad crossings be closed, subject to other evaluation criteria.

(b) The Transportation Cabinet may perform or recommend the performance of a traffic study of the road network in the vicinity of a railroad crossing being considered for closure to analyze the effect of the closure on users of the railroad crossing and on local traffic flow.

(c) The Transportation Cabinet may evaluate a railroad crossing in terms of its economic costs and benefits, considering:

1. The railroad crossing's effects on highway and rail operations safety;

2. Changes in highway capital and maintenance costs due to closure;

3. Effects on local business operations and property values, either positive or negative;

4. Effects on rail and highway vehicle operating costs due to closure; or

5. Any other effect which may have economic impact.

Section 3. Data Verification. If the evaluation performed pursuant to Section 2 of this administrative regulation indicates that a railroad crossing is a candidate for closure, the Transportation Cabinet shall :

(1) Provide notification to the jurisdictional local government unit and appropriate railroad company of the potential for closure of the crossing;

(2) Verify elements of its information file which are critical to accurate evaluation of the particular railroad crossing. This verification shall, as available, consist of the following:

(a) Collection of updated information from local officials;

(b) Collection of updated information from officials of the affected railroad company; and

(c) Field data collection activities such as updated traffic counts at the railroad crossing.

Section 4. Public Input. (1) If based on the evaluation results of Sections 2 and 3 of this administrative regulation the Transportation Cabinet reaches a preliminary decision to recommend closure of a railroad crossing, the Transportation Cabinet may conduct public information meetings regarding the proposed railroad crossing closure in the region affected by the proposed closure.

(2) If a hearing is requested as specified in KRS 177.120(3), the Transportation Cabinet shall hold a public comment ~~[contested case]~~ hearing in accordance with 600 KAR 1:010 ~~[the hearing process specified in 601 KAR 1:030, except that the transcript shall be paid for by the Transportation Cabinet and the Report and Recommended Order shall be presented to the Transportation Secretary]~~.

(3) ~~[The burden of proof for retention of the railroad crossing shall be the responsibility of the individuals, organizations, or agencies that contested the closure decision.~~

~~(4)]~~ The Transportation Cabinet Secretary's decision following the public hearing shall be based on the evaluation performed and information obtained in Sections 2 and 3 of this administrative regulation, subject to new information acquired through the public information and hearing process.

Section 5. Official Order. (1) If the Transportation Cabinet's final decision is to close the candidate railroad crossing, the secretary shall issue an official order to that effect.

(2) The official order shall have an effective date far enough in advance of its issuance to allow the local government unit having jurisdiction to comply with the requirements of KRS 178.050. 178.050.

(3) After the issuance of the official order by the secretary:

(a) The railroad involved shall physically remove the crossing from the tracks; and

(b) The entity maintaining the highway shall:

1. Remove or barricade the approaches to the crossing; or

2. Sign the approaches in accordance with the requirements of 603 KAR 5:050.

Section 6. Local Closures. The Transportation Cabinet's railroad crossing closure program, as mandated by KRS 177.120, shall not preclude local officials and railroad companies from pursuing railroad crossing closure agreements independent of the cabinet's program.

~~[Section 7. 1993 Proposed List of Crossings to be Closed. (1) The Transportation Cabinet has determined in accordance with the provisions of this administrative regulation that the following railroad crossings should be closed:~~

	County	Railroad	Location	ID Number
~~(a)~~	~~Carroll~~	~~CSX~~	~~Simmons St. @ Worthville~~	~~345645N~~
~~(b)~~	~~McCreary~~	~~Southern~~	~~Strunk - Pine Knot Loop~~	~~841898M~~
~~(c)~~	~~Mason~~	~~CSX~~	~~Walnut St. in Maysville~~	~~229280S~~
~~(d)~~	~~Oldham~~	~~CSX~~	~~Connector Rd/0.5 N Camden Rd~~	~~345546R~~
~~(e)~~	~~Oldham~~	~~CSX~~	~~Connector Rd/.3 SW Glenarm Rd~~	~~345547X~~

~~(2) The Transportation Cabinet hereby offers the opportunity for a hearing on any of these proposed closures. A hearing request shall be received at the Division of Planning, 419 Ann Street, Frankfort, Kentucky 40622, within thirty (30) days of the publication of this proposed amended administrative regulation in the Administrative Register.~~]

J.M. YOWELL, P.E., State Highway Engineer
JERRY D. ANGLIN, Deputy Secretary and Commissioner
DON C. KELLY, P.E., Secretary

APPROVED BY AGENCY: February 10, 1995

FILED WITH LRC: February 10, 1995 at 10 a.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on March 29, 1995 at 10 a.m. local prevailing time in the Transportation Cabinet, Corner of High, Clinton and Holmes Streets, 501 High Street, Room 1003, Frankfort, Kentucky 40622. Any person who intends to attend this meeting must in writing by March 24, 1995 so notify this agency. If no notification of intent to attend the hearing is received by this date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given the opportunity to comment on the administrative regulation. A transcript of the public comment hearing will not be made unless a written request for a transcript is made and then only at the requestor's expense. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by March 24, 1995. This request does not have to be in writing. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. Written comments will be accepted until the close of business on March 29, 1995. Send written notification of intent to attend the public comment hearing or written comments on the administrative regulation to: Sandra G. Pullen, Staff Assistant, Transportation Cabinet, 1003 State Office Building, 501 High Street, Frankfort, Kentucky 40622, (502) 564-4890.

REGULATORY IMPACT ANALYSIS

Contact person: Sandra G. Pullen

(1) Type and number of entities affected: County governments (89) and municipal governments (over 100) and railroad companies (13) are affected by this administrative regulation. Any rail line which intersects a county road, city street, or road on the state-maintained highway system creates a potential railroad-highway crossing closure candidate.

(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: None

(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 would be direct costs to the railroad company from each of the proposed closures as a result of the cost of removing the crossing and installing the street barricade. These costs would be offset by the elimination of future maintenance responsibility for the closed crossing (estimated at $900 - $1300/year). Indirect costs or savings must be determined on a case-by-case basis. A crossing closure will eliminate the potential for a train-vehicle accident, resulting in an inherent savings of accidents costs and potentially human life.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: Cities, counties and railroads are asked to respond to correspondence from the Transportation Cabinet requesting submission of a recommended list of rail-highway crossing candidates for potential closure.

1. First year following implementation: Same

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body: A study of each crossing closure candidate will require extensive time for Cabinet personnel to conduct office and field review. Should a candidate crossing be chosen for closure, local coordination and local public review and responses must be addressed. The potential exists for extensive and lengthy legal appeals regarding decisions to close a rail crossing, which could result in extensive paperwork require-

ments.

(a) Direct and indirect costs or savings:

1. First year: $50,000 - $75,000 as a result of personnel, equipment, travel, etc. to evaluate these crossings and attend hearings/meetings.

2. Continuing costs or savings: Same as first year

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Annually the Transportation Cabinet must contact all affected entities.

(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: Road 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: None - Only rarely used or redundant crossings are likely to ever be closed.

(b) Kentucky: Same

(7) Assessment of alternative methods; reasons why alternatives were rejected: The changes in this administrative regulation were made to comply with the changes in state law passed by the 1994 General Assembly. Since there was no reason presented to change the basic criteria established for closing a crossing, only those items necessary to bring the administrative regulation into compliance with state law were included. An alternative method presently exists whereby the railroad companies and the local jurisdictional body can agree to close a rail-highway crossing independent of Transportation Cabinet involvement. This administrative regulation does not preclude the continuance of this process.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Closing crossings leads to a more safe condition on the highways because rail/highway crossings are, by their very nature, unsafe.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No, the changes in the administrative regulation are technical.

(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: KRS 178.355 provides a process for the elimination of railroad crossings on county roads. This statute could be considered as potentially overlapping the provisions of this administrative regulation.

(a) Necessity of proposed regulation if in conflict: Not 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 takes into consideration the amount of traffic and other such factors when selecting crossings for possible closure.

EDUCATION, ARTS, AND HUMANITIES CABINET
Department of Education
Office of Chief State School Officer
(Proposed Amendment)

701 KAR 5:100. Guidelines for alternative models for school-based decision making.

RELATES TO: KRS 160.345

STATUTORY AUTHORITY: KRS 156.070, 160.345

NECESSITY AND FUNCTION: The State Board for Elementary and Secondary Education is directed by KRS 160.345(7) to review for approval applications for alternative models for school-based decision making. This administrative regulation establishes approval guidelines for alternative models for school- based decision making.

Section 1. The membership of school councils shall be maintained at the 3-2-1 ratio set forth in KRS 160.345(2) so [~~such~~] that parental membership shall not fall below one-third (1/3) of voting members. Any representation of classified staff or of students on the school council shall either be as nonvoting members of the council or on committees advisory to the council, whichever the council itself shall decide.

Section 2. [~~Terms of office for teachers and parents on the school council shall be one (1) year. Council members shall have the right to stand for reelection.~~]

[~~Section 3.~~] (1) If a school can demonstrate that it had in operation prior to July 13, 1990, a successful school-based decision making model composed of a different membership than specified in KRS 160.345(2), it may apply to the State Board for Elementary and Secondary Education for approval of its model under KRS 160.345(7) regarding alternative models. Priority for approval of [~~such~~] alternative models shall be given to those preexisting models which add parents in numbers sufficient to meet the 3-2-1 statutory configuration.

(2) To demonstrate that a school had [~~such~~] a formal, operational, decision-making entity in place before July 13, 1990, it shall submit written evidence of decisions and actions taken by the decision-making body and implemented in the school. Groups that were informal and advisory in that they were dealing with peripheral issues not covered in the Kentucky Education Reform Act of 1990 shall [~~, do~~] not qualify for alternative model approval.

(3) In the case of requests for approval of [~~such~~] alternative models which were in operation prior to July 13, 1990, the school shall show evidence that the model in existence has been subjected to review, evaluation, and recommendation regarding its continuation by representatives of the parents, students, certified personnel, and the administrators of the school, and that two-thirds (2/3) of the faculty (all certified members of the school [~~excluding the principal, assistant principal, and any head teacher and~~] including any itinerant teacher assigned to the school for payroll purposes) have agreed to apply for the continued use of that model for school- based decision making.

Section 3. Each [~~4. All other~~] application[~~s~~] for alternative models from schools which began school-based decision making after July 13, 1990, shall be based on the 3-2-1 statutory configuration so [~~such~~] that parental membership shall not fall below one-third (1/3) of voting members, shall have no more than two (2) year [~~one (1) year~~] terms of office, and shall show any student or classified staff representation as nonvoting or advisory. The [~~Such~~] other requests shall be approved or rejected after a case-by-case review by the board and recommendation by the Department of Education.

Section 4. [~~5.~~] KRS 160.345(7) stipulates that the school shall submit its application for an alternative model "through" the local board to the Commissioner of Education and the State Board for Elementary and Secondary Education for approval. The state board interprets that provision to mean that the local board shall transmit the request to the state as quickly as possible. In exercising this function, the local board is serving as transmittal agent and shall [~~does~~] not have the right to delay or deny a school's request for an alternative model.

[~~Section 6. All alternative models submitted to the state board since July 13, 1990, shall be reviewed for approval using the criteria in this administrative regulation.~~]

Section 5. [~~7.~~] All alternative models approved by the state board pursuant to any provision contained in this administrative regulation

shall be valid for and indefinite period, subject to continuous review by the state board. This approval for an indefinite period, subject to continuous review by the state board, shall apply to all alternative models approved prior to and subsequent to the date of enactment of this administrative regulation. [~~a period not to exceed two (2) years. Applications for a renewed waiver may be resubmitted in accordance with the procedures set forth in this regulation.~~]

Section 6. The Kentucky Department of Education shall keep records of all schools which apply for, and all schools which are granted, an alternative model for school-based decision making.

THOMAS C. BOYSEN, Commissioner
JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: February 13, 1995
FILED WITH LRC: February 14, 1995 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 30, 1995, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by March 25, 1995, 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 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 Kevin M. Noland, Office of Legal Services, Department of Education, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact person: Charles W. Edwards, Director

(1) Type and number of entities affected: Local school districts. Approximately 1400 schools.

(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: If school prefers an SBDM alternative model, reporting requirement to file an application for alternative model to the Kentucky Board of Education.

1. First year following implementation: None
2. Second and subsequent years: None

(3) Effects on the promulgating administrative body: Requires Kentucky Board of Education to review applications.

(a) Direct and indirect costs or savings: None

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Requires local school which prefers an alternative SBDM model to submit application to Kentucky Board of Education.

(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: Kentucky Department of Education, Division of School-Based Decision Making.

(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: Approval by the Kentucky Board of Education of alternative SBDM models is required by KRS 160.345.

(8) Assessment of expected benefits: Enables flexibility at school level when implementing SBDM.

(a) Identify effects on public health and environmental welfare of 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: 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? (Explain why tiering was or was not used) No. Regulation applies equally to any school wishing to implement an alternative administrative structure for SBDM.

EDUCATION, ARTS, AND HUMANITIES CABINET
Department of Education
Office of District Support Services
(Proposed Amendment)

702 KAR 1:001. Implementation guidelines - Kentucky school facilities planning manual.

RELATES TO: KRS 157.420, 157.620, 157.622
STATUTORY AUTHORITY: KRS 156.070, 157.420
NECESSITY AND FUNCTION: KRS 157.420(3) requires that the capital outlay allotment from the public school fund be used by school districts for capital outlay projects approved by the chief state school officer in accordance with requirements of law and based on a survey made in accordance with administrative regulations of the State Board for Elementary and Secondary Education; and KRS 157.622 sets forth certain requirements for school facilities plans relative to participation in funding by the School Facilities Construction Commission. KRS 157.620 states construction needs shall be approved by the State Board for Elementary and Secondary Education. This administrative regulation provides for the development and adoption of a written plan by the school district describing construction and use of school facilities.

Section 1. School districts shall develop a local facility plan once every four (4) years in accordance with the schedule set by the chief state school officer. The State Board for Elementary and Secondary Education shall approve the facility plan submitted by the district upon the recommendation of the chief state school officer. Nothing in this administrative regulation shall prohibit a school district from requesting an amendment to its facility plan at other times during the four (4) year cycle.

Section 2. Each school district's facilities plan, and requested amendments thereto, shall be developed in accordance with the standards and hearing procedures contained in the "Kentucky School Facilities Planning Manual", December 1994, and the Master Educational Facility Plan Guidelines, January 1995 [~~November 1992~~], which are [~~is~~] hereby adopted and incorporated by reference. Copies of these [~~this~~] document may be inspected, copied, and obtained from the Division of Facilities Management, Department of Education, 15th

Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

Section 3. The facilities plan shall remain in effect until any changes have been approved by the State Board for Elementary and Secondary Education.

Section 4. The adopted facilities plan shall become the facilities plan of the local school district and shall be implemented to the extent that the financial ability of the district shall permit as determined by the chief state school officer and the School Facilities Construction Commission. The scope of any construction project recommended in the facilities plan shall remain in effect until any changes have been approved by the state board.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the State Board for Elementary and Secondary Education, as required by KRS 156.070(4).

Thomas C. Boysen
Commissioner of Education

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: February 14, 1995

FILED WITH LRC: February 14, 1995 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 30, 1995, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by March 25, 1995, 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 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 Kevin M. Noland, Office of Legal Services, Department of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact: Mark Ryles, Director

(1) Type and number of entities affected: 176 local school districts.

(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: None

(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: 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: The proposed amendments will reduce reporting and paperwork in the first and subsequent years.

2. Second and subsequent years: See above item.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The proposed amendment will reduce reporting and paperwork in the 1st and subsequent years, simplify administration to facility plans and reduce costs each year.

2. Continuing costs or savings: The proposed amendment will reconcile finance structure and project needs increase the effectiveness of limited construction funds.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The proposed amendment will reduce reporting and paperwork.

(4) Assessment of anticipated effect on state and local revenues: Minor, positive effect.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: No additional revenue required. Regulation shall be enforced by Department of Education, Facilities Management staff.

(6) To the extent available from 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: Alternatives were reviewed and rejected by constituent groups including school officials.

(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 occur, explain detrimental effect: N/A

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplicative: None

(a) Necessity of proposed regulation, if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments: None

(11) TIERING: Was tiering applied? No. The administrative regulation applies equally to all 176 local school districts.

EDUCATION, ARTS, AND HUMANITIES CABINET
Department of Education
Office of District Support Services
(Proposed Amendment)

702 KAR 3:120. Uniform school financial accounting system.

RELATES TO: KRS [~~156.031,~~] 156.070, 156.160, 156.200

STATUTORY AUTHORITY: KRS 156.070, 156.160, 156.200

NECESSITY AND FUNCTION: [~~KRS 156.031 requires that regulations relating to statutes amended by the 1990 Kentucky Education Reform Act be reviewed, amended if necessary, and resubmitted to the Legislative Research Commission prior to December 30, 1990;~~] KRS 156.070 gives the State Board for Elementary and Secondary Education the management and control of the common schools; KRS 156.160 gives the state board authority over local school district budgets; and KRS 156.200 gives the state board authority over the accounting procedures and reports of local boards of education. This administrative regulation is necessary to provide a uniform system of financial accounting and budgets for boards of education.

Section 1. Local boards of education shall follow the uniform financial accounting system detailed in "Official Manual of Instruction for the Kentucky Uniform School Financial Accounting System," July 1990 [~~1, 1978~~], approved by the chief state school officer, a copy of which is incorporated by reference, and which may be obtained from the Division of [~~Office of School Administration and~~] Finance, 15th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, Monday

through Friday, 8 a.m. through 4:30 p.m., until the Kentucky Education Technology System (KETS) district administrative system chart of accounts is installed in the district. Local boards of education shall then follow the chart of accounts inherent to the system, "KETS District Administrative System Chart of Accounts," February, 1995, a copy of which is incorporated by reference. A copy may be obtained from the Division of Finance, 15th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. through 4:30 p.m.

Section 2. A close estimate or working budget shall be required annually of each board of education. The form of this document shall conform to the uniform financial accounting system provided.

Section 3. As occasions shall demand, certain local boards of education may be permitted, upon approval of the chief state school officer, to deviate from the "Official Manual of Instruction for the Kentucky Uniform School Financial Accounting System," July 1990, or the "KETS District Administrative System Chart of Accounts," February, 1995 [~~1, 1978~~], in general use in order to experiment or to serve as pilot systems, for good and detailed cause shown and for a time certain.

Section 4. All the financial records of the local board of education shall be prepared and filed in either the office of the superintendent or in a location designated by [~~offices adjacent to~~] the superintendent[~~'s office~~].

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the State Board for Elementary and Secondary Education, as required by KRS 156.070(4).

Thomas C. Boysen
Commissioner of Education

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: February 14, 1995

FILED WITH LRC: February 14, 1995 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 30, 1995, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by March 25, 1995, 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 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 Kevin M. Noland, Office of Legal Services, Department of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact: Kyna Koch, Director

(1) Type and number of entities affected: 176 districts.

(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: None

(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: 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: None

(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: None

(6) To the extent available from 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 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 occur, explain detrimental effect: This regulation does not relate to the environment or public health.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplicative: None

(a) Necessity of proposed regulation, if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

EDUCATION, ARTS, AND HUMANITIES CABINET
Department of Education
Office of District Support Services
(Proposed Amendment)

702 KAR 3:130. Internal accounting.

RELATES TO: KRS [~~156.070,~~] 156.160, 156.200

STATUTORY AUTHORITY: KRS 156.070, 156.160

NECESSITY AND FUNCTION: KRS 156.070 gives the State Board for Elementary and Secondary Education the management and control of the common schools; and KRS 156.200 gives the state board authority over accounting procedures and reports of local school districts. This administrative regulation is necessary to establish uniform procedures for the accounting of school activity funds.

Section 1. Definition. "Internal accounts" means [~~shall be defined as~~] all school funds including funds derived from fund raising activities sponsored under the auspices of the school. [~~except that~~] Funds raised or received by organizations which do not come under the direct supervision of school authorities shall not be considered internal accounts.

Section 2. The district board of education shall have the responsibility for administration and control of all internal accounts.

Section 3. The district board of education shall develop accounting procedures consistent with those set out in the Department of Education's "A Uniform Program of Accounting for School Activity Funds in Kentucky Schools," January 1995 [~~rev. September 1993~~], a copy of which is incorporated by reference and which may be inspected, copied, and obtained from the Division of [~~Office of District Support Services~~], 15th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. through 4:30 p.m.

Section 4. Internal accounts shall be audited annually as follows:

(1) High school activity fund accounts shall be audited by a certified public accountant.

(2) The high school activity fund account for the purpose of making the audit shall include the following [~~be defined as follows~~]:

(a) Schools with grade ranges of 10 through 12;

(b) Schools with grade ranges of 9 through 12;

(c) Schools with grade ranges of 7 through 12; and

(d) Schools with grade ranges of primary through 12.

(3) Activity fund accounts other than high school accounts shall be audited either by a certified public accountant or a select committee approved by the Board of Education. The committee shall be composed of central office staff, principals, teachers or citizens who are not employees of the board.

(4) If an audit committee is selected by the Board of Education, the names and titles of the committee members shall be submitted to the chief state school officer for approval prior to the date of the audit.

(5) All [~~The~~] audit reports shall be reviewed and accepted by the local board. All recommendations and exceptions listed in the audit shall be reviewed by staff of the Department of Education[~~'s accounts examiner~~] and a report made to the district Board of Education [~~and the chief state school officer~~]. A copy of the audit report shall be on file in both the office of the principal and the office of the superintendent of the local school district where it shall be open for public inspection.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the State Board for Elementary and Secondary Education, as required by KRS 156.070(4).

Thomas C. Boysen
Commissioner of Education

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: February 14, 1995

FILED WITH LRC: February 14, 1995 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 30, 1995, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by March 25, 1995, 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 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 Kevin M. Noland, Office of Legal Services, Department of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact: Kyna Koch, Director

(1) Type and number of entities affected: 176 districts.

(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: None

(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: 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: None

(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: None

(6) To the extent available from 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 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 occur, explain detrimental effect: This regulation does not relate to the environment or public health.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplicative: None

(a) Necessity of proposed regulation, if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

EDUCATION, ARTS, AND HUMANITIES CABINET
Department of Education
Bureau of Learning Results Services
(Proposed Amendment)

703 KAR 4:010. The formula for determining successful schools.

RELATES TO: KRS 158.645, 158.6451, 158.6453, 158.6455

STATUTORY AUTHORITY: KRS 156.070, 158.6455

NECESSITY AND FUNCTION: KRS 158.6455 gives the State Board for Elementary and Secondary Education the authority to promulgate administrative regulations to establish a system of determining successful schools and a system of rewards and

sanctions for certified staff in schools and for certified staff who are not assigned to a school in a local school district. Successful schools must be defined in terms of student achievement of the goals set forth in KRS 158.645, and these goals were adopted by the State Board for Elementary and Secondary Education on December 19, 1991, pursuant to KRS 158.6451. Finally, successful schools must be defined with reference to the statewide assessment program set forth in KRS 158.6453.

Section 1. Definitions. (1) "Accountability index" means the statistic which is the combination [~~average~~] of the academic [~~cognitive~~] and noncognitive indices for a school.

(2) "Baseline" means the accountability index score which describes the school's percentage of successful students at the beginning of each biennium.

(3) "Academic [~~Cognitive~~] index" means the statistic which describes school success on the cognitive goals set forth in KRS 158.6451(1)(b).

(4) "Common open-ended questions" means assessment items which are taken by all students in the accountability grades and which require [~~short~~] written answers.

(5) "Declines by less than five (5) percent or more" means obtains an average accountability index for the biennium of less than [~~which is~~] five (5) or more points below its baseline [~~for~~] that is established at the beginning of the biennium, is based on performance during the previous biennium, and obtains a year two (2) accountability index below its improvement goal for the biennium.

(6) "Declines by less than five (5) percent" means obtains an average accountability index which is less than five (5) points below its baseline for that biennium, and obtains a year two (2) accountability index below the improvement goal for the biennium.

(7) "Maintains the previous percentage of successful students" means obtains an average accountability index not less than the baseline nor equal to or greater than its improvement goal assigned at the beginning of [~~threshold for~~] that biennium, and obtains a year two (2) accountability index below the improvement goal for the biennium.

(8) "Matrix-sampled open-ended questions" means assessment items which are taken by a sample of students and which require short written answers.

(9) "Noncognitive index" means the statistic which describes school success on the noncognitive goals set forth in KRS 158.6451(1)(c), (d), (e), and (f).

(10) "Percentage of successful students" means the [~~"percentage of successful students" statistic, which shall also be referred to as the~~] accountability index.

(11) "Performance events" means assessment tasks that require students to apply what they have learned in a real-life context.

(12) "Performance levels" means categories of student learning in each of the content areas, i.e., novice, apprentice, proficient, or distinguished.

(13) "Portfolio scores" means the scores assigned by teachers, or scores reassigned through portfolio scoring review procedures, to a collection of a student's best work in a given content area.

(14) "Improvement goal [~~Threshold~~]" means the accountability index score which describes the amount of growth required for a school or school district for [~~during each year of~~] the biennium.

(15) "Alternate portfolio" means that component of the assessment system designed for students who cannot with all assistance and adaptive devices available participate in the regular assessment process.

(16) "Year two (2) accountability index" means the accountability index a school or school district obtains in the second year of the biennium.

Section 2. The data used in the formula for determining successful schools shall be the academic [~~cognitive~~] and noncognitive data gathered in the statewide assessment program during each biennium pursuant to KRS 158.6453.

Section 3. For the 1992-94 biennium the baseline shall be based on data from the 1991-92 assessment program. For subsequent biennia the baseline shall be based on the weighted average of the two (2) years of assessment data from [~~for~~] the most recent previous biennium.

Section 4. The points assigned to each performance level for purposes of computing the academic [~~cognitive~~] indices shall be: novice = zero; apprentice = two (2); proficient = five (5); and distinguished = seven (7).

Section 5. For purposes of computing the academic index [~~cognitive, noncognitive and accountability indices~~] the data shall be transformed to a scale such that a school with all of its students at the novice level shall receive a score of zero and a school with all of its students at the proficient level shall receive a score of 100.

Section 6. Computing the academic [~~cognitive~~] index for each content area (writing, reading, mathematics, science, [~~and~~] social studies, arts and humanities, and practical living/vocational studies) shall require determining the percentage of students at each performance level with the following weighting and combining of data:

(1) Writing: portfolio scores - 100 percent;

(2) Reading; common open-ended questions - fifty (50) percent, and matrix-sampled open-ended questions - fifty (50) percent;

(3) Mathematics:

(a) Grade 4: common open-ended questions - forty (40) percent, matrix-sampled open-ended questions - forty (40) percent, and performance events - twenty (20) percent.

(b) For the 1992-94 Biennium, Grade 8 and Grade 12 mathematics: common open-ended questions - forty (40) percent, matrix-sampled open-ended questions - forty (40) percent, performance events - twenty (20) percent, and mathematics portfolio scores - zero percent.

(c) For the 1994-96 Biennium, Grade 8 and Grade 12 mathematics: common open-ended questions - thirty (30) percent, matrix-sampled open-ended questions - thirty (30) percent, performance events - ten (10) percent, and mathematics portfolio scores - thirty (30) percent.

(4) Science: common open-ended questions - forty (40) percent, matrix-sampled open-ended questions - forty (40) percent, and performance events - twenty (20) percent; [~~and~~]

(5) Social studies: common open-ended questions - forty (40) percent, matrix-sampled open-ended questions - forty (40) percent, and performance events - twenty (20) percent;

(6) Arts and humanities: matrix-sampled open-ended questions - seventy (70) percent, and performance events - thirty (30) percent; and

(7) Practical living/vocational studies: matrix-sampled open-ended questions - eighty (80) percent, and performance events - twenty (20) percent.

Section 7. Alternate Portfolios. Scores from alternate portfolios shall be included in the academic indices so that the data from each alternate portfolio completed by students eligible to participate in this assessment component contributes the same weight to the academic component of the accountability index as would a student participating in the regular components of the assessment program. This shall be done by considering each alternate portfolio student's scores on all common and two (2) matrix items in all subject areas, on writing and mathematics portfolio, and on a practical living/vocational studies performance event which shall be the same as that student's alternate portfolio score.

Section 8. [7.] Once the percentage of students at each performance level in each content area has been calculated, each percentage shall be multiplied by the appropriate points described in Section 4 of this administrative regulation and transformed to the scale described in Section 5 of this administrative regulation.

Section 9. Components of Noncognitive Index. [8.] The values for attendance rate and successful transition to adult life rate shall be the actual percentage reported. The values for retention rate and dropout rate shall be 100 minus the actual percentage reported.

Section 10. [9.] The weights assigned to each noncognitive variable shall be:

(1) Grade 4: attendance rate - eighty (80) percent and retention rate - twenty (20) percent;

(2) Grade 8: attendance rate - forty (40) percent, retention - forty (40) percent, and dropout rate - twenty (20) percent; and

(3) Grade 12: attendance rate - twenty (20) percent, retention - five (5) percent, dropout rate - thirty-seven and five-tenths (37.5) percent, and transition rate - thirty-seven and five-tenths (37.5) percent.

(4) Beginning with the accountability index calculated for the 1994-95 school year, noncognitive data shall be calculated using the data from the previous school year.

Section 11. [10.] To compute the noncognitive index the weights for each noncognitive variable described in Section 10 [9] of this administrative regulation shall be multiplied by the value for each noncognitive variable described in Section 9 [8] of this administrative regulation.

Section 12. [11.] To compute the accountability index the academic [cognitive] index for each content area and the noncognitive index shall be calculated by summing the weighted indices as follows: [averaged.]

	Weight
Reading Index	14
Mathematics Index	14
Science Index	14
Social Studies	14
Writing	14
Arts and Humanities	7
Practical Living/Vocational Studies	7
Noncognitive Index	16

Section 13. [12.] A local district's accountability index shall be calculated by aggregating the data from all of the students in that district. [the weighted average of its schools' accountability indices.]

Section 14. [13. By January of the first school year in each biennium, the board shall approve a procedure for the calculation of a threshold for each school.] A local district's improvement goal [threshold] shall be its baseline [the weighted average of its schools' threshold. For the 1992-94 biennium, a school's threshold shall be its 1991-92 accountability] index as calculated per Section 13 of this administrative regulation plus one-tenth (0.1) the difference between 100 and the school's baseline [1991-92 accountability] index.

Section 15. [14.] To determine whether a school or district is successful, its accountability index for the two (2) years of the biennium shall be averaged and compared to its improvement goal [threshold] calculated from the results of the previous biennium. Schools and districts whose average accountability index is equal to or greater than its improvement goal [threshold] shall be declared successful.

[Section 15. "Creating Thresholds from KIRIS Data", December 2, 1992, is hereby adopted and incorporated by reference. Copies of this document may be inspected, copied, and obtained from the Office of Curriculum, Assessment, and Accountability, Department of Education, 19th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. through 4:30 p.m.]

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the State Board for Elementary and Secondary Education, as required by KRS 156.070(4).

Thomas C. Boysen
Commissioner of Education

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: February 14, 1995

FILED WITH LRC: February 14, 1995 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 30, 1995, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by March 25, 1995, 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 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 Kevin M. Noland, Office of Legal Services, Department of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: Scott Trimble

1. Type and number of entities affected: 176 districts and approximately 35,000 professional staff.

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 administrative regulation will be implemented: No impact.

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

1. First year: None

2. Continuing costs or savings: None

(3) Additional factors increasing or decreasing costs:

(a) Direct and indirect costs or savings: No additional expenditures.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenue: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Not applicable.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: Not applicable.

(b) Kentucky: Not applicable.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This method is consistent with legislative intent and board action. Alternatives were not.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Not applicable.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Not applicable.

(c) If detrimental effect would result, explain detrimental effect: Not applicable.

(9) Identify any statute, administrative regulation or governmental policy which may conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effect made to harmonize the proposed administrative regulation with conflicting provisions: None

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. The regulation applies equally to all school districts and their professional staff.

EDUCATION, ARTS, AND HUMANITIES CABINET
Department of Education
Office of Learning Programs Development
(Proposed Amendment)

704 KAR 7:120. Home/ [~~or~~] hospital instruction.

RELATES TO: KRS 159.030

STATUTORY AUTHORITY: KRS 156.070, 156.160, 157.220

NECESSITY AND FUNCTION: KRS 156.070, 156.160, and 157.220 authorize the State Board for Elementary and Secondary Education to adopt administrative regulations establishing standards which local school districts and state operated schools shall meet in student, program, services and operational performance and related to special education programs. KRS 159.030 provides exemptions from compulsory attendance for students whose physical or mental condition prevents or renders inadvisable attendance at school or application to study. This administrative regulation establishes minimum requirements for home/ [~~or~~] hospital instruction programs.

Section 1. Definitions. "Local health personnel" means credentialed professionals in the public or private domain who deal with mental or physical health related matters as their primary occupation either in school or community settings.

Section 2. General Provisions. Local boards of education shall operate programs for home/ [~~instruction and~~] hospital instruction for children of school age pursuant to KRS 157.200 and the criteria listed below.

Section 3. Eligibility for Home/hospital Instruction. It shall be determined that a child or youth is to be provided home/ [~~or~~] hospital instruction if the condition of the child or youth prevents or renders inadvisable attendance at school as verified by a signed statement in accordance with KRS 159.030(2). Local directors of pupil personnel and a home/ [~~or~~] hospital teacher or home instruction program director, in conjunction with local health personnel, shall review each statement and other information as available to confirm or reject the need for home/ [~~or~~] hospital instruction. Applications for home/hospital instruction for medical conditions may be considered only if completed by a health professional, and applications for mental health reasons may be considered only if completed by a licensed psychologist or psychiatrist. A student referred for home/hospital instruction and not in attendance at school shall not be counted for average daily attendance (ADA) prior to the date on which eligibility for such services is approved. Applications for home/hospital instruction shall be accepted only for those students for whom there is an expectation of an inability to attend regular school for more than five (5) consecutive school days. The application for home/hospital instruction [~~Forms for the required statement~~] shall be provided by the Kentucky Department of Education (KDE).

Section 4. Temporary Placement for Children or Youth on Home/ [~~or~~] Hospital Instruction. (1) Local boards of education shall implement referral and placement procedures in accordance with local board policy for children or youth with temporary conditions such as fractures, surgical recuperation, or other physical, health, or mental conditions. The condition of pregnancy shall [~~is~~] not [~~to~~] be considered a physical or health impairment in and of itself, and the nature and extent of any complication shall [~~must~~] be delineated prior to consideration of home/ [~~or~~] hospital instruction [~~services~~] for this condition.

(2) For students with recurring conditions which result in periods where the need for home/hospital instruction is intermittent and the student is able to attend school for short periods, the student may be exited and re-entered on home/hospital instruction.

(a) This shall require initial approval by the home/hospital instruction review committee.

(b) The review committee shall review the need for an alternative schedule of services based on verification by the professional statement in the home/hospital instruction program application of the need for intermittent services.

(c) The home/hospital instruction review committee shall review intermittent placement no later than every six (6) months when the statement from a second professional is due for continued program eligibility.

(d) The parent or student shall notify the principal or director of pupil personnel prior to the need for school re-entry or to exit to home/hospital instruction. Failure to provide this notice to school staff may terminate the student's eligibility for home/hospital instruction and the student shall then be expected to return to regular school attendance.

Section 5. Extended Placement for Children or Youth on Home/ [~~or~~] Hospital Instruction. Local boards of education shall implement referral, placement, and review procedures for children or youth whose physical or mental health condition results in placement in a home or hospital setting more than six (6) months. For secondary students served on home/hospital instruction for extended periods, each local board of education shall adopt a policy regulating the amount of credits that may be earned per semester towards graduation while served on home/hospital instruction. Any child or youth who is exempted from school attendance more than six (6) months shall have two (2) signed statements. The [~~Such~~] exemption[~~s~~] shall be reviewed annually with a plan and timeline developed for returning the child or youth to school or documentation maintained verifying why return [~~such a consideration~~] is not feasible.

Section 6. Home/Hospital Instruction Operation. (1) In addition to the teacher and student, an adult shall be present in the home during the time the home instruction teacher is present.

(2) Each home instruction teacher shall complete a visitation and planning schedule on a weekly basis. This schedule shall include specific times for instruction, travel, planning and conferences. A copy of this schedule shall be on file in the central office.

(3) Attendance records and services descriptions shall be maintained and summarized on a monthly basis on the home/hospital instruction monthly report for submission to the department at the end of each semester.

(4) Each local board of education shall develop timelines for determination of student eligibility for home/hospital instruction, provision of services when deemed eligible, and for committee review of continued eligibility no later than every six (6) months or sooner as needed. The home/hospital instruction committee may schedule a

review of continued student eligibility for home/hospital instruction at any time based on changes in the student's condition.

(5) Teachers serving students in a home instruction shall not exceed a caseload of twelve (12) students. Teachers on hospital instruction shall not exceed a caseload of fifteen (15) students. For a teacher serving a combination of home and hospital students, the caseload maximum shall be determined by the setting where the majority of his students are served.

(6) Children or youth with communicable diseases found eligible for home/hospital instruction may be served by alternative means such as correspondence, computer assisted instruction, or video during the period of contagion, if documentation from a licensed physician verifies the student's condition poses a serious health threat to a home/hospital teacher providing regular visitation.

Section 7. [6.] The "Application for Home/Hospital Instruction", December, 1994 [June 1993] is hereby approved and incorporated by reference. Copies of the document may be inspected, [and] copied, and obtained at the Division of Exceptional Children Services, Department of Education, 8th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the State Board for Elementary and Secondary Education, as required by KRS 156.070(4).

Thomas C. Boysen
Commissioner of Education

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: February 14, 1995

FILED WITH LRC: February 14, 1995 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 30, 1995, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by March 25, 1995, 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 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 Kevin M. Noland, Office of Legal Services, Department of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact: Preston Lewis

(1) Type and number of entities affected: 176 school districts.

(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 for the public comments received: None

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented, to the extent available from the public comments received: 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: Home/hospital instruction teacher weekly schedules required to be on file at the central office.

2. Second and subsequent years: Monthly maintenance of home/hospital teacher weekly schedules.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Decreasing state costs by disallowing home/hospital services for students whose school absence will be five days or less and minimizing services for otherwise ineligible students.

2. Continued costs or savings: Continued savings by reducing the amount of state reimbursement for home or hospital services for short term placements (i.e., less than five days).

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Submission of monthly home/hospital services attendance reports to Kentucky Department of Education at the end of each semester.

(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: School district funds.

(6) To the extent available from 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: Considered addressing issues with a recommended policy or set of voluntary standards. Rejected due to need for consistent adherence to common minimal standards for operation of home/hospital instruction programs by all school districts and to curb abuses in placement of students on home/hospital instruction.

(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 occur, explain detrimental effect: N/A

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplicative: 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:

(11) TIERING: Was tiering applied? No Tiering was not applicable, as the regulation applies equally to all 176 school districts.

EDUCATION, ARTS, AND HUMANITIES CABINET
Department of Education
Office of Special Instructional Services
(Proposed Amendment)

707 KAR 1:090. Kentucky School for the Deaf; code of conduct.

RELATES TO: KRS [156.031,] 167.150, 167.170

STATUTORY AUTHORITY: KRS 156.070, 167.150

NECESSITY AND FUNCTION: [KRS 156.031 requires that regulations relating to statutes amended by the 1990 Kentucky Education Reform Act be reviewed, amended if necessary and resubmitted to the Legislative Research Commission prior to December 30, 1990;] KRS 167.150 authorizes the State Board for Elementary and Secondary Education, upon recommendation of the chief state school officer, to prescribe curriculum and rules for the government and discipline of pupils who attend the Kentucky School for the Deaf; and KRS 167.170 gives the State Board the power of

expulsion from that school. This administrative regulation implements such authority by prescribing the "Kentucky School for the Deaf Student Code of Conduct."

Section 1. The "Kentucky School for the Deaf Student Code of Conduct", August, 1994 [~~November, 1990~~], is hereby adopted and incorporated herein by reference. Copies of this handbook may be inspected, copied, and obtained from the Superintendent, Kentucky School for the Deaf, Danville, Kentucky 40422, [~~8 a.m. to 4:30 p.m.,~~] Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the State Board for Elementary and Secondary Education, as required by KRS 156.070(4).

Thomas C. Boysen
Commissioner of Education

JOSEPH W. KELLY, Chairman
APPROVED BY AGENCY: February 14, 1995
FILED WITH LRC: February 14, 1995 at noon
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 30, 1995, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by March 25, 1995, 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 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 Kevin M. Noland, Office of Legal Services, Department of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact person: Harvey Corson, Superintendent
(1) Type and number of entities affected: Kentucky School for the Deaf.
(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: No additional
(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: Normal state budget for agency.
(6) Economic impact, including effects of economic activities arising from administrative regulation, on:
(a) Geographical area in which administrative regulation will be implemented: Kentucky School for the Deaf campus and off-campus activities conducted under the supervision of Kentucky School for the Deaf staff.
(b) Kentucky: Kentucky School for the Deaf campus and off-campus activities conducted under the supervision of Kentucky School for the Deaf staff.
(7) Assessment of alternative methods; reasons why alternatives were rejected: KRS 167.150 requires the Kentucky Board of Education to prescribe rules for the government and discipline of students at the Kentucky School for the Deaf. There are no alternative options.
(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 results, 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: Does not apply.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Does not apply.
(10) Any additional information or comments: None
(11) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health
(Proposed Amendment)

803 KAR 2:301. Adoption of 29 CFR Part 1910.7-.19.

RELATES TO: KRS Chapter 338, 29 CFR 1910
STATUTORY AUTHORITY: KRS Chapter 13A
NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules and administrative regulations, and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1910.

Section 1. The Occupational Safety and Health Standards Board hereby adopts Chapter 29, Part 1910.7-.19 of the Code of Federal Regulations revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions, and deletions.
(1) 29 CFR 1910.7, "Definition and Requirements for a Nationally Recognized Testing Laboratory," as published in Federal Register, Volume 53, Number 70, April 12, 1988, is incorporated by reference.
(2) The removal of 29 CFR 1910.13, "Ship repairing", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.
(3) The removal of 29 CFR 1910.14, "Shipbuilding", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.
(4) The revision of 29 CFR 1910.15, "Shipyard employment", as published in the Federal Register, Volume 58, Number 124, June 30,

1993, is incorporated by reference.

(5) 29 CFR 1910.16(b)(2)(ix), "Longshoring and Marine Terminals," as published in the Federal Register, Volume 52, Number 186, September 25, 1987 is incorporated by reference.

(6) 29 CFR 1910.19(f) "Special Provisions for Air Contaminants," is removed as published in the Federal Register, Volume 50, Number 240, December 13, 1985, is incorporated by reference.

(a) 29 CFR 1910.19(i), "Special Provisions for Air Contaminants," as published in the Federal Register, Volume 52, Number 176, September 11, 1987 is incorporated by reference.

(b) A new paragraph (i) to 29 CFR 1910.19, "Special Provisions for Air Contaminants," as published in the Federal Register, Volume 57, Number 154, August 10, 1992, is incorporated by reference.

(c) 29 CFR 1910.19(j), "Special Provisions for Air Contaminants," as published in the Federal Register, Volume Number 52, December 4, 1987, is incorporated by reference.

(d) A new paragraph (k) to 29 CFR 1910.19, "Special Provisions for Air Contaminants," as published in the Federal Register, Volume 57, Number 178, September 14, 1992, is incorporated by reference.

(e) The revision to 29 CFR 1910.19, "Special Provisions for Air Contaminants", as published in the Federal Register, Volume 59, Number 153, August 10, 1994, is incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

BILL RIGGS, Chairman

APPROVED BY AGENCY: February 13, 1995

FILED WITH LRC: February 15, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 23, 1995, at 2 p.m. (ET), at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by March 18, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: William L. Ralston, Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, (502) 564-2778.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, W. L. Ralston

(1) Type and number of entities affected: The amendments to this regulation affect all employers in general industry.

(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 will be no additional costs or savings as this proposed change updates a reference.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: Undetermined.

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

1. First year following implementation: Undetermined

2. Second and subsequent years: Undetermined

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of this amendment.

(a) Direct and indirect costs or savings:

(1) First year:

(2) Continuing costs or savings:

(3) Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements as a result of these proposed changes.

(4) Assessment of anticipated effect on state and local revenues: This amendment will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

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

(a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as this proposed regulation is adopted by reference from federal regulations published in the Federal Register.

(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 will enhance worker safety throughout Kentucky.

(b) State whether 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 conflicting, overlapping, or duplication as a result of adoption of this amendment.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one (1) or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KyOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of three or more employees) has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. This amendment adopts federal regulations.

3. Minimum or uniform standards contained in the federal mandate. This proposed amendment adopts the revisions to the previously adopted regulations 29 CFR 1910.19, as published in the Federal Register, Volume 59, Number 153, August 10, 1994.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This adopted amendment is identical to the federal regulations.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This revision

imposes no stricter, additional or different responsibilities than federal standards.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This proposed amendment affects local government entities that have employees working with asbestos.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed regulations affect the safety and health of employees of local government who are exposed to asbestos.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of this amendment is to comply with federal regulations relating to occupational safety and health. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health
(Proposed Amendment)

803 KAR 2:307. Adoption of 29 CFR Part 1910.101-.120.

RELATES TO: KRS Chapter 338, 29 CFR 1910
STATUTORY AUTHORITY: KRS Chapter 13A
NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules and administrative regulations, and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1910.

Section 1. The Occupational Safety and Health Standards Board hereby adopts 29 CFR Part 1910.101-.120 revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions, and deletions:

(1) 29 CFR 1910.101(b), "Compressed Gases," shall be amended by revocation of referenced pamphlets P-1-1965 and the adoption of P-1-1974, herein filed by reference.

(2) 29 CFR 1910.103, "Hydrogen", is amended, as follows:

(a) The amendment to 29 CFR 1910.103(a)(1) (ii), "Hydrogen," as published in Federal Register, Volume 53, Number 70, April 12, 1988, is incorporated by reference.

(b) The amendment to 29 CFR 1910.103, "Hydrogen," as published in the Federal Register, Volume 55, No. 151, August 6, 1990, is incorporated by reference.

(c) The amendments to 29 CFR 1910.103, "Hydrogen", as published in the Federal Register, Volume 58, No. 124, June 30, 1993, are incorporated by reference.

(3) 29 CFR 1910.106, "Flammable and Combustible Liquids" is amended as follows:

(a) 29 CFR 1910.106(a)(3) shall read: "The term automotive service station, or service stations, shall mean that portion of property where flammable or combustible liquids used as motor fuel are stored and dispensed from fixed equipment and into the fuel tanks of motor vehicles and shall include any facilities available for the sale and servicing of tires, batteries, accessories and for minor automotive maintenance work and shall also include private stations not accessible or open to the public such as those used by commercial, industrial or governmental establishments. This section shall not apply to agriculture."

(b) The amendment to 29 CFR 1910.106(a)(35), "Flammable and Combustible Liquids," as published in Federal Register, Volume 53, Number 70, April 12, 1988, is incorporated by reference.

(c) 29 CFR 1910.106(g)(1)(i)(g), "Flammable and Combustible Liquids," as published in the Federal Register, Volume 51, Number 188, September 29, 1986, is removed.

(d) Amendment to 29 CFR 1910.106, "Flammable and Combustible Liquids," as published in the Federal Register, Volume 55, No. 151, August 6, 1990, is incorporated by reference.

(4) The amendment to 29 CFR 1910.107(a)(8), "Spray Finishing Using Flammable and Combustible Materials," as published in Federal Register, Volume 53, Number 70, April 12, 1988, is incorporated by reference.

(5) The amendment to 29 CFR 1910.108(a)(3), "Dip Tanks Containing Flammable or Combustible Liquids," as published in Federal Register, Volume 53, Number 70, April 12, 1988, is incorporated by reference.

(6) The amendment to 29 CFR 1910.109(d)(2) (iii)(a), "Explosives and Blasting Agents," as published in Federal Register, Volume 53, Number 70, April 12, 1988, is incorporated by reference.

(7) The amendment to 29 CFR 1910.109, "(Amended)", as published in the Federal Register, Volume 58, No. 124, June 30, 1993, is incorporated by reference.

(8) The amendment to 29 CFR 1910-109, as published in the Federal Register, Volume 57, Number 36, February 24, 1991, is incorporated by reference.

(9) 29 CFR 1910.110 is amended, as follows:

(a) The amendment to 29 CFR 1910.109, "Explosive and Blasting Agents", as published in the Federal Register, Volume 58, Number 58, March 29, 1993, is incorporated by reference.

(b) The amendment to 29 CFR 1910.110, as published in the Federal Register, Volume 55, Number 151, is incorporated by reference.

(c) The amendments to 29 CFR 1910.110(a)(14), (b)(2)(iii), (c)(5)(i)(g)(l) and (f)(5)(iv), "Storage and Handling of Liquefied Petroleum Gases," as published in Federal Register, Volume 53, Number 70, April 12, 1988, are incorporated by reference.

(d) The amendment to 29 CFR 1910.110, as published in the Federal Register, Volume 55, Number 119, June 20, 1990, is incorporated by reference.

(e) The amendment to 29 CFR 1910.110(d)(11), "Storage and Handling of Liquefied Petroleum Gases", as published in the Federal Register, Volume 58, Number 52, March 19, 1993, is incorporated by reference.

(f) The amendment to 29 CFR 1910.110, "(Amended)", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

(10) The amendments to 29 CFR 1910.111(b)(1) (ii) and the new paragraph 1910.111(b)(1)(vi), "Storage and Handling of Anhydrous Ammonia," as published in Federal Register, Volume 53, Number 70, April 12, 1988, are incorporated by reference.

(11) 29 CFR 1910-119, as published in the Federal Register, Volume 57, Number 36, February 24, 1991, is incorporated by reference, with the following additions, exceptions, or deletions: The corrections to 1910.119, as published in the Federal Register, Volume 57, Number 43, March 4, 1992, are incorporated by reference.

(12) The amendment to 29 CFR 1910.116, "(Amended)", as published in the Federal Register, Volume 58, Number 124, June 30,

1993, is incorporated by reference.

(13) 29 CFR 1910.120, "Hazardous Waste Operations and Emergency Response," as published in the Federal Register, December 19, 1986, Volume 51, No. 244, is incorporated by reference.

(a) Corrections to amendments to 29 CFR 1910.120, "Hazardous Waste Operations and Emergency Response," as published in Federal Register, Volume 52, Number 85, May 4, 1987, are incorporated by reference.

(b) 29 CFR 1910.120, "Hazardous Waste Operations and Emergency Response," as published in the Federal Register, Volume 54, Number 42, March 6, 1989, is incorporated by reference.

(c) The amendment to 29 CFR 1910.120, as published in the Federal Register, Volume 55, Number 72, April 13, 1990, is incorporated by reference.

(d) Amendments, revisions and additions to 29 CFR 1910.120, as published in the Federal Register, Volume 56, Number 75, April 18, 1991, are incorporated by reference.

(e) The revisions to 29 CFR 1910.120, "Hazardous Waste Operations and Emergency Response", as published in the Federal Register, Volume 59, Number 161, August 22, 1994, are incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

BILL RIGGS, Chairman

APPROVED BY AGENCY: February 13, 1995

FILED WITH LRC: February 15, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 23, 1995, at 2 p.m. (ET), at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by March 18, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: William L. Ralston, Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, (502) 564-2778.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, W. L. Ralston

(1) Type and number of entities affected: The amendments to this regulation affect all employers in general or construction industry.

(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 will be little or no additional costs or savings as this proposed change addresses technical changes.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: Undetermined.

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

1. First year following implementation:

2. Second and subsequent years: Undetermined. There are no additional factors regarding this proposed amendment which will increase or decrease costs. There will be no affect on competition. This proposed change will not entail any reporting or additional paperwork requirements.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of this amendment.

(a) Direct and indirect costs or savings:

(1) First year:

(2) Continuing costs or savings:

(3) Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements as a result of this proposed change.

(4) Assessment of anticipated effect on state and local revenues: This amendment will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

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

(a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as this proposed regulation is adopted by reference from federal regulations published in the Federal Register.

(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 will enhance worker safety throughout Kentucky.

(b) State whether 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 conflicting, overlapping, or duplication as a result of adoption of this amendment.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one (1) or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KyOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of three or more employees) has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. This amendment adopts federal regulations.

3. Minimum or uniform standards contained in the federal mandate. This proposed amendment adopts the revisions to the previously adopted regulations 29 CFR 1910.120, as published in the Federal Register, Volume 59, Number 161, August 22, 1994.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those

required by the federal mandate? This adopted amendment is identical to the federal regulations.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This revision imposes no stricter, additional or different responsibilities than federal standards.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This proposed amendment affects local government entities that have employees working with asbestos.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed regulations affect the safety and health of employees of local government who respond to emergencies or involved in hazardous waste operations.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of this amendment is to comply with federal regulations relating to occupational safety and health. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health
(Proposed Amendment)

803 KAR 2:308. Adoption of 29 CFR Part 1910.132-.140.

RELATES TO: KRS Chapter 338, 29 CFR 1910
STATUTORY AUTHORITY: KRS Chapter 13A
NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules and administrative regulations, and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1910.

Section 1. The Occupational Safety and Health Standards Board hereby adopts Chapter 29, Part 1910.132-.140 of the Code of Federal Regulations revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions, and deletions:

(1) 29 CFR 1910.132, "General Requirements", is amended, as follows:

(a) The addition to 29 CFR 1910.132, "General Requirements," as published in the Federal Register, Volume 59, Number 66, April 6, 1994, is incorporated by reference.

(b) The revision to 29 CFR 1910.132, "General Requirements", as published in the Federal Register, Volume 59, Number 126, July 1, 1994, is incorporated by reference.

(2) 29 CFR 1910.133, "Eye and Face Protection", is amended, as follows:

(a) Revisions to 29 CFR 1910.133, "Eye and Face Protection," as published in the Federal Register, Volume 59, Number 66, April 6, 1994, are incorporated by reference.

(b) The revision to 29 CFR 1910.133, "Eye and Face Protection", as published in the Federal Register, Volume 59, Number 126, July 1, 1994, is incorporated by reference.

(3) 29 CFR 1910.134 is amended as follows:

(a) 29 CFR 1910.134(b)(10) shall read: "A physician shall determine whether or not an employee has any medical conditions that would preclude the use of respirators. The physician shall follow the guidance in ANSI Z88.6, "American National Standard for Respiratory Protection-Respirator Use-Physical Qualifications for Personnel" on the frequency and content of the examination.

(b) The amendment to 29 CFR 1910.134(b)(11), "(Amended)", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

(c) 29 CFR 1910.134(c) shall read: "Proper selection of respirators shall be made according to the guidance of American National Standard Practices for Respiratory Protection Z88.2 - 1980."

(d) 29 CFR 1910.134(d) the third sentence shall read: "Breathing air shall meet at least the requirements of the specification for Grade D breathing air as described in Compressed Gas Association Commodity Specification G-7.1 - 1973."

(e) 29 CFR 1910.134(g) shall read: Identification of Air-purifying Respirator Canisters and Cartridges.

1. The primary means of identifying an air-purifying respirator canister or cartridge shall be by means of properly worded labels. The secondary means of identifying an air-purifying respirator canister or cartridge shall be by an identifying color or colors.

2. All who issue or use air-purifying respirators falling within the scope of this standard shall ensure that all canisters and cartridges purchased or used by them are properly labeled and colored in accordance with this standard before they are placed in service and that the labels and colors are properly maintained at all times thereafter until the canisters and cartridges have completely served their purpose. The user shall refer to the label wording to determine the type and degree of protection the canister or cartridge will afford.

3. On each air-purifying respirator canister and cartridge, the following shall appear in bold letters:

CANISTER FOR _____
(Name of atmospheric contaminant)

or

CARTRIDGE FOR _____
(Name of atmospheric contaminant)

In addition, either or both of subparagraphs 1 and 2 of this paragraph, and subparagraph 3 of this paragraph, shall appear beneath the appropriate phrase on the canister or cartridge label.

1. For respiratory protection in atmospheres containing not more than _____ by volume of
(Concentration)

_____
(Name of atmospheric contaminant)

2. For respiratory protection in atmospheres containing

_____
(Type of particulate contaminant)

3. Do not use in atmospheres containing less than nineteen and five-tenths (19.5) percent oxygen by volume at sea level.

4. Each respirator canister or cartridge, or canister or cartridge label, shall be a distinctive color as indicated in Table I-1. The color coating used shall offer a high degree of resistance to changes such as chipping, scaling, peeling, blistering, and fading, and to the effects of ordinary atmospheres to which they may be exposed under normal conditions of storage and use.

(f) 29 CFR 1910.134 Table I-1 shall read:

TABLE I-1
Color Assigned to Canister or Cartridge

Atmospheric Contaminant(s) to Be Protected Against	Color Assigned	ISCC-NBS Centroid Color Number	ISCC-NBS Centroid Color Name
Acid gases	White	263	White
Organic vapors	Black	267	Black
Ammonia gas	Green	139	Vivid green
Carbon monoxide gas	Blue	178	Strong blue
Acid gases and organic vapors	Yellow	82	Vivid yellow
Acid gases, ammonia, and organic vapors	Brown	75	Deep yellow brown
Acid gases, ammonia, carbon monoxide, and organic vapors	Red	11	Vivid red
Other vapors and gases not listed above	Olive	106	Light olive
Radioactive materials (except tritium and noble gases)	Purple	218	Strong purple
Dusts, fumes, and mists (other than radioactive materials)	Orange	48	Vivid orange

NOTES:

1) A purple (ISCC-NBS Centroid Number 218) stripe shall be used to identify radioactive materials in combination with any vapor or gas.

2) An orange (ISCC-NBS Centroid Number 48) stripe shall be used to identify dusts, fumes, and mists in combination with any vapor or gas.

3) Where labels only are colored to conform with this table, the canister or cartridge body shall be gray (ISCC-NBS Centroid Number 265), or a metal canister or cartridge body may be left in its natural metallic color.

4) The user shall refer to the wording of the label to determine the type and degree of protection the canister or cartridge will afford.

(4) Revisions to 29 CFR 1910.135, "Head Protection," as published in the Federal Register, Volume 59, Number 66, April 6, 1994, are incorporated by reference.

(5) 29 CFR 1910.136, "Foot Protection", is amended, as follows:

(a) Revisions to 29 CFR 1910.136, "Foot Protection," as published in the Federal Register, Volume 59, Number 66, April 6, 1994, are incorporated by reference.

(b) The revision to 29 CFR 1910.136, "Foot Protection", as published in the Federal Register, Volume 59, Number 126, July 1, 1994, is incorporated by reference.

(6) 29 CFR 1910.137, "Electrical Protective Equipment", is amended, as follows:

(a) Revisions to 29 CFR 1910.137, "Electrical Protective Equipment," as published in the Federal Register, Volume 59, Number 20, January 31, 1994, are incorporated by reference.

(b) The corrections to 29 CFR 1910.137, "Electrical Protective Equipment", as published in the Federal Register, Volume 59, Number 125, June 30, 1994, are incorporated by reference.

(7) 29 CFR 1910.138, "Hand Protection", is amended, as follows:

(a) 29 CFR 1910.138, "Hand Protection," as published in the Federal Register, Volume 59, Number 66, April 6, 1994, is incorporated by reference.

(b) The revision to 29 CFR 1910.138, "Hand Protection", as published in the Federal Register, Volume 59, Number 126, July 1, 1994, is incorporated by reference.

(8) Appendices A and B added to Subpart I, as published in the Federal Register, Volume 59, Number 66, April 6, 1994, are incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

BILL RIGGS, Chairman

APPROVED BY AGENCY: February 13, 1995

FILED WITH LRC: February 15, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 23, 1995, at 2 p.m. (ET), at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by March 18, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: William L. Ralston, Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, (502) 564-2778.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, W. L. Ralston

(1) Type and number of entities affected: The amendment to this regulation affects all employers in general industry.

(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 to those affected by these proposed amendments, as they clarify and correct errors in the original publications.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented:

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

1. First year following implementation: Undetermined

2. Second and subsequent years: Undetermined

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these proposed changes.

(a) Direct and indirect costs or savings:

(1) First year:

(2) Continuing costs or savings:

(3) Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements as a result of these proposed regulations.

(4) Assessment of anticipated effect on state and local revenues: These proposed changes will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising

from administrative regulation on:

(a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as these proposed amendments simply clarify and correct errors in the original standard.

(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 will enhance worker safety throughout Kentucky.

(b) State whether 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 conflicting, overlapping, or duplication as a result of adoption of these proposed changes.

(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? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one (1) or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KyOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of five or more employees) has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These proposed amendments adopt federal regulations.

3. Minimum or uniform standards contained in the federal mandate. These amendments adopt the revisions to previously adopted regulation in 29 CFR Part 1910, as published in the Federal Register, Volume 59, Number 126, July 1, 1994 and Volume 59, Number 125, June 30, 1994.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? These adopted amendments are identical to the federal regulations.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These amendments impose no stricter, additional or different responsibilities than federal standards.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. These proposed changes affect all local government entities.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed revisions affect safety and health of employees of local government.

4. How does this administrative regulation affect the local government or any service it provides? There will be no increase or decrease in local government revenues or expenditures. These proposed changes will not affect the number of local government employees.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health
(Proposed Amendment)

803 KAR 2:317. Adoption of 29 CFR Part 1910.261-.275.

RELATES TO: KRS Chapter 338, 29 CFR 1910

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules and administrative regulations, and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1910.

Section 1. The Occupational Safety and Health Standards Board hereby adopts 29 CFR Part 1910.261-.275 revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions, and deletions:

(1) The amendment to 29 CFR 1910.261, "Pulp, Paper, and Paperboard Mills," as published in the Federal Register, Volume 55, Number 151, August 6, 1990, is incorporated by reference.

(2) The amendment to 29 CFR 1910.265(d)(2) (iv)(c), "Sawmills," as published in Federal Register, Volume 53, Number 70, April 12, 1988, is incorporated by reference.

(3) The amendment to 29 CFR 1910.265, as published in the Federal Register, Volume 55, Number 151, August 6, 1990, is incorporated by reference.

(4) 29 CFR 1910.266 is amended, as follows:

(a) The amendments to 29 CFR 1910.266(c)(4) (iii) and (iv), "Pulpwood Logging," as published in Federal Register, Volume 53, Number 70, April 12, 1988, are incorporated by reference.

(b) [~~(5)~~] The amendment to 29 CFR 1910.266, as published in the Federal Register, Volume 55, Number 151, August 6, 1990, is incorporated by reference.

(c) The revisions to 29 CFR 1910.266, "Logging", as published in the Federal Register, Volume 59, Number 196, October 12, 1994, are incorporated by reference.

(5) [~~(6)~~] 29 CFR 1910.268(c), "Telecommunications," shall be revised as follows: Revisions as published in the Federal Register, Volume 52, Number 187, September 28, 1987, are incorporated by reference.

(6) [~~(7)~~] 29 CFR 1910.269, "Electric Power Generation, Transmission, and Distribution", as published in the Federal Register, Volume 59, Number 20, January 31, 1994, is incorporated by reference.

(a) The revisions to 29 CFR 1910.269, "Electric Power Generation, Transmission, and Distribution", as published in the Federal Register, Volume 59, Number 125, June 30, 1994, are incorporated by reference.

(b) The revision to 29 CFR 1910.269, "Electric Power Generation, Transmission, and Distribution", as published in the Federal Register, Volume 59, Number 152, August 9, 1994, is incorporated by reference.

(c) The revision to 29 CFR 1910.269, "Electric Power Generation, Transmission, and Distribution", as published in the Federal Register,

Volume 59, Number 196, October 12, 1994, is incorporated by reference.

(7) [~~(8)~~] 29 CFR 1910.272, "Grain Handling Facilities," as published in the Federal Register, Volume 52, Number 251, December 31, 1987, is incorporated by reference.

(a) The amendments to 29 CFR 1910.272, "Grain Handling Facilities," as published in the Federal Register, Volume 53, Number 96, May 18, 1988, are incorporated by reference.

(b) The amendment to 29 CFR 1910.272, as published in the Federal Register, Volume 55, Number 119, June 20, 1990, is incorporated by reference.

(8) [~~(9)~~] The amendment to 29 CFR 1910.275, as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

BILL RIGGS, Chairman

APPROVED BY AGENCY: February 13, 1995

FILED WITH LRC: February 15, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 23, 1995, at 2 p.m. (ET), at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by March 18, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: William L. Ralston, Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, (502) 564-2778.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, W. L. Ralston

(1) Type and number of entities affected: The amendments to this regulation affect all employers in general industry engaged in logging operations and electric power generation, transmission, and distribution.

(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: For the proposed amendment of the logging regulation, the Occupational Safety and Health Administration (OSHA) estimates the cost of compliance to range from $38 to $1300 per establishment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: There are no costs or savings to those affected by the proposed amendments on the electric power generation, transmission, and distribution requirements as the changes correct minor typographical and technical changes and change a reference to another 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:

2. Second and continuing years: There are no additional factors regarding these amendments which will increase or decrease costs. There will be no affect on competition. Reporting and paperwork requirements: These amendments will not entail any reporting or additional paperwork requirements.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these amendments.

(a) Direct and indirect costs or savings:

(1) First year:

(2) Continuing costs or savings:

(3) Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements as a result of these proposed changes.

(4) Assessment of anticipated effect on state and local revenues: These amendments will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

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

(a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as these revisions are adoption of federal regulations as published in the Federal Register.

(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 will enhance worker safety throughout Kentucky.

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

(c) If detrimental effected 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 conflicting, overlapping, or duplication as a result of adoption of these proposed amendments.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one (1) or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KyOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of five or more employees) has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These proposed amendments adopt federal regulations.

3. Minimum or uniform standards contained in the federal mandate. These amendments adopt the revisions to the previously adopted regulations of 29 CFR 1910.266, as published in the Federal Register, Volume 59, Number 196, October 12, 1994, and the corrections and revision to 29 CFR 1910.269, as published in the Federal Register, Volume 59, Number 125, June 30, 1994 and

Volume 59, Number 152, August 9,1994.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? These proposed amendments are identical to the federal regulations.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions impose no stricter, additional or different responsibilities than federal standards.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. These proposed amendments affect all local government entities that have employees working in logging operations and electric power generation, transmission, and distribution.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed revisions affect the safety and health of employees of local government who work in logging operations and electric power generation, transmission, and distribution.

4. How does this administrative regulation affect the local government or any service it provides? These proposed amendments comply with federal regulations relating to occupational safety and health. There will be no significant increase or decrease in local government revenues or expenditures. These amendments will not affect the number of local government employees.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health
(Proposed Amendment)

803 KAR 2:320. Adoption of 29 CFR Part 1910.1000- .1500.

RELATES TO: KRS Chapter 338, 29 CFR 1910
STATUTORY AUTHORITY: KRS Chapter 13A
NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules and administrative regulations, and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1910.

Section 1. The Occupational Safety and Health Standards Board hereby adopts 29 CFR Part 1910 revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference, as amended February 15, 1990 and May 15, 1990, with the following additions, exceptions, and deletions:

(1) 29 CFR 1910.1000, "Air Contaminants", Table Z-1 is amended as published in the Federal Register, Volume 50, Number 240, December 13, 1985, is incorporated by reference.

(a) 29 CFR 1910.1000, "Air Contaminants", Tables Z-1-A, Z-2 and Z-3 as published in Federal Register, Volume 54, Volume Number 12, January 19, 1989 are incorporated by reference.

(b) 4,4'-"Methylene bis (2-chloroaniline)", found in Table Z-1-A of 29 CFR 1910.1000, as published in the Federal Register, Volume 54, Number 12, January 19, 1989, is hereby revoked.

(c) Revisions to 29 CFR 1910.1000, "Air Contaminants", Table Z-1-A, as published in the Federal Register, Volume 54, Number 127, July 5, 1989, is incorporated by reference.

(d) Revisions to 29 CFR 1910.1000, "Air Contaminants", Table Z-1-A, as published in the Federal Register, Volume 54, Number 170, September 5, 1989, is incorporated by reference.

(e) 29 CFR 1910.1000, Table Z-2, "Benzene", shall be amended as follows: Amendments as published in the Federal Register, Volume 52, Number 176, September 11, 1987 are incorporated by reference.

(f) 29 CFR 1910.1000, Table Z-2, "Formaldehyde", as published in the Federal Register, Volume Number 52, December 4, 1987, is amended.

(g) Amendments to 29 CFR 1910.1000, "Air Contaminants", as published in the Federal Register, Volume 57, Number 112, June 10, 1992, are incorporated by reference.

(h) Amendments to 29 CFR 1910.1000, "Air Contaminants", as published in the Federal Register, Volume 57, Number 127, July 1, 1992, are incorporated by reference.

(i) Amendments to 29 CFR 1910.1000, "Air Contaminants", as published in the Federal Register, Volume 57, Number 178, September 14, 1992, are incorporated by reference.

(j) Amendments to 29 CFR 1910.1000, "Air Contaminants", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, are incorporated by reference.

(k) Amendments to 29 CFR 1910.1000, "Air Contaminants", as published in the Federal Register, Volume 58, Number 142, July 27, 1993, are incorporated by reference.

(2) The revisions to 29 CFR 1910.1001, "Occupational Exposure to Asbestos", as published in Federal Register, Volume 59, Number 153, August 10, 1994, are incorporated by reference. ~~[29 CFR 1910.1001, "Asbestos", is amended as follows:~~

~~(a) Amendments as published in the Federal Register, Volume 51, Number 119, June 20, 1986, are incorporated by reference.~~

~~(b) 29 CFR 1910.1001(d)(6)(ii) is amended to read: "The employer shall ensure that all sampling will be conducted in accordance with the ORM in Appendix A, before sampling commences."~~

~~(c) 29 CFR 1910.1001(d)(6)(iv) is amended to read: "The employer shall ensure that all analyses are performed in accordance with the elements outlined in Appendix A, and that all asbestos counters meet the criterion specified in Appendix A. This notice shall be given prior to the start of the analyses."~~

~~(d) 29 CFR 1910.1001(g)(3)(i) is amended to read: "Where respiratory protection is required, the employer shall institute a respirator program in accordance with American National Standards Practices for Respiratory Protection, ANSI Z88.2 1980, with the exception of Appendix A5, Suggested Procedures for Carrying Out Qualitative Respirator Fitting Tests, and Appendix A6, Suggested Procedures for Carrying Out Quantitative Respirator Fitting Tests."~~

~~(e) 29 CFR 1910.1001(j)(1)(ii) is amended to read: "Sign specifications. The warning signs required by paragraph (j)(1)(i) of the section shall be of a vertical format measuring twenty (20) inches in length and fourteen (14) inches in width, and shall be printed in letters of sufficient size and contrast as to be readily visible and legible, and shall bear the following information:"~~

~~(f) 29 CFR 1910.1001, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite", as published in Federal Register, October 17, 1986, Volume 51, No. 201, is incorporated by reference.~~

~~(g) 29 CFR 1910.1001, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite", as published in Federal Register, May 12, 1987, Volume 52, No. 91, is incorporated by reference.~~

~~(h) Amendments, revisions and additions to 29 CFR 1910.1001, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and~~

~~Actinolite", as published in Federal Register, Volume 53, Number 178, September 14, 1988, are incorporated by reference.~~

~~(i) Amendments, revisions and additions to 29 CFR 1910.1001, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite", as published in Federal Register, Volume 54, Number 243, December 20, 1989, are incorporated by reference.~~

~~(j) Amendments, revisions, and additions to 29 CFR 1910.1001, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite", as published in Federal Register, Volume 55, Number 24, February 5, 1990, are incorporated by reference.~~

~~(k) Amendments, revisions and additions to 29 CFR 1910.1001, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite", as published in the Federal Register, Volume 55, Number 237, December 10, 1990, are incorporated by reference.~~

~~(l) Amendments, revisions and additions to 29 CFR 1910.1001, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite", as published in the Federal Register, Volume 56, Number 171, September 4, 1991, are incorporated by reference.~~

~~(m) Amendments to 29 CFR 1910.1001, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite", as published in the Federal Register, Volume 57, Number 110, June 8, 1992, are incorporated by reference.~~

~~(n) Amendments to 29 CFR 1910.1001, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite", as published in the Federal Register, Volume 57, Number 126, June 30, 1992, are incorporated by reference.]~~

(3) The amendment to 29 CFR 1910.1003, "(Amended)", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

(4) The amendment to 29 CFR 1910.1004, "(Amended)", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

(5)(a) 29 CFR 1910.1005 "4,4'-methylene bis (2-chloroaniline)" and 29 CFR 1910.1003 through .1016 paragraphs (c)(6), "Laboratory Activities", printed in the Federal Register, Volume 39, Number 125, June 27, 1974, are in effect.

(b) Paragraph 1910.1005(c)(7) of the 29 CFR 1910 General Industry Standards shall read as follows: "Premixed Solutions: Where 4,4'-methylene bis (2-chloroaniline) is present only in a single solution at a temperature not exceeding 120 degrees Celsius, the establishment of a regulated area is not required; however, (i) only authorized employees shall be permitted to handle such materials."

(6) The amendment to 29 CFR 1910.1006, "(Amended)", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

(7) The amendment to 29 CFR 1910.1007, "(Amended)", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

(8) The amendment to 29 CFR 1910.1008, "(Amended)", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

(9) The amendment to 29 CFR 1910.1009, "(Amended)", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

(10) The amendment to 29 CFR 1910.1010, "(Amended)", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

(11) The amendment to 29 CFR 1910.1011, "(Amended)", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

(12) The amendment to 29 CFR 1910.1012, "(Amended)", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

(13) The amendment to 29 CFR 1910.1013, "(Amended)", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

(14) The amendment to 29 CFR 1910.1014, "(Amended)", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

(15) The amendment to 29 CFR 1910.1015, "(Amended)", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

(16) The amendment to 29 CFR 1910.1016, "(Amended)", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

(17) The amendment to 29 CFR 1910.1017, "(Amended)", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

(18) The amendment to 29 CFR 1910.1018, "(Amended)", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

(19) 29 CFR 1910.1025, "Occupational Exposure to Lead" shall be amended as follows:

(a) "Table 1 - Implementation Schedule" is amended to read:

TABLE 1 - Implementation Schedule

	COMPLIANCE DATES		
INDUSTRY[1]	200 ug/m³	100 ug/m³	50
Primary Lead Production	(2)	June 29, 1984	June 29, 1991
Secondary Lead Production	(2)	June 29, 1984	June 29, 1986
Lead Acid Battery Manufacture	(2)	June 29, 1983	June 29, 1986
Automobile/Manufacture/Solder Grinding	(2)	N/A	June 29, 1988
Electronics, Gray Iron Foundries, Ink Manufacture, Paints and Coatings Manufacture, Wall Paper Manufacture, Can Manufactures, and Printing	(2)	N/A	June 29, 1982
Lead Pigment Manufacture, Nonferrous Foundries, Leaded Steel Manufacture, Lead Chemical Manufacture, Ship Building and Ship Repair, Battery Breaking in the Collection and Processing of Scrap (excluding collection and processing of scrap which is part of a secondary smelting operation), Secondary Smelting of Copper, and Lead Casting	(2)	N/A	N/A
All Other Industries	(2)	N/A	June 11,1984

[1]Includes ancillary activities located on the same worksite.

[2] On effective date. This continues an obligation from Table Z-2 of 29 CFR 1910.1000 which had been in effect since 1971 but which was deleted upon effectiveness of this section.

(b) Revision to 1910.1025, as published in the Federal Register, Volume 54, Number 131, July 11, 1989 is incorporated by reference.

(c) Amendments, revisions, and additions to 29 CFR 1910.1025, "Occupational Exposure to Lead", as published in Federal Register, Volume 55, Number 30, February 13, 1990, are incorporated by reference.

(d) Amendments, revisions, and additions to 29 CFR 1910.1025, "Occupational Exposure to Lead", as published in Federal Register, Volume 56, Number 105, May 31, 1991, are incorporated by

reference.

(20) Amendments to 29 CFR 1910.1027, "Cadmium", as published in the Federal Register, Volume 57, Number 178, September 14, 1992, are incorporated by reference.

(21) Amendments to 29 CFR 1910.1027, "Cadmium", as published in the Federal Register, Volume 55, Number 77, April 23, 1993, are incorporated by reference.

(22) 29 CFR 1910.1028, "Benzene", as published in the Federal Register, Volume 52, Number 176, September 11, 1987 is incorporated by reference.

(23) 29 CFR 1910.1029, "Coke Oven Emissions", shall be amended as follows: Revision as published in the Federal Register, Volume 50, Number 178, September 13, 1985 are incorporated by reference.

(24) 29 CFR 1910.1030, "Bloodborne Pathogens", as published in the Federal Register, Volume 56, No. 235, is incorporated by reference with the following revisions, additions, or deletions:

(a) 29 CFR 1910.1030(d)(3)(ix) is amended to read: Gloves. Gloves shall be worn when it can be reasonably anticipated that the employees may have hand contact with blood, other potentially infectious materials, mucous membranes, and nonintact skin when performing vascular access procedures and when handling or touching contaminated items or surfaces.

(b) 29 CFR 1910.1030(d)(3)(ix)(D) is removed.

(25) Amendments to 29 CFR 1910.1030, "Bloodborne Pathogens", as published in the Federal Register, Volume 57, Number 127, are incorporated by reference.

(26) Corrections to 29 CFR 1910.1043, "Cotton Dust" as published in the Federal Register, Volume 51, Number 128, July 3, 1986, are incorporated by reference.

(27) The amendment to 29 CFR 1910.1044, "(Amended)", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

(28) The amendment to 29 CFR 1910.1045, "(Amended)", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

(29) Amendments and corrections to 29 CFR 1910.1047, "Ethylene Oxide and Appendices A, B, C and D", as published in the Federal Register, Volume 51, Number 132, July 10, 1986 are incorporated by reference.

(a) The amendments to 29 CFR 1910.1047, "Occupational Exposure to Ethylene Oxide", as published in the Federal Register, Volume 53, Number 66, April 6, 1988, are incorporated by reference.

(b) Revisions to 29 CFR 1910.1047, "Occupational Exposure to Ethylene Oxide", as published in Federal Register, Volume 53, Number 143, July 26, 1988, are incorporated by reference.

(30) 29 CFR 1910.1048, "Formaldehyde", as published in the Federal Register, Volume Number 52, December 4, 1987, is incorporated by reference.

(a) Amendments to 29 CFR 1910.1048, "Occupational Exposure to Formaldehyde", as published in Federal Register, Volume 53, Number 170, September 1, 1988, are incorporated by reference.

(b) Amendments to 29 CFR 1910.1048, "Occupational Exposure to Formaldehyde", as published in the Federal Register, Volume 54, Number 133, July 13, 1989, is incorporated by reference.

(c) Amendments to 29 CFR 1910.1048, "Occupational Exposure to Formaldehyde", as published in the Federal Register, Volume 57, Number 102, May 27, 1992, are incorporated by reference.

(d) Amendments to 29 CFR 1910.1048, "Occupational Exposure to Formaldehyde", as published in the Federal Register, Volume 57, Number 112, June 10, 1992, are incorporated by reference.

(e) Amendments to 29 CFR 1910.1048, "Occupational Exposure to Formaldehyde", as published in the Federal Register, Volume 57, Number 118, June 18, 1992, are incorporated by reference.

(31) Amendments, revisions, and additions to 29 CFR 1910.1101, "Asbestos", as published in Federal Register, Volume 56, Number 171, September 4, 1991, are incorporated by reference.

(32) Amendments to 29 CFR 1910.1050, "Methylenedianiline", as published in the Federal Register, Volume 57, Number 154, August 10, 1992, are incorporated by reference.

(33) Amendments to 29 CFR 1910.1101, "Asbestos", as published in the Federal Register, Volume 57, Number 110, June 8, 1992, are incorporated by reference.

(34) 29 CFR 1910.1200, "Hazard Communication", shall be amended as follows:

(a) Amendments as published in the Federal Register, Volume 52, Number 163, August 24, 1987 are incorporated by reference.

(b) Revision of 29 CFR 1910.1200(i)(3), "Hazard Communication", and an amendment removing the last paragraph in 1910.1200 Appendix D, as published in the Federal Register, Volume 51, Number 189, September 30, 1986, are incorporated by reference.

(c) The revisions to 29 CFR 1910.1200, "Hazard Communication", as published in the Federal Register, Volume 59, Number 27, February 9, 1994, are incorporated by reference.

(35) The addition of 29 CFR 1910.1201, "Retention of DOT Markings, Placards, and Labels", as published in the Federal Register, Volume 59, Number 137, July 19, 1994, is incorporated by reference.

(36) 29 CFR 1910.1450, "Occupational Exposure to Hazardous Chemicals in Laboratories", as published in Federal Register, Volume 55, Number 21, January 31, 1990, are incorporated by reference.

(37) [~~(36)~~] Amendments to 29 CFR 1910.1450, "Occupational Exposure to Hazardous Chemicals in Laboratories", as published in the Federal Register, Volume 57, Number 127, July 1, 1992, are incorporated by reference.

(38) [~~(37)~~] Amendments to 29 CFR 1910.1500, "Standards Organizations", as published in the Federal Register, Volume 57, Number 127, July 1, 1992, are incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

BILL RIGGS, Chairman

APPROVED BY AGENCY: February 13, 1995

FILED WITH LRC: February 15, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 23, 1995, at 2 p.m. (ET), at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by March 18, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: William L. Ralston, Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, (502) 564-2778.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, W. L. Ralston

(1) Type and number of entities affected: The amendments to this regulation affect all employers in general industry.

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

(a) Cost of living and employment in the geographic area in which

the administrative regulation will be implemented: There are no costs or savings to those affected by the proposed amendment on retention of DOT warnings, signs, or placards, as the proposed amendment requires the retention of those warnings already required on the container. Total additional annual costs for compliance with the proposed regulation on asbestos for all general industry employers across the country are estimated at $14.8 million by the Occupational Safety and Health Administration (OSHA). There is no available cost breakdown per establishment.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: There will be little effect from this amendment.

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

1. First year following implementation:

2. Second and subsequent years: There are no additional factors regarding these amendments which will increase or decrease costs. There will be no affect on competition. Reporting and paperwork requirements: These amendments will not entail any reporting or additional paperwork requirements.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these amendments.

(a) Direct and indirect costs or savings:

(1) First year:

(2) Continuing costs or savings:

(3) Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements as a result of these proposed changes.

(4) Assessment of anticipated effect on state and local revenues: These amendments will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

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

(a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as these proposed regulations are adopted by reference from federal regulations published in the Federal Register.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: This amendment will enhance worker safety throughout Kentucky.

(b) State whether 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 conflicting, overlapping, or duplication as a result of adoption of these amendments.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one (1) or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KyOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of three or more employees) has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These amendments adopt federal regulations.

3. Minimum or uniform standards contained in the federal mandate. These amendments adopt the revisions to the previously adopted regulations 29 CFR 1910.1001, as published in the Federal Register, Volume 59, Number 153, August 10, 1994, and adopt 29 CFR 1910.1201, as published in the Federal Register, Volume 59, Number 137, July 19, 1994, and 29 CFR 1915.1001, as published in the Federal Register, Volume 59, Number 137, July 19, 1994.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? These adopted amendments are identical to the federal regulations.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions impose no stricter, additional or different responsibilities than federal standards.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. These amendments affect local government entities that have employees working with asbestos and those working with hazardous substances which require warning, placards, or signs by DOT.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed regulations affect the safety and health of employees of local government who are exposed to asbestos, and those who would be affected by warnings, signs, or placards required by DOT.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of these amendments is to comply with federal regulations relating to occupational safety and health. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health
(Proposed Amendment)

803 KAR 2:403. Adoption of 29 CFR Part 1926.50-.66.

RELATES TO: KRS Chapter 338

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules, administrative regulations, and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following administrative regulation contains those standards to be enforced by

the Division of Occupational Safety and Health Compliance in the area of construction. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1926.

Section 1. The Occupational Safety and Health Standards Board hereby adopts 29 CFR Part 1926.50-.66, revised as of June 30, 1993, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference, as amended April 13, 1990, with the following additions, exceptions, and deletions:

(1) The addition to 29 CFR 1926.50, "Medical Services and First Aid", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

(2) The additions to 29 CFR 1926.51, "Sanitation", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, are incorporated by reference.

(3) The additions and corrections to 29 CFR 1926.53, "Ionizing Radiation", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, are incorporated by reference.

(4) The additions to 29 CFR 1926.55, "Gases, Vapors, Fumes Dusts, and Mists", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, are incorporated by reference.

(5) The additions to 29 CFR 1926.57, "Ventilation", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, are incorporated by reference.

~~[(6) 29 CFR 1926.58, "Asbestos, Tremolite, Anthophylite, and Actinolite," as published in the Federal Register, Volume 51, Number 119, June 20, 1986 is adopted by reference with the following amendments:~~

~~(a) 29 CFR 1926.58(e)(6)(iii) is amended to read: "The employer shall ensure that contractors provide in writing that they have a competent person meeting the requirements of paragraph (b) "competent person" and paragraphs (e)(6)(ii) and (iii) before work commences."~~

~~(b) 29 CFR 1926.58(f)(3) is amended to read: "The respirators required by this exception are to be Type "C" supplied air respirators; continuous flow or pressure demand class."~~

~~(c) 29 CFR 1926.58(f)(5)(ii) is amended to read: "The employer shall ensure that all sampling is conducted in accordance with the ORM in Appendix A before sampling commences."~~

~~(d) 29 CFR 1926.58(f)(5)(iii) is amended to read: "The employer shall ensure that all analyses are performed in accordance with the elements outlined in Appendix A, and that all asbestos counters meet the qualifications listed in Appendix A. This notice shall be given prior to the start of the analyses."~~

~~(e) 29 CFR 1926.58(h)(3)(i) is amended to read: "Where respiratory protection is used, the employer shall institute a respirator program in accordance with American National Standards Practices for Respiratory Protection, ANSI Z88.2 1980, with the exception of Appendix A5, Suggested Procedures for Carrying Out Qualitative Respirator Fitting Tests, and Appendix A6, Suggested Procedures for Carrying Out Quantitative Respirator Fitting Tests."~~

~~(f) 29 CFR 1926.58(j)(2)(I) is amended to read: "The decontamination area shall be separated from the regulated area by an air lock. Air locks shall be used to separate the clean room, shower area and equipment room. An "air lock" is an open area used to separate the clean room, shower room and equipment room from each other; and to separate the decontamination area from the work area. It is accessible through doorways protected by two overlapping polyethylene sheets."~~

~~(g) 29 CFR 1926.58(k)(I)(ii) is amended to read: "Sign specifications. The warning signs required by paragraph (k)(I)(i) of this section shall be of a vertical format measuring twenty (20) inches in length and fourteen (14) inches in width, and shall be printed in letters of sufficient size and contrast as to be readily visible and legible, and shall bear the following information:"~~

~~(h) 29 CFR 1926.58, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite," as published in Federal Register, May 12, 1987, Volume 52, No. 91, is incorporated by reference.~~

~~(i) Revisions to 29 CFR 1926.58, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite," as published in Federal Register, Volume 53, Number 178, September 14, 1988, are incorporated by reference.~~

~~(j) Revisions to 29 CFR 1926.58, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite," as published in the Federal Register, Volume 55, Number 237, December 10, 1990, are incorporated by reference.~~

~~(k) Revisions to 29 CFR 1926.58, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite," as published in Federal Register, Volume 54, Number 243, December 20, 1989, is incorporated by reference.~~

~~(l) Revisions to 29 CFR 1926.58, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite," as published in Federal Register, Volume 55, Number 24, February 5, 1990, is incorporated by reference.~~

~~(m) Amendments, revisions and additions to 29 CFR 1926.58, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite," as published in the Federal Register, Volume 56, Number 171, September 4, 1991, are incorporated by reference.~~

~~(n) Amendments to 29 CFR 1926.58, "Asbestos, Tremolite, Anthophyllite, and Actinolite," as published in the Federal Register, Volume 57, Number 110, June 8, 1992, are incorporated by reference.]~~

(6) ~~[(7)]~~ 29 CFR 1926.59, "Hazard Communication," as published in Federal Register, August 24, 1987, Volume 52, Number 163, is incorporated by reference.

(7) ~~[(8)]~~ Revisions to 29 CFR 1926.59, "Hazard Communication", as published in Federal Register, February 9, 1994, Volume 59, Number 27, are incorporated by reference.

(8) ~~[(9)]~~ Amendments to 29 CFR 1926.60, "Methylenedianiline," as published in the Federal Register, Volume 57, Number 154, August 10, 1992, are incorporated by reference.

(9) ~~[(10)]~~ Amendments to 29 CFR 1926.62, "Lead in Construction; Interim Final Rule", as published in the Federal Register, Volume 58, Number 84, May 4, 1993, are incorporated by reference.

(10) The addition of 29 CFR 1926.61, "Retention of DOT Markings, Placards, and Labels", as published in the Federal Register, Volume 59, Number 137, July 19, 1994, is incorporated by reference.

(11) Amendments to 29 CFR 1926.63, "Cadmium," as published in the Federal Register, Volume 57, Number 178, September 14, 1992, are incorporated by reference.

(12) Redesignation of 29 CFR 1926.63, "Cadmium", as published in the Federal Register, Volume 59, Number 1, January 3, 1994, is incorporated by reference.

(13) Amendments to 29 CFR 1926.63, "Cadmium," as published in the Federal Register, Volume 58, Number 77, April 23, 1993, are incorporated by reference.

(14) 29 CFR 1926.64, "Process Safety Management for Highly Hazardous Chemicals", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

(15) 29 CFR 1926.65, "Hazardous Waste Operations and Emergency Response", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

(16) The revisions to 29 CFR 1926.65, "Hazardous Waste Operations and Emergency Response", as published in the Federal Register, Volume 59, Number 161, August 22, 1994, are incorporated by reference.

(17) ~~[(16)]~~ 29 CFR 1926.66, "Criteria for Design and Construction of Spray Booths", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS

13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

BILL RIGGS, Chairman

APPROVED BY AGENCY: February 13, 1995

FILED WITH LRC: February 15, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 23, 1995, at 2 p.m. (ET), at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Marc 18, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: William L. Ralston, Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, (502) 564-2778.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, W. L. Ralston

(1) Type and number of entities affected: The amendment to this regulation affect all employers in the construction industry.

(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 with regard to the proposed change eliminating the asbestos requirements, as these requirements are removed from this regulation, but new requirements are proposed to be in 803 KAR 2:425.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: There are no costs or savings to those affected by the proposed amendment on retention of DOT warnings, signs, or placards, as the proposed amendment requires the retention of those warnings already required on the container. There will be no additional costs or savings for the proposed amendment dealing with hazardous waste and emergency response, as this proposed change addresses technical changes and adds a nonmandatory appendix.

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

1. First year following implementation:

2. Second and continuing years:

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors regarding these amendments which will increase or decrease costs. There will be no affect on competition. Reporting and paperwork requirements: These amendments will not entail any reporting or additional paperwork requirements.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these proposed amendments.

(a) Direct and indirect costs or savings:

(1) First year:

(2) Continuing costs or savings:

(3) Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements as a result of these proposed changes.

(4) Assessment of anticipated effect on state and local revenues: These proposed amendments will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

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

(a) Geographic area in which administrative regulation will be implemented:

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as these revisions adopt federal standards published in the Federal Register.

(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 will enhance worker safety throughout Kentucky.

(b) State whether 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 conflicting, overlapping, or duplication as a result of adoption of these proposed amendments.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one (1) or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KyOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of five or more employees) has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These proposed amendments are identical to federal regulations.

3. Minimum or uniform standards contained in the federal mandate. These amendments will properly place 29 CFR 1926.1101 to the proper state regulation and adopt federal standards on retention Of DOT warnings.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? These proposed amendments will not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions impose no stricter, additional or different responsibilities than federal standards.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. These proposed amendments affect all local government entities that have employees working with asbestos, those who work with hazardous substances requiring DOT warnings and those who respond to emergencies or deal with hazardous waste while performing construction work.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed revisions affect the safety and health of employees of local government doing construction work who work with asbestos and hazardous substances requiring DOT warnings and those who respond to emergencies or deal with hazardous waste while performing construction work.

4. How does this administrative regulation affect the local government or any service it provides? There will be no significant increase or decrease in local government revenues or expenditures. These amendments will not affect the number of local government employees.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health
(Proposed Amendment)

803 KAR 2:404. Adoption of 29 CFR Part 1926.100-.107.

RELATES TO: KRS Chapter 338
STATUTORY AUTHORITY: KRS Chapter 13A
NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules, administrative regulations, and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1926.

Section 1. The Occupational Safety and Health Standards Board hereby adopts Chapter 29, Part 1926.95-.107 of the Code of Federal Regulations, revised as of June 30, 1993, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions, and deletions:

(1) 29 CFR 1926.95, "Criteria for Personal Protective Equipment", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

(2) 29 CFR 1926.96, "Occupational Foot Protection", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

(3) 29 CFR 1926.97, "Protective Clothing for Fire Brigades", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

(4) 29 CFR 1926.98, "Respiratory Protection for Fire Brigades", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

(5) 29 CFR 1926.99, "(Reserved)", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

(6) The additions to 29 CFR 1926.102, "Eye and Face Protection", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, are incorporated by reference.

(7) 29 CFR 1926.103, "Respiratory Protection," Table E-4 is amended as follows:

Table E-4
Respirator Protection Factors[a]

Type of Respirator	Permitted for Use in Oxygen-deficient Atmosphere	Permitted for Use in Immediately-dangerous-to-life-or-health Atmosphere[f]	Respirator Protection Factor	
			Qualitative Test	Quantitative Test
Particulate-filter, or half-mask face-piece[b,c]	No	No	10	As measured on each quarter-mask person with maximum of 100.
Vapor- or gas-removing, quarter-mask or half-mask facepiece[c]	No	No	10, or maximum use limit of cartridge or canister for vapor or gas, whichever is less.	As measured on each person with maximum of 100, or maximum use limit of cartridge or canister for vapor or gas,[i,j] whichever is less.
Combination particulate-filter and vapor- or gas-removing, quarter-mask or half-mask facepiece[b,c]	No	No	10, or maximum use limit or cartridge or canister for vapor or gas, whichever is less.	As measured on each person with maximum of 100, or maximum use limit of cartridge or canister for vapor or gas,[i,j], whichever is less.
Particulate-filter, full facepiece[b]	No	No	100	As measured on each person with maximum of 100 if dust, fume

				or mist filter is used, or maximum of 1000 if high-efficiency filter is used.
Vapor- or gas-removing, full facepiece	No	No	100, or maximum use limit of cartridge or canister for vapor or gas, whichever is less.	As measured on each person with maximum of 1000, or maximum use limit of cartridge or canister for vapor or gas[i,j], whichever is less.
Combination particulate-filter and vapor- or gas-removing, full facepiece[b]	No	No	100, or maximum use limit of cartridge or canister for vapor or gas, whichever is less.	As measured on each person with maximum of 100 if dust, fume or mist filter is used and maximum of 1000 if high-efficiency filter is used, or maximum use limit of cartridge or canister for vapor or gas, whichever is less.
Powered particulate-filter, any respiratory-inlet covering[b,c,d]	No	No (yes, if escape provisions are provided[d])	N/A	N/A No tests are required due to positive-pressure operation of respirator. The maximum protection factor is 100 if dust, fume, or mist filter is used and 3000 if high-efficiency filter is used.
Powered vapor- or gas-removing, any respiratory-inlet covering[c,d]	No	No (yes, if escape provisions are provided[d])	N/A	N/A No tests are required due to positive-pressure operation of respirator. The maximum protection factor is 3000, or maximum use limit of cartridge or canister for vapor or gas[i,j]whichever is less.
Powered combination particulate-filter and vapor or gas-removing, any respiratory-inlet covering[b,c,d]	No	No (yes, if escape provisions are provided[d])	N/A	N/A No tests are required due to positive-pressure operation of respirator. The maximum protection factor is 100 if dust, fume, or mist fileter is used and 3000 if high-efficiency filter is used, or maximum use limit of cartridge or canister for vapor or gas,[i,j], whichever is less.
Airline, demand, quarter-mask or half-mask facepiece, with or without escape provisions[c,e]	Yes[f]	No	10	As measured on each person, but limited to the use of the respirator in concentrations of contaminants below the immediately-dangerous to-life-or-health (IDLH) values.
Airline, demand, full facepiece, with or without escape provisions[e]	Yes[f]	No	100	As measured on each person, but limited to the use of the respirator in concentrations of contaminants below the immediately-dangerous to-life-or-health (IDLH) values
Airline, continuous flow or pressure demand type, any facepiece, without escape provisions[c]	Yes[f]	No	N/A	N/A No tests are required due to positive-pressure operation of respirator. The protection factor provided by the respirator is limited to use of the respirator in concentrations of contaminants below the immediately-dangerous-to-life-or-health

			(IDLH) values.	
Airline, continuous flow or pressure demand type, any facepiece, with escape provisions[c,e]	Yes[g]	Yes	N/A	N/A No tests are required due to positive-pressure operation of respirator. The maximum protection factors is 10000 plus[h].
Airline, continuous flow, helmet, hood, suit without escape provisions	Yes[f]	No	N/A	N/A No tests are required due to positive-pressure operation of respirator. The protection factor provided by the respirator is limited to the use of the respirator in concentrations of contamtaminants below the immediately-dangerous-to-life-or-health (IDLH) values.
Airline, continuous flow, helmet, hood, or suit, with escape provisions[e]	Yes[g]	Yes	N/A	N/A No tests are required due to positive-pressure operation of respirator. The maximum protection factor is 10000 plus[h].
Hose mask, with or without blower, full facepiece	Yes[f]	No	10	As measured on each person, but limited to the use of the respirator in concentrations of contaminants below the immediately-dangerous-to-life-or-health (IDLH) values.
Self-contained breathing apparatus, demand-type open-circuit or negative-pressure-type closed-circuit, quarter-mask or half-mask face-piece[c]	Yes[f]	No	10	As measured on each person, but limited to the use of the respirator in concentrations of contaminants below the immediately-dangerous-to-life-or-health (IDLH) values.
Self-contained breathing apparatus, demand-type open-circuit or negative-pressure-type closed-circuit, full face-piece or mouth-piece/nose clamp[c]	Yes[f] (Yes, if respirator is used for mine rescue and mine recovery operations.)	No (yes, if respirator is used for mine rescue and mine recovery operations.)	100	As measured on each person, but limited to the use of the respirator in concentrations of contaminants below the immediately-dangerous-to-life-or health (IDHL) values except when the respirator is used for mine rescue and mine recovery operations.
Self-contained breathing apparatus, pressure-demand-type open-circuit or positive-pressure-type closed-circuit, quarter-mask or half-mask facepiece, full facepiece, or mouth-piece/nose clamp[c]	Yes[g]	Yes	N/A	N/A No tests are required due to positive-pressure operation of respirator. The maximum protection factor is 10000 plus.
Combination respirators not listed.	The type and mode of operation having the lowest respirator protection factor shall be applied to the combination respirator.			

N/A means not applicable since a respirator-fitting test is not carried out.

[a] A respirator protection factor is a measure of the degree of protection provided by a respirator to a respirator wearer. Multiplying the permissible time-weighted average concentration or the permissible ceiling concentration, whichever is applicable, for a toxic substance, or the maximum permissible airborne concentration for a radionuclide, by a protection factor assigned to a respirator gives the maximum concentration of the hazardous substance for which the respirator can be used. Limitations of filters, cartridges, and canisters used in air-purifying respirators shall be considered in determining protection factors.

[b] When the respirator is used for protection against airborne particulate matter having a permissible time-weighted average concentration less than 0.05 milligram particulate matter per cubic meter of air or less than 2 million particles per cubic foot of air, or for protection against airborne radionuclide particulate matter, the respirator shall be equipped with a high-efficiency filter(s).

[c] If the air contaminant causes eye irritation, the wearer of a respirator equipped with a quarter-mask or half-mask facepiece or mouthpiece and nose clamp shall be permitted to use a protective goggle or to use a respirator equipped with a full facepiece.

[d] If the powered air-purifying respirator is equipped with a facepiece, the escape provision means that the wearer is able to breathe through the filter, cartridge, or canister and through the pump. If the powered air-purifying respirator is equipped with a helmet, hood, or suit, the escape provision shall be an auxiliary self-contained supply of respirable air.

[e] The escape provision shall be an auxiliary self-contained supply of respirable air.

[f] "Oxygen deficiency - not immediately dangerous to life or health" - an atmosphere having an oxygen concentration below the minimum legal requirement but above that which is immediately dangerous to life or health.

[g] "Oxygen deficiency - immediately dangerous to life or health" - an atmosphere which causes an oxygen partial pressure of 100 millimeters of mercury column or less in the freshly inspired air in the upper portion of the lungs which is saturated with water vapor.

[h] The protection factor measurement exceeds the limit of sensitivity of the test apparatus. Therefore, the respirator has been classified for use in atmospheres having unknown concentrations of contaminants.

[i] The service life of a vapor- or gas-removing cartridge or canister depends on the specific vapor or gas, the concentration of the vapor or gas in air, the temperature and humidity of the air, the type and quantity of the sorbent in the cartridge or canister, and the activity of the respirator wearer. Cartridges and canisters may provide only very short service lives for certain vapors and gases. Vapor/gas service life testing is recommended to ensure that cartridges and canisters provide adequate service lives. Reference should be made to published reports which give vapor/gas life data for cartridges and canisters.

[j] Vapor- and gas-removing respirators are not approved for contaminants that lack adequate warning properties of odor, irritation, or taste at concentrations in air at or above the permissible exposure limits.

NOTE: Respirator protection factors for air-purifying-type respirators equipped with a mouthpiece/nose clamp form of respiratory-inlet covering are not given, since such respirators are approved only for escape purposes.

(8) The revision to 29 CFR 1926.104, "Safety Belts, Lifelines, and Lanyards", as published in the Federal Register, Volume 59, Number 152, August 9, 1994, is incorporated by reference.

(9) The revision to 29 CFR 1926.105, "Safety Nets", as published in the Federal Register, Volume 59, Number 152, August 9, 1994, is incorporated by reference.

(10) The revision to 29 CFR 1926.107, "Definitions Applicable to this Subpart", as published in the Federal Register, Volume 59, Number 152, August 9, 1994, is incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

BILL RIGGS, Chairman

APPROVED BY AGENCY: February 13, 1995

FILED WITH LRC: February 15, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 23, 1995, at 2 p.m. (ET), at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by March 18, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: William L. Ralston, Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, (502) 564-2778.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, W. L. Ralston

(1) Type and number of entities affected: The amendment to this regulation affects all employers in the construction industry.

(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 to those affected by these proposed amendments, as they removes an existing regulations.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented:

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

1. First year following implementation:

2. Second and subsequent years: There are no additional factors regarding these amendments which will increase or decrease costs. There will be no affect on competition. This proposed change will not entail any reporting or paperwork requirements.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of this proposed change.

(a) Direct and indirect costs or savings:

(1) First year:

(2) Continuing costs or savings:

(3) Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements as a result of these proposed regulations.

(4) Assessment of anticipated effect on state and local revenues: These proposed changes will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

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

(a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as these proposed amendments simply remove existing 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: This amendment will enhance worker safety throughout Kentucky.

(b) State whether 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 conflicting, overlapping, or duplication as a result of adoption of these proposed changes.

(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? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one (1) or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KyOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of five or more employees) has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These proposed amendments adopt federal regulations.

3. Minimum or uniform standards contained in the federal mandate. These amendments adopt the revisions to the previously adopted regulations in 29 CFR Part 1926, as published in the Federal Register, Volume 59, Number 152, August 9. 1994.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? These adopted amendments are identical to the federal regulations.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These amendments impose no stricter, additional or different responsibilities than federal standards.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. Theses proposed changes affect all local government entities that have employees do construction work.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed revision affects safety and health of employees of local government who do construction work.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of these amendments remove existing regulations. There will be no increase or decrease in local government revenues or expenditures. This proposed change will not affect the number of local government employees.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health
(Proposed Amendment)

803 KAR 2:407. Adoption of 29 CFR Part 1926.250-.252.

RELATES TO: KRS Chapter 338

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules and administrative regulations, and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1926.

Section 1. The Occupational Safety and Health Standards Board hereby adopts Chapter 29, Part 1926.250-.252 of the Code of Federal Regulations revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, revisions, and deletions:

(1) 29 CFR 1926.250, "General Requirements for Storage", is amended, as follows:

(a) The additions to 29 CFR 1926.250, "General Requirements for Storage", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, are incorporated by reference.

(b) The revision to 29 CFR 1926.250, "General Requirements for Storage", as published in the Federal Register, Volume 59, Number 152, August 9, 1994, is incorporated by reference.

(2) The additions to 29 CFR 1926.251, "Rigging Equipment for Material Handling", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, are incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

BILL RIGGS, Chairman

APPROVED BY AGENCY: February 13, 1995

FILED WITH LRC: February 15, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 23, 1995, at 2 p.m. (ET), at the

Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by March 18, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: William L. Ralston, Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, (502) 564-2778.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, W. L. Ralston

(1) Type and number of entities affected: The amendment to this regulation affects all employers in the construction industry.

(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 to those affected by this proposed amendment, as it updates a reference to another regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: Undetermined.

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

1. First year following implementation:

2. Second and continuing years:

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors regarding this amendment which will increase or decrease costs. There will be no affect on competition. Reporting and paperwork requirements: This proposed change will not entail any reporting or paperwork requirements.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of this proposed change.

(a) Direct and indirect costs or savings:

(1) First year:

(2) Continuing costs or savings:

(3) Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements as a result of this proposed regulation.

(4) Assessment of anticipated effect on state and local revenues: This proposed change will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

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

(a) Geographic area in which administrative regulation will be implemented:

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as this proposed amendment simply updates a reference to another regulation.

(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 will enhance worker safety throughout Kentucky.

(b) State whether 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 conflicting, overlapping, or duplication as a result of adoption of this proposed change.

(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? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one (1) or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KyOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of five or more employees) has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. This proposed amendment adopts federal regulations.

3. Minimum or uniform standards contained in the federal mandate. This amendment adopts the revision to the previously adopted regulation in 29 CFR Part 1926, as published in the Federal Register, Volume 59, Number 152, August 9. 1994.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This adopted amendment is identical to the federal regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This amendment imposes no stricter, additional or different responsibilities than federal standard.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This proposed change affects all local government entities that have employees do construction work.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed revision affects safety and health of employees of local government who do construction work.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of this amendment is to update a reference to another regulation. There will be no increase or decrease in local government revenues or expenditures. This proposed change will not affect the number of local government employees.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health
(Proposed Amendment)

803 KAR 2:412. Adoption of 29 CFR Part 1926.500-.503 [2].

RELATES TO: KRS Chapter 338
STATUTORY AUTHORITY: KRS Chapter 13A
NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules and administrative regulations, and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1926.

Section 1. The Occupational Safety and Health Standards Board hereby adopts 29 CFR, Part 1926.500-.503 [2] revised as of August 9, 1994 [~~July 1, 1986~~], published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference.

(1) 29 CFR 1926.500 is amended, as follows:

(a) Revision to 29 CFR 1926.500, as published in the Federal Register, Volume 55, Number 220, November 14, 1990, is incorporated by reference.

(b) The revisions to 29 CFR 1926.500, "Scope, Application, and Definitions Applicable to this Subpart", as published in the Federal Register, Volume 59, Number 152, August 9, 1994, are incorporated by reference.

(2) 29 CFR 1926.501 is amended, as follows:

(a) Revision to 29 CFR 1926.501, as published in the Federal Register, Volume 55, Number 220, November 14, 1990, is incorporated by reference.

(b) The revisions to 29 CFR 1926.501, "Duty to Have Fall Protection", as published in the Federal Register, Volume 59, Number 152, August 9, 1994, are incorporated by reference.

(3) The revisions to 29 CFR 1926.502, "Fall Protection Systems Criteria and Practices", as published in the Federal Register, Volume 59, Number 152, August 9, 1994, are incorporated by reference.

(4) The addition of 29 CFR 1926.503, "Training Requirements", as published in the Federal Register, Volume 59, Number 152, August 9, 1994, are incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

BILL RIGGS, Chairman
APPROVED BY AGENCY: February 13, 1995
FILED WITH LRC: February 15, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 23, 1995, at 2 p.m. (ET), at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by March 18, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: William L. Ralston, Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, (502) 564-2778.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, W. L. Ralston

(1) Type and number of entities affected: The amendment to this regulation affects all employers in the construction industry.

(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: The Occupational Safety and Health Administration (OSHA) has projected the cost for compliance with this regulation nationwide to be approximately $40,000,000 annually, this figure includes $25,000,000 for employees working from roofs, $5.4 million for safety nets, and $6.6 million for training. There are no available figures for individual costs but OSHA has projected that these figures represent less than 0.01% of total construction revenues and less than 0.5% of the revenues for each affected construction sector.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented:

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

1. First year following implementation: Undetermined

2. Second and subsequent years: Undetermined. There are no additional factors regarding these amendments which will increase or decrease costs. There will be no affect on competition. These proposed changes will not entail any reporting or paperwork requirements.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these proposed changes.

(a) Direct and indirect costs or savings:

(1) First year:

(2) Continuing costs or savings:

(3) Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements as a result of this proposed regulation.

(4) Assessment of anticipated effect on state and local revenues: This proposed changes will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

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

(a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as these proposed amendments are part of a package of proposed regulations by this agency that clarify fall protection requirements for those in the construction industry.

(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 will enhance worker safety throughout Kentucky.

(b) State whether 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 conflicting, overlapping, or duplication as a result of adoption of this proposed change.

(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? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one (1) or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KyOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of five or more employees) has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These proposed amendments adopt federal regulations.

3. Minimum or uniform standards contained in the federal mandate. These amendments adopt the revisions to the previously adopted regulations in 29 CFR Part 1926, as published in the Federal Register, Volume 59, Number 152, August 9. 1994.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? These adopted amendments are identical to the federal regulations.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These proposed amendments impose no stricter, additional or different responsibilities than federal standards.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. These proposed changes affect all local government entities that have employees do construction work.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed revision affects safety and health of employees of local government who do construction work.

4. How does this administrative regulation affect the local government or any service it provides? There will be no increase or decrease in local government revenues or significant expenditures. These proposed changes will not affect the number of local government employees. Costs to local government to comply with these proposed changes will be born in supplying fall protection to its employees involved in construction work.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health
(Proposed Amendment)

803 KAR 2:413. Adoption of 29 CFR Part 1926.550-.556.

RELATES TO: KRS Chapter 338

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules, administrative regulations, and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1926.

Section 1. The Occupational Safety and Health Standards Board hereby adopts 29 CFR Part 1926.550-.556 revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions, and deletions:

(1) 29 CFR 1926.550(b)(2), "Cranes and Derricks," shall be revised as follows: revisions as published in the Federal Register, Volume 52, Number 187, September 28, 1987 are incorporated by reference.

(a) Additions to 29 CFR 1926.550 (Section g), "Cranes and Derricks," as published in Federal Register, Volume 53, Number 148, August 2, 1988, are incorporated by reference.

(b) Additions to 29 CFR 1926.550, as published in the Federal Register, Volume 54, Number 73, April 18, 1989, is incorporated by reference.

(c) The addition to 29 CFR 1926.550, "Cranes and Derricks", as published in Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

(d) The revisions to 29 CFR 1926.550, "Cranes and Derricks", as published in Federal Register, Volume 59, Number 152, August 9, 1994, are incorporated by reference.

(2) 29 CFR 1926.552(b)(8) of the paragraph on "Material Hoists," shall read as follows: All material hoists shall conform to the requirements of ANSI A10.5-1969, Safety Requirements for Material Hoists, with the exception that material hoists manufactured prior to January 1, 1970 may be used with a drum pitch diameter at least eighteen (18) times the normal rope diameter provided the hoisting wire rope is at least equal in flexibility to 6 x 37 classification wire rope.

(3) 29 CFR 1926.552(c)(15), "Material Hoists, Personnel Hoists and Elevators," shall be revised as follows: revisions as published in the Federal Register, Volume 52, Number 187, September 28, 1987 are incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

BILL RIGGS, Chairman

APPROVED BY AGENCY: February 13, 1995

FILED WITH LRC: February 15, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 23, 1995, at 2 p.m. (ET), at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference

Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by March 18, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: William L. Ralston, Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, (502) 564-2778.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, W. L. Ralston

(1) Type and number of entities affected: The amendment to this regulation affects all employers in the construction industry.

(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 to those affected by this proposed amendment, as it clarifies an existing requirement and updates a references to other regulations.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: Undetermined

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

1. First year following implementation: Undetermined

2. Continuing costs or savings: Undetermined

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of this proposed change.

(a) Direct and indirect costs or savings:

(1) First year:

(2) Continuing costs or savings:

(3) Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements as a result of this proposed regulation.

(4) Assessment of anticipated effect on state and local revenues: This proposed change will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal 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) Geographic area in which administrative regulation will be implemented: Undetermined

(b) Kentucky: Undetermined

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as this proposed amendment simply clarifies an existing requirement and updates a references to other 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: This amendment will enhance worker safety throughout Kentucky.

(b) State whether 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 conflicting, overlapping, or duplication as a result of adoption of this proposed change.

(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? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one (1) or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KyOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of five or more employees) has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. This proposed amendment adopts federal regulations.

3. Minimum or uniform standards contained in the federal mandate. This amendment adopts the revision to the previously adopted regulation in 29 CFR Part 1926, as published in the Federal Register, Volume 59, Number 152, August 9, 1994.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed amendment is identical to the federal regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This amendment imposes no stricter, additional or different responsibilities than federal standard.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This proposed change affects all local government entities that have employees do construction work.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed revision affects safety and health of employees of local government who do construction work.

4. How does this administrative regulation affect the local government or any service it provides? This proposed amendment simply clarifies an existing requirement and updates a references to other regulations. There will be no increase or decrease in local government revenues or expenditures. This proposed change will not affect the number of local government employees.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health
(Proposed Amendment)

803 KAR 2:415. Adoption of 29 CFR Part 1926.650-.653.

RELATES TO: KRS Chapter 338
STATUTORY AUTHORITY: KRS Chapter 13A
NECESSITY AND FUNCTION: KRS 338.051 and 338.061

authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules and administrative regulations, and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1926.

Section 1. The Occupational Safety and Health Standards Board hereby adopts Chapter 29, Part 1926.650-.653 of the Code of Federal Regulations revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference, as amended April 13, 1990, with following additions, exceptions, and deletions:

(1) Revisions to 29 CFR 1926, Subpart P, "Excavations," as published in Federal Register, Volume 54, Number 209, October 31, 1989, are incorporated by reference.

(2) The revisions to 29 CFR 1926.651(1), "Specific Excavation Requirements", as published in Federal Register, Volume 59, Number 152, August 9, 1994, are incorporated by reference

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

BILL RIGGS, Chairman

APPROVED BY AGENCY: February 13, 1995

FILED WITH LRC: February 15, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 23, 1995, at 2 p.m. (ET), at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by March 18, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: William L. Ralston, Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, (502) 564-2778.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, W. L. Ralston

(1) Type and number of entities affected: The amendment to this regulation affects all employers in general or construction industry.

(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 will be little or no additional costs or savings as this proposed change addresses technical changes.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: Undetermined.

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

1. First year following implementation:

2. Second and subsequent years: Undetermined. There are no additional factors regarding this proposed amendment which will increase or decrease costs. There will be no effect on competition. This proposed change will not entail any reporting or additional paperwork requirements.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of this proposed change.

(a) Direct and indirect costs or savings:

(1) First year:

(2) Continuing costs or savings:

(3) Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements as a result of this proposed regulation.

(4) Assessment of anticipated effect on state and local revenues: This proposed change will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

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

(a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as this proposed amendment simply deletes a requirement and updates a reference to another regulation.

(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 will enhance worker safety throughout Kentucky.

(b) State whether 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 conflicting, overlapping, or duplication as a result of adoption of this proposed change.

(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? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one (1) or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KyOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of five or more employees) has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. This proposed amendment adopts federal regulations.

3. Minimum or uniform standards contained in the federal mandate. This amendment adopts the revision to the previously adopted regulation in 29 CFR Part 1926, as published in the Federal Register, Volume 59, Number 152, August 9, 1994.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This adopted amendment is identical to the federal regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This amendment imposes no stricter, additional or different responsibilities than federal standard.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This proposed change affects all local government entities that have employees do construction work.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed revision affects safety and health of employees of local government who do construction work.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of this amendment is to delete a requirement and update a reference to another regulation. There will be no increase or decrease in local government revenues or expenditures. This proposed change will not affect the number of local government employees.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health
(Proposed Amendment)

803 KAR 2:416. Adoption of 29 CFR Part 1926.700-.702.

RELATES TO: KRS Chapter 338
STATUTORY AUTHORITY: KRS Chapter 13A
NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules, administrative regulations, and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1926.

Section 1. The Occupational Safety and Health Standards Board hereby adopts 29 CFR, Part 1926.700-.702, revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference, as amended April 13, 1990, with the following additions, exceptions, and deletions:

(1) Revisions to 29 CFR 1926, Subpart Q, "Concrete, Concrete Forms and Shoring," (now "Concrete and Masonry Construction"), as published in Federal Register, Volume 53, Number 116, June 16, 1988, are incorporated by reference.

(2) Revisions to 29 CFR 1926.700, as published in the Federal Register, Volume 55, Number 202, October 18, 1990, are incorporated by reference.

(3) The revision to 29 CFR 1926.701, "General Requirements", as published in the Federal Register, Volume 59, Number 152, August 9, 1994, is incorporated by reference.

(4) Revisions to Subpart Q of 1926.704(b), "Concrete and Masonry Construction Safety Standards," as published in Federal Register, Volume 54, Number 192, October 5, 1989, are incorporated by reference.

(5) [(4)] Revisions to 29 CFR 1926.705, as published in the Federal Register, Volume 55, Number 202, October 18, 1990, are incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

BILL RIGGS, Chairman
APPROVED BY AGENCY: February 13, 1995
FILED WITH LRC: February 15, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 23, 1995, at 2 p.m. (ET), at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by March 18, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: William L. Ralston, Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, (502) 564-2778.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, W. L. Ralston

(1) Type and number of entities affected: The amendment to this regulation affects all employers in the construction industry.

(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 additional costs or savings to those affected by this proposed amendment. This amendment, part of a package of proposed regulations by this agency which will clarify fall protection requirements in the construction industry, deletes a paragraph.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: Undetermined

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

1. First year following implementation:

2. Second and continuing years: Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors regarding this amendment which will increase or decrease costs. There will be no affect on competition. Reporting and paperwork requirements: This proposed change will not entail any reporting or paperwork requirements.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of this proposed change.

(a) Direct and indirect costs or savings:

(1) First year:

(2) Continuing costs or savings:

(3) Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no

reporting or paperwork requirements as a result of this proposed regulation.

(4) Assessment of anticipated effect on state and local revenues: This proposed change will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

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

(a) Geographic area in which administrative regulation will be implemented:

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as this proposed amendment, as part of a package of proposed regulations by this agency which will clarify fall protection requirements in the construction industry, deletes a paragraph.

(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 will enhance worker safety throughout Kentucky.

(b) State whether 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 conflicting, overlapping, or duplication as a result of adoption of this proposed change.

(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? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one (1) or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KyOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of five or more employees) has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. This proposed amendment adopts federal regulations.

3. Minimum or uniform standards contained in the federal mandate. This amendment adopts the revision to the previously adopted regulation in 29 CFR Part 1926, as published in the Federal Register, Volume 59, Number 152, August 9, 1994.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This adopted amendment is identical to the federal regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This amendment imposes no stricter, additional or different responsibilities than federal standard.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This proposed change affects all local government entities that have employees do construction work.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed revision affects safety and health of employees of local government who do construction work.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of this amendment is to delete a paragraph. There will be no increase or decrease in local government revenues or expenditures. This proposed change will not affect the number of local government employees.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health
(Proposed Amendment)

803 KAR 2:417. Adoption of 29 CFR Part 1926.750-.753 [~~752~~].

RELATES TO: KRS Chapter 338

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules and administrative regulations, and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1926.

Section 1. The Occupational Safety and Health Standards Board hereby adopts Chapter 29, Part 1926.750-.753 [~~752~~] of the Code of Federal Regulations revised as of August 9, 1994 [~~July 1, 1986~~], published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions, and deletions: The addition of 29 CFR 1926.753, "Safety Nets", as published in the Federal Register, Volume 59, Number 152, August 9, 1994, is incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

BILL RIGGS, Chairman

APPROVED BY AGENCY: February 13, 1995

FILED WITH LRC: February 15, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 23, 1995, at 2 p.m. (ET), at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by March 18, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not

wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: William L. Ralston, Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, (502) 564-2778.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, W. L. Ralston

(1) Type and number of entities affected: The amendment to this regulation affects all employers in the construction industry.

(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 additional costs or savings to those affected by this proposed amendment. This amendment, part of a package of proposed regulations by this agency which will clarify fall protection requirements in the construction industry, redesignate safety net requirements to this regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: Undetermined.

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

1. First year following implementation:

2. Second and subsequent years: There are no additional factors regarding this amendment which will increase or decrease costs. There will be no affect on competition. This proposed change will not entail any reporting or paperwork requirements.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of this proposed change.

(a) Direct and indirect costs or savings:

(1) First year:

(2) Continuing costs or savings:

(3) Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements as a result of this proposed regulation.

(4) Assessment of anticipated effect on state and local revenues: This proposed change will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

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

(a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as this proposed amendment redesignate requirements for safety nets to this regulation.

(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 will enhance worker safety throughout Kentucky.

(b) State whether 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 conflicting, overlapping, or duplication as a result of adoption of this proposed change.

(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? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one (1) or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KyOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of five or more employees) has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. This proposed amendment adopts federal regulations.

3. Minimum or uniform standards contained in the federal mandate. This amendment adopts the revision to the previously adopted regulation in 29 CFR Part 1926, as published in the Federal Register, Volume 59, Number 152, August 9, 1994.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This adopted amendment is identical to the federal regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This amendment imposes no stricter, additional or different responsibilities than federal standard.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This proposed change affects all local government entities that have employees do construction work.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed revision affects safety and health of employees of local government who do construction work.

4. How does this administrative regulation affect the local government or any service it provides? There will be no increase or decrease in local government revenues or expenditures. This proposed change will not affect the number of local government employees.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health
(Proposed Amendment)

803 KAR 2:421. Adoption of 29 CFR Part 1926.950-.960.

RELATES TO: KRS Chapter 338

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules, administrative regulations, and standards. Express authority to incorporate by reference established federal standards and national

consensus standards is also given to the board. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1926.

Section 1. The Occupational Safety and Health Standards Board hereby adopts Chapter 29, Part 1926 of the Code of Federal Regulations, revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions, and deletions:

(1) Amend subparagraph 1926.950(c)(1)(i) to read as follows: "The employee is insulated or guarded from the energized part. Insulating gloves, as well as insulating sleeves when necessary, rated for the voltage involved shall be considered insulation of the employee from the energized part, or ....."

(2) The revision to 29 CFR 1926.951, "Tools and Protective Equipment", as published in the Federal Register, Volume 59, Number 152, August 9, 1994, is incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

BILL RIGGS, Chairman

APPROVED BY AGENCY: February 13, 1995

FILED WITH LRC: February 15, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 23, 1995, at 2 p.m. (ET), at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by March 18, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: William L. Ralston, Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, (502) 564-2778.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, W. L. Ralston

(1) Type and number of entities affected: The amendment to this regulation affects all employers in the construction industry.

(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 to those affected by this proposed amendment, as it updates a reference to another regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented:

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

1. First year following implementation:

2. Second and continuing years: Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors regarding this amendment which will increase or decrease costs. There will be no affect on competition. Reporting and paperwork requirements: This proposed change will not entail any reporting or paperwork requirements.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of this proposed change.

(a) Direct and indirect costs or savings:

(1) First year:

(2) Continuing costs or savings:

(3) Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements as a result of this proposed regulation.

(4) Assessment of anticipated effect on state and local revenues: This proposed change will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

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

(a) Geographic area in which administrative regulation will be implemented:

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as this proposed amendment simply updates a reference to another regulation.

(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 will enhance worker safety throughout Kentucky.

(b) State whether 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 conflicting, overlapping, or duplication as a result of adoption of this proposed change.

(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? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one (1) or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KyOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of five or more employees) has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. This proposed amendment adopts federal regulations.

3. Minimum or uniform standards contained in the federal mandate. This amendment adopts the revision to the previously adopted regulation in 29 CFR Part 1926, as published in the Federal Register, Volume 59, Number 152, August 9, 1994.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those

required by the federal mandate? This adopted amendment is identical to the federal regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This amendment imposes no stricter, additional or different responsibilities than federal standard.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This proposed change affects all local government entities that have employees do construction work.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed revision affects safety and health of employees of local government who do construction work.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of this amendment is to update a reference to another regulation. There will be no increase or decrease in local government revenues or expenditures. This proposed change will not affect the number of local government employees.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health
(Proposed Amendment)

803 KAR 2:424. Adoption of 29 CFR Part 1926.1071-.1092.

RELATES TO: KRS Chapter 338

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: KRS 338.051 and 338.06 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules and administrative regulations, and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1926.

Section 1. The Occupational Safety and Health Standards Board hereby adopts 29 CFR, Part 1926.1071-.1092 revised as of June 20, 1993, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration, Volume 58, Number 124. These standards are hereby incorporated by reference ~~[with the following additions, exceptions, and deletions: the redesignation of "Cadmium", to 29 CFR 1926.1127, as published in the Federal Register, Volume 59, Number 1, January 3, 1994 is incorporated by reference]~~.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

BILL RIGGS, Chairman

APPROVED BY AGENCY: February 13, 1995

FILED WITH LRC: February 15, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 23, 1995, at 2 p.m. (ET), at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by March 18, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: William L. Ralston, Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, (502) 564-2778.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, W. L. Ralston

(1) Type and number of entities affected: These regulations affect all employers in the construction industry.

(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 to those affected by this proposed change, as this is simply a housekeeping revision to place the referenced federal standard under the proper state regulatory number.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: Undetermined

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

1. First year following implementation:

2. Second and continuing years: There are no additional factors regarding this proposed change which will increase or decrease costs. There will be no affect on competition. This proposed change will not entail any reporting or paperwork requirements.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of this proposed 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: There will be no reporting or paperwork requirements as a result of this proposed regulation.

(4) Assessment of anticipated effect on state and local revenues: This proposed change will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

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

(a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as these additions are simply the renumbering of regulations that have been previously enforced.

(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 will enhance worker safety throughout Kentucky.

(b) State whether 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 conflicting, overlapping, or duplication as a result of adoption of this proposed change.

(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? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one (1) or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KyOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of five or more employees) has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. This proposed change does not affect any changes in compliance.

3. Minimum or uniform standards contained in the federal mandate. This proposed change does not affect 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? This proposed change will not impose stricter requirements or additional or different responsibilities or requirements other than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This proposed regulation will impose no stricter, additional or different responsibilities than the federal standard.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This proposed change will have no affect on local government entities, as the referenced federal standard which is presently enforced is being placed under the more appropriate state administrative regulation.

3. State the aspect or service of local government to which this administrative regulation relates. No aspect or service of local government will be affected.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of this regulation is to properly place a federal referenced federal standard in the Kentucky Administrative Regulations. There will be no increase or decrease in local government revenues or expenditures. This regulation will not affect the number of local government employees.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health
(Proposed Amendment)

803 KAR 2:425. Adoption of 29 CFR Part 1926.1100-.1148.

RELATES TO: KRS Chapter 338

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules and administrative regulations, and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1926.

Section 1. The Occupational Safety and Health Standards Board hereby adopts 29 CFR, Part 1926.1100-.1148 revised as of June 30, 1993, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration, Volume 58, Number 124. These standards are hereby incorporated by reference with the following additions, revisions, and deletions:

(1) The amendment to 29 CFR 1926.1101, "Occupational Exposure to Asbestos", as published in the Federal Register, Volume 59, Number 153, August 10, 1994, is incorporated by reference.

(2) The amendment to 29 CFR 1926.1147, "Ethylene oxide," as published in the Federal Register, Volume 58, Number 143, July 28, 1993, is incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

BILL RIGGS, Chairman

APPROVED BY AGENCY: February 13, 1995

FILED WITH LRC: February 15, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 23, 1995, at 2 p.m. (ET), at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by March 18, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: William L. Ralston, Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, (502) 564-2778.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, W. L. Ralston

(1) Type and number of entities affected: These regulations affect all employers in the construction industry.

(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: The Occupational Safety and Health Administration has estimated the cost of compliance with this revised asbestos regulation to be approximately $422 per worker (average of all establishments). With costs per worker within affected industries ranging form $25 per worker (wrecking and demolition work and special trade contractors) to $1005 per worker in the floor laying and floor work industry.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented:

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

1. First year following implementation:

2. Second and subsequent years: Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors regarding these regulations which will increase or decrease costs. There will be no affect on competition. Reporting and paperwork requirements: This regulation will not entail any reporting or paperwork requirements.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of 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: There will be no reporting or paperwork requirements as a result of this regulation.

(4) Assessment of anticipated effect on state and local revenues: This proposed regulation will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

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

(a) Geographic area in which administrative regulation will be implemented:

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as this proposed regulation is adopted by reference for federal regulations published in the Federal Register.

(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 will enhance worker safety throughout Kentucky.

(b) State whether 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 conflicting, overlapping, or duplication as a result of adoption of this proposed amendment.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one (1) or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KyOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of five or more employees) has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. This proposed amendment adopts federal regulations.

3. Minimum or uniform standards contained in the federal mandate. The proposed amendment adopts 29 CFR Part 1926.1101, as published in the Federal Register, Volume 59, Number 153, August 10, 1994.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed amendment is identical to the federal regulations.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These proposed regulations impose no stricter, additional or different responsibilities than federal standards.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. These regulations affect all local government entities that have employees do construction work and are exposed to asbestos.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed regulations affect safety and health of employees of local government who do construction work and are exposed to asbestos.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of these regulations are to comply with federal regulations relating to occupational safety and health. There will be no significant increase or decrease in local government revenues or expenditures. These regulations will not affect the number of local government employees.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health
(Proposed Amendment)

803 KAR 2:500. Adoption of 29 CFR Part 1915, 1917, 1918 and 1919, Maritime employment.

RELATES TO: KRS Chapter 338

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules, administrative regulations, and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of Maritime employment.

Section 1. The Occupational Safety and Health Standards Board hereby incorporates Chapter 29, Part 1915 as published in the April 20, 1983, Federal Register, Part 1917 as published in July 5, 1983, Federal Register, and Parts 1918 and 1919 of the Code of Federal Regulations, revised as of July 1, 1981, published by the Office of the Federal Register, National Archives and Records Services, General

Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions, and deletions:

(1) 29 CFR 1915.1, 1918.1, and 1919.1 shall read as follows: "The provisions of this regulation adopt and extend the applicability of established Federal Maritime Standards contained in 29 CFR 1915, 1916, 1917, 1918, and 1919 to all Maritime employers, Maritime employees, and places of Maritime employment throughout the Commonwealth except those excluded in KRS 338.021."

(2) The amendments to 29 CFR 1915, "Occupational Safety and Health Standards for Shipyard Employment", as published in the Federal Register, Volume 58, Number 125, July 1, 1993, are incorporated by reference.

(3) 29 CFR 1915.4(b) and 1918.3(b), "Secretary," means Secretary of Labor, Kentucky Labor Cabinet, Commonwealth of Kentucky, or his authorized representatives.

(4) The revisions to 29 CFR 1915.7, "Competent Person", addressing "Confined and Enclosed Spaces and Other Dangerous Atmospheres in Shipyard Employment", as published in the Federal Register, Volume 59, Number 141, July 25, 1994, are incorporated by reference.

(5) The revisions to 29 CFR 1915, Subpart B, "Confined and Enclosed Spaces and Other Dangerous Atmospheres in Shipyard Employment", as published in the Federal Register, Volume 59, Number 141, July 25, 1994, are incorporated by reference.

(6) [~~(4)~~] 29 CFR 1919.2(D), "Assistant Secretary" is changed to read: "Secretary" means the Secretary of Labor, Kentucky Labor Cabinet, Commonwealth of Kentucky, or his authorized representative.

(7) [~~(5)~~] 29 CFR 1915.97, "Health and Sanitation," is revised to read as follows: Revisions as published in the Federal Register, Volume 52, Number 163, August 24, 1987.

(8) [~~(6)~~] 29 CFR 1915.99, "Hazard Communication," as published in the Federal Register, Volume 52, Number 163, August 24, 1987 is incorporated by reference.

(9) [~~(7)~~] The revisions to 29 CFR 1915.99, "Hazard Communication", as published in the Federal Register, Volume 59, Number 27, February 9, 1994, are incorporated by reference.

(10) The addition of 29 CFR 1915.100, "Retention of DOT Markings, Placards, and Labels", as published in the Federal Register, Volume 59, Number 137, July 19, 1994, is incorporated by reference.

(11) [~~(8)~~] Revision to 29 CFR 1915.113(b)(1), "Shackles and Hooks," as published in the Federal Register, Volume 51, Number 188, September 29, 1986 is incorporated by reference.

(12) [~~(9)~~] Revision to 29 CFR 1915.172(d), "Portable Air Receivers and Other Unfired Pressure Vessels," as published in the Federal Register, Volume 51, Number 188, September 29, 1986, is incorporated by reference.

(13) The addition of 29 CFR 1915.1001, "Asbestos", as published in the Federal Register, Volume 59, Number 153, August 10, 1994, is incorporated by reference.

(14) [~~(10)~~] Amendments to 29 CFR 1915.1027, "Cadmium", as published in the Federal Register, Volume 57, Number 178, September 14, 1992, are incorporated by reference.

(15) [~~(11)~~] Amendments to 29 CFR 1915.1027, "Cadmium", as published in the Federal Register, Volume 58, Number 77, April 23, 1993, are incorporated by reference.

(16) [~~(12)~~] Amendments to 29 CFR 1915.1927, "Cadmium", as published in the Federal Register, Volume 59, Number 1, January 3, 1994, are incorporated by reference.

(17) [~~(13)~~] 29 CFR 1917.1(a)(2)(x), "Marine Terminals," as published in the Federal Register, Volume Number 52, December 31, 1987, is incorporated by reference.

(18) [~~(14)~~] 29 CFR 1917.1(a)(2)(ix), "Scope and Applicability," as published in the Federal Register, Volume 52, Number 186, September 25, 1987 is incorporated by reference.

(19) [~~(15)~~] 29 CFR 1917.28, "Hazard Communication," as published in the Federal Register, Volume 52, Number 163, August 24, 1987 is incorporated by reference.

(20) [~~(16)~~] Revisions to 29 CFR 1917.28, "Hazard Communication", as published in the Federal Register, Volume 59, Number 27, February 9, 1994, are incorporated by reference.

(21) The addition of 29 CFR 1917.29, "Retention of DOT Markings, Placards, and Labels", as published in the Federal Register, Volume 59, Number 137, July 19, 1994, are incorporated by reference.

(22) [~~(17)~~] 29 CFR 1917.44(o), "General Rules Applicable to Vehicles," shall be amended as follows: Amendments as published in the Federal Register, Volume 52, Number 186, September 25, 1987 are incorporated by reference.

(23) [~~(18)~~] 29 CFR 1917.72, "Grain Elevators," (reserved) as published in the Federal Register, Volume Number 52, December 31, 1987, is removed.

(24) [~~(19)~~] 29 CFR 1918.90, "Hazard Communication," as published in the Federal Register, Volume 52, Number 163, August 24, 1987 is incorporated by reference.

(25) [~~(20)~~] Revisions to 29 CFR 1918.90, "Hazard Communication", as published in the Federal Register, Volume 59, Number 27, February 9, 1994, are incorporated by reference.

(26) The addition of 29 CFR 1918.100, "Retention of DOT Markings, Placards, and Labels", as published in the Federal Register, Volume 59, Number 137, July 19, 1994, are incorporated by reference.

(27) [~~(21)~~] 29 CFR 1919.2(e) "Administration" is changed to read: "Program" means the Kentucky Occupational Safety and Health Program, Frankfort, Kentucky.

(28) [~~(22)~~] An employer, required under 29 CFR 1915, 1918 or 1919 to report information to the U.S. Department of Labor, or any subsidiary thereof, shall instead report such information to the Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

BILL RIGGS, Chairman

APPROVED BY AGENCY: February 13, 1995

FILED WITH LRC: February 15, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 23, 1995, at 2 p.m. (ET), at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by March 18, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: William L. Ralston, Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, (502) 564-2778.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, W. L. Ralston

(1) Type and number of entities affected: The amendments to this regulation affect all public sector employers engaged in shipyard

employment.

(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: For that proposed amendment dealing with entry into dangerous atmospheres in shipyard employment, the Occupational Safety and Health Administration (OSHA) published that submissions to it by the shipyard industry, unions, and professionals in the maritime industry indicate that these elements would impose no new costs on shipyards, but would codify current safe industry practice.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: There are no costs or savings to those affected by the proposed amendment on retention of DOT warnings, signs, or placards, as the proposed amendment requires the retention of those warnings already required on the container. Total additional annual costs for compliance with the proposed regulation on asbestos for all shipyards across the country are estimated at $93,000 by OSHA.

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

1. First year following implementation:

2. Second and subsequent years: There are no additional factors regarding these amendments which will increase or decrease costs. There will be no affect on competition. These amendments will not entail any reporting or additional paperwork requirements.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these amendments.

(a) Direct and indirect costs or savings:

(1) First year:

(2) Continuing costs or savings:

(3) Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements as a result of these proposed changes.

(4) Assessment of anticipated effect on state and local revenues: These amendments will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

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

(a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as these proposed regulations are adopted by reference from federal regulations published in the Federal Register.

(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 will enhance worker safety throughout Kentucky.

(b) State whether 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 conflicting, overlapping, or duplication as a result of adoption of these amendments.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one (1) or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KyOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of three or more employees) has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These amendments adopt federal regulations.

3. Minimum or uniform standards contained in the federal mandate. These amendments adopt the revisions to the previously adopted regulations 29 CFR 1915.7 and 29 CFR 1915, Subpart B, as published in the Federal Register, Volume 59, Number 141, July 25, 1994; adopt 29 CFR 1915.100, 1917.29, and 1918.100, as published in the Federal Register, Volume 59, Number 137, July 19, 1994, and 29 CFR 1915.1001, as published in the Federal Register, Volume 59, Number 153, August 10, 1994.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? These adopted amendments are identical to the federal regulations.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions impose no stricter, additional or different responsibilities than federal standards.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. These amendments affect local government entities that have employees working in shipyard work.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed regulations affect the safety and health of employees of local government who work in shipyards in confined and enclosed spaces or other dangerous atmospheres of ships, those local government employees working in maritime employment who are exposed to asbestos, and those who would be affected by warnings, signs, or placards required by DOT who work in maritime operations.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of these amendments is to comply with federal regulations relating to occupational safety and health. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health
(Proposed Amendment)

803 KAR 2:600. Adoption of 29 CFR Part 1928.

RELATES TO: KRS Chapter 338
STATUTORY AUTHORITY: KRS Chapter 13A
NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules, administrative regulations, and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of agriculture.

Section 1. The Occupational Safety and Health Standards Board hereby incorporates Chapter 29, Part 1928 of the Code of Federal Regulations revised as of July 1, 1981, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions and deletions:

(1) 29 CFR 1928, "Hazard Communication," as published in the Federal Register, Volume 52, Number 163, August 24, 1987 is incorporated by reference.

(2) 29 CFR Part 1928.1 shall read as follows: "This part contains Occupational Safety and Health Standards applicable to agriculture operations. The provisions of this regulation adopt and extend the applicability to established federal standards contained in 29 CFR Part 1928 to all employers, employees, and places of employment throughout the Commonwealth except those excluded in KRS 338.021."

(3) The revisions to 29 CFR 1928.21(a)(3), "Logging", as published in the Federal Register, Volume 59, Number 196, October 12, 1994 are incorporated by reference.

(4) The revisions to 29 CFR 1928.21, "Hazard Communication", as published in the Federal Register, Volume 59, Number 27, February 9, 1994 are incorporated by reference.

(5) [~~(4)~~] 29 CFR "Field Sanitation," as published in the Federal Register, Volume Number 52, May 1, 1987, is incorporated by reference.

(6) The addition of 29 CFR 1928.21(a)(7), "Retention of DOT Markings, Placards, and Labels", as published in the Federal Register, Volume 59, Number 137, July 19, 1994 are incorporated by reference.

(7) [~~(5)~~] Amendments to 29 CFR 1928.1027, "Cadmium", as published in the Federal Register, Volume 58, Number 77, April 23, 1993, are incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

BILL RIGGS, Chairman
APPROVED BY AGENCY: February 13, 1995
FILED WITH LRC: February 15, 1995 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 23, 1995, at 2 p.m. (ET), at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by March 18, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: William L. Ralston, Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, (502) 564-2778.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, W. L. Ralston

(1) Type and number of entities affected: The amendments to this regulation affect all employers in agriculture.

(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: For the proposed amendment of the existing logging regulation, the Occupational Safety and Health Administration (OSHA) estimates the cost of compliance to range from $38 to $1300 per establishment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: There are no costs or savings to those affected by the proposed amendment on retention of DOT warnings, signs, or placards, as the proposed amendment requires the retention of those warnings already required on the container.

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

1. First year following implementation:

2. Second and subsequent years: Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors regarding this amendment which will increase or decrease costs. There will be no affect on competition. Reporting and paperwork requirements: These amendments will not entail any reporting or additional paperwork requirements.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these amendments.

(a) Direct and indirect costs or savings:

(1) First year:

(2) Continuing costs or savings:

(3) Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements as a result of these proposed changes.

(4) Assessment of anticipated effect on state and local revenues: These amendments will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

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

(a) Geographic area in which administrative regulation will be implemented:

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as these revisions are adoption of federal regulations as published in the Federal Register.

(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 will enhance worker safety throughout Kentucky.

(b) State whether 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 conflicting, overlapping, or duplication as a result of adoption of these proposed amendments.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one (1) or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KyOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of five or more employees) has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These proposed amendments adopt federal regulations.

3. Minimum or uniform standards contained in the federal mandate. These amendments adopt the revisions to the previously adopted regulations of 29 CFR 1928.21(a)(3), as published in the Federal Register, Volume 59, Number 196, October 12, 1994, and the addition of 29 CFR 1928.21(a)(7), as published in the Federal Register, Volume 59, Number 137, July 19, 1994.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? These proposed amendments are identical to the federal regulations.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions impose no stricter, additional or different responsibilities than federal standards.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. These proposed amendments affect all local government entities that have employees working in logging operations and those affected by warning signs, labels and placards while engaged in agricultural work.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed revisions affect the safety and health of employees of local government who work in logging operations or are affected by warning signs, labels and placards while engaged in agricultural work.

4. How does this administrative regulation affect the local government or any service it provides? These proposed amendments comply with federal regulations relating to occupational safety and health. There will be no significant increase or decrease in local government revenues or expenditures. These amendments will not affect the number of local government employees.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky Racing Commission
(Proposed Amendment)

810 KAR 1:009. Jockeys and apprentices.

RELATES TO: KRS 230.210 to 230.360

STATUTORY AUTHORITY: KRS 230.260

NECESSITY AND FUNCTION: To regulate conditions under which thoroughbred racing shall be conducted in Kentucky. The function of this administrative regulation is to outline the requirements for jockeys and apprentice jockeys.

Section 1. Probationary Mounts. Any person desiring to participate in this state as a jockey and who never previously has ridden in a race may be permitted to ride in three (3) races before applying for a license as a jockey or apprentice jockey; if:

(1) The person is a licensed stable employee assistant trainer, or trainer with at least one (1) year of service with a racing stable; and

(2) A licensed trainer certifies in writing to the stewards that the person has demonstrated sufficient horsemanship as evidenced by his control of the animal while mounting, riding, and dismounting in race and nonrace conditions to be permitted the probationary mounts; and

(3) The starter has schooled the person breaking from the starting gate with other horses and approves the person as capable of starting a horse properly from the starting gate in a race; and

(4) The stewards determine that the person:

(a) Intends to become a licensed jockey;

(b) Possesses the physical ability to be a jockey; and

(c) Has demonstrated his ability to ride in a race without jeopardizing the safety of horses or other jockeys in the race.

(5) A person shall not ride in any probationary races without prior approval of the stewards.

Section 2. Qualifications for License. In addition to the administrative regulations applicable to licensees under 810 KAR 1:003, a holder of a license as a jockey or apprentice jockey:

(1) Shall be sixteen (16) years of age or older and licensed under his legal name which shall be listed in the daily race program;

(2) Shall have served at least one (1) year with a racing stable;

(3) Shall have ridden in at least three (3) races;

(4) Shall, when required by the stewards, provide a medical affidavit certifying the person is physically and mentally capable of performing the activities and duties of a licensed jockey.

Section 3. Amateur or Provisional Jockey. An amateur wishing to ride in races on even terms with professional riders, but without accepting fees or gratuities therefor, shall be approved by the stewards as to competency of horsemanship, shall be granted an amateur jockey's license, and his amateur status shall be duly noted on the daily race program. A licensed owner or licensed trainer, upon approval by the stewards, may be issued a provisional jockey's license to ride his own horse or horse registered in his care as trainer.

Section 4. Apprentice Allowance. Any person sixteen (16) years of age or older, who never previously has been licensed as a jockey in any jurisdiction, and who is qualified under Section 2 of this administrative regulation, may claim in all purse races except handicaps the following weight allowances:

(1) Ten (10) pounds until he has ridden five (5) winners, and seven (7) pounds until he has ridden an additional thirty (30) winners; if he has ridden a total of thirty-five (35) winners prior to the end of one (1) year from the date of riding his fifth winner, he shall have an allowance of five (5) pounds until the end of that year.

(2) After the completion of conditions in subsection (1) of this section a contracted apprentice for one (1) year may claim three (3)

pounds when riding horses owned or trained by his original contract employer; provided, his contract has not been transferred or sold since his first winner. The original contract employer shall be deemed the party to the contract who was the employer at the time of the apprentice jockey's first winner. No apprentice allowances may be claimed for a period in excess of three (3) years from the date of the rider's fifth winner.

(3) An apprentice jockey may enter into a contract with a licensed owner or licensed trainer qualified under Section 5 of this administrative regulation for a period not to exceed five (5) years. These contracts shall be:

(a) Approved by the stewards;

(b) Filed with the racing commission; and

(c) Binding in all respects on the parties to the contract;

(d) An apprentice who has not entered into a contract pursuant to this subsection shall be given an apprentice jockey certificate, on a form furnished by the commission.

(4) If an apprentice jockey is unable to ride for a period of fourteen (14) consecutive days or more because of service in the armed forces of the United States, physical disablement, or restrictions on racing, the commission upon recommendation of the stewards and after consultation with the racing authority which approved the original apprentice contract, may extend the time during which the apprentice weight allowance may be claimed for a period no longer than the period the apprentice rider was unable to ride.

(5) After completion of conditions in subsection (1) of this section, the rider shall be issued a license as a jockey before accepting subsequent mounts. Under these circumstances, the commission may waive collection of an additional license fee.

Section 5. Rider Contracts. All contracts between an employer owner or trainer and employee rider shall be subject to the administrative regulations promulgated by the Kentucky Racing Commission. All riding contracts for terms longer than thirty (30) days, as well as any amendments, cancellation, or transfer, shall be in writing with signature of parties notarized, and shall be approved by the stewards and filed with the commission. The stewards may approve a riding contract and permit parties to participate in racing in this state if the stewards find that:

(1) The contract employer is a licensed owner or licensed trainer who owns or trains at least three (3) horses eligible to race at the time of execution of the contract;

(2) The contract employer possesses the character, ability, facilities, and financial responsibility as may be conducive to developing a competent race rider;

(3) The contracts for apprentice jockeys provide for fair remuneration, adequate medical care, and an option equally available to both employer and apprentice jockey to cancel the contract after two (2) years from date of execution.

Section 6. Restrictions as to Contract Riders. No rider may:

(1) Ride any horse not owned or trained by his contract employer in a race against a horse owned or trained by his contract employer;

(2) Ride or agree to ride any horse in a race without consent of his contract employer;

(3) Share any money earned from riding with his contract employer;

(4) Accept any present, money, or reward of any kind in connection with his riding of any race except through his contract employer.

Section 7. Calls and Engagements. Any rider not so prohibited by prior contract may agree to give first or second call on his race-riding services to any licensed owner or trainer. These agreements, if for terms of more than thirty (30) days, shall be in writing, approved by the stewards, and filed with the commission. Any rider employed by a racing stable on a regular salaried basis may not ride against the stable which so employs him. No owner or trainer shall employ or engage a rider to prevent him from riding another horse.

Section 8. Jockey Fee. (1) The purpose of this section is not to establish a minimum or maximum fee, but merely provide a fee if the parties have not made any other agreement to the contrary. The fee to a jockey shall be, in the absence of special agreement, as follows:

(a) Purse $2,000 to $3,400: Winning mount, ten (10) percent of win purse; Second mount, $45; Third mount, $35; Losing mount, $30.

(b) Purse $3,500 to $4,900: Winning mount, ten (10) percent of win purse; Second mount, $55; Third mount, $45; Losing mount, $35.

(c) Purse $5,000 to $9,900: Winning mount, ten (10) percent of win purse; Second mount, $65; Third mount, $50; Losing mount, $40.

(d) Purse, $10,000 to $14,900: Winning mount, ten (10) percent of win purse; Second mount, five (5) percent of second purse; Third mount, five (5) percent of third purse; Losing mount, $45.

(e) Purse, $15,000 to $24,900: Winning mount, ten (10) percent of win purse; Second mount, five (5) percent of second purse; Third mount, five (5) percent of third purse; Losing mount, $50.

(f) Purse, $25,000 to $49,900: Winning mount, ten (10) percent of win purse; Second mount, five (5) percent of second purse; Third mount, five (5) percent of third purse; Losing mount, $60.

(g) Purse, $50,000 to $99,900: Winning mount, ten (10) percent of win purse; Second mount, five (5) percent of second purse; Third mount, five (5) percent of third purse; Losing mount, $75.

(h) Purse, $100,000 and up: Winning mount, ten (10) percent of win purse; Second mount, five (5) percent of second purse; Third mount, five (5) percent of third purse; Losing mount, $100.

(2) A jockey fee shall be considered earned by a rider when he is weighed out by the clerk of scales except:

(a) When a rider does not weigh out and ride in a race for which he has been engaged because an owner or trainer engaged more than one (1) rider for the same race; the owner or trainer shall pay an appropriate fee to each rider engaged for the race.

(b) When a rider capable of riding elects to take himself off the mount without, in the opinion of the stewards, proper cause.

(c) When a rider is replaced by the stewards with a substitute rider for a reason other than a physical injury suffered by the rider during the time between weighing out and start of the race.

Section 9. Revised Order of Finish After Race is Declared Official. If a winning purse is forfeited through subsequent ruling of the stewards or racing commission, after the result has originally been made official, the winning fee shall be paid to the jockey whose mount is ultimately adjudged the winner, and the original winner shall be credited only with a losing mount.

Section 10. Duty to Fulfill Engagements. Every rider shall fulfill his duly scheduled riding engagements, unless excused by the stewards. No rider shall be required to ride a horse he believes to be unsound, nor over a racing strip he believes to be unsafe, but if the stewards find a rider's refusal to fulfill a riding engagement is based on a personal belief unwarranted by the facts and circumstances, the rider may be subject to disciplinary action.

Section 11. Presence in Jockey Room. (1) Each rider who has been engaged to ride in a race shall be physically present in the jockey room no later than one (1) hour prior to post time for the first race on the day he is scheduled to ride, unless excused by the stewards, or the clerk of scales; and upon arrival shall report to the clerk of scales his engagements. If a rider should fail for any reason to arrive in the jockey room prior to one (1) hour before post time of a race in which he is scheduled to ride, the clerk of scales shall so advise the stewards who may name a substitute rider and shall cause a public announcement to be made of the rider substitution prior to opening of wagering on the race.

(2) Each rider reporting to the jockey room shall remain in the jockey room until he has fulfilled all his riding engagements for the

day, except to ride in a race, or except to view the running of a race from a location approved by the stewards. No rider shall have contact or communication with any person outside the jockey room other than an owner or trainer for whom he is riding, a racing official, or a representative of the regular news media, until the rider has fulfilled all his riding engagements for the day.

(3) The association shall be responsible for security of the jockey room so as to exclude all persons except riders scheduled to ride on the day's program, valets, authorized attendants, racing officials, duly accredited members of the news media, and persons having special permission of the stewards to enter the jockey room.

(4) Any rider intending to discontinue riding at a race meeting prior to its conclusion shall notify the stewards of his intent to depart after fulfilling his final riding engagement of the day.

Section 12. Weighing Out. (1) Each rider engaged to ride in a race shall report to the clerk of scales for weighing out not more than one (1) hour and not less than fifteen (15) minutes before post time for each race in which he is engaged to ride, and at the time of weighing out shall declare overweight, if any.

(2) No rider shall pass the scale with more than one (1) pound overweight, without consent of the owner or trainer of the horse he is engaged to ride; in no event shall a rider pass the scale with more than five (5) pounds overweight.

(3) No horse shall be disqualified because of overweight carried.

(4) Whip, blinkers, number cloth, bridle, goggles, and rider's safety helmet shall not be included in a rider's weight.

Section 13. Wagering. No rider shall place a wager, cause a wager to be placed on his behalf, or accept any ticket or winnings from a wager on any race except on his own mount, and except through the owner or trainer of the horse he is riding. The owner or trainer placing wagers for his rider shall maintain a precise and complete record of all such wagers, and the record shall be available for examination by the stewards at all times.

Section 14. Attire. Upon leaving the jockey room to ride in any race, each rider shall be neat and clean in appearance and wear the traditional jockey costume with all jacket buttons and catches fastened. Each jockey shall wear the cap and jacket racing colors registered in the name of the owner of the horse he is to ride, stock tie, white or light breeches, top boots, safety helmet approved by the commission, and a number on his right shoulder corresponding to his mount's number as shown on the saddle cloth and daily racing program. Advertising, promotional, or cartoon symbols or wording which in the opinion of the commission are not in keeping with the traditions of the turf are prohibited. Beginning January 1, 1994, each jockey or jockey apprentice shall wear in all races a safety vest which shall provide a minimum of shock protection to the upper body of a five (5) rating as defined by the British Equestrian Trade Association. A safety vest shall weigh no more than two (2) pounds and shall not be included in the jockey's weight when weighing out to race. The clerk of scales and attending valet shall be held jointly responsible with a rider for his neat and clean appearance and proper attire.

Section 15. Viewing Films or Tapes of Races. Every rider shall be responsible for checking the film list posted by the stewards in the jockey room the day after riding in a race. The posting of the film list shall be considered as notice to all riders whose names are listed to present themselves at the time designated by the stewards to view the patrol films or video tapes of races. Any rider may be accompanied by a representative of the jockey organization of which he is a member in viewing the films, or with the stewards' permission, be represented at the viewing by his designated representative.

WAYNE G. LYSTER, III, Chairman

APPROVED BY AGENCY: December 13, 1994

FILED WITH LRC: February 15, 1995 at 8 a.m.

PUBLIC HEARING: A public hearing will be held on March 24, 1995, at 10 a.m. at the offices of the Kentucky Racing Commission located at the Kentucky Horse Park, 4063 Iron Works Pike, Building B, Lexington, Kentucky 40511. Those interested in attending the hearing should contact in writing: Bernard J. Hettel, Executive Director, Kentucky Racing Commission, 4063 Iron Works Pike, Building B, Lexington, Kentucky 40511.

REGULATORY IMPACT ANALYSIS

Contact Person: Bernard J. Hettel

(1) Type and number of entities affected: 317 jockeys and apprentices.

(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. Confirms by regulation preexisting policy; no direct or indirect 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. Confirms by regulation preexisting policy; no direct or indirect costs or savings.

(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 reporting or paperwork will be required; compliance will be done by the stewards.

2. Second and subsequent years: No reporting or paperwork will be required; compliance will be done by the stewards.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Policy previous. This confirmed by regulation. No costs or savings.

2. Continuing costs or savings: Policy previous. This confirmed by regulation. No costs or savings.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: There are none.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: There are no increased costs, therefore no revenue consideration.

(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 response to offering of public hearing, any adverse economic effect would be negligible.

(b) Kentucky: No response to offering of public hearing, any adverse economic effect would be negligible.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Allowing advertising is inappropriate and inconsistent with traditions of racing.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Integrity of racing preserved.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Does not affect environment or public health.

(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:

(a) Necessity of proposed regulation if in conflict: Confirms preexisting policy.

(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? Not applied because of the Racing Commission's desire to protect the traditions of racing from the lowest level claiming race to the highest level stakes races.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky Racing Commission
(Proposed Amendment)

810 KAR 1:014. Weights.

RELATES TO: KRS 230.210 to 230.360
STATUTORY AUTHORITY: KRS Chapter 13A
NECESSITY AND FUNCTION: To regulate conditions under which thoroughbred racing shall be conducted in Kentucky. The function of this administrative regulation is to outline the requirements for assigning weights for the horse to race.

Section 1. (1) Weight penalties shall be obligatory. Weight allowance shall be claimed at time of entry and shall not be waived after the posting of entries, except by consent of the stewards.

(2) A horse shall start with only the allowance of weight to which it is entitled at time of starting, regardless of its allowance at time of entry.

(3) Horses incurring weight penalties for a race shall not be entitled to any weight allowance for that race. Horses not entitled to the first weight allowance in a race shall not be entitled to any subsequent allowance specified in the conditions.

(4) Claim of weight allowance to which a horse is not entitled shall not disqualify, unless protest is made in writing and lodged with the stewards at least one (1) hour before post time.

(5) No horse shall incur a weight penalty or be barred from any race for having been placed second or lower in any race. No horse shall be given a weight allowance for failure to finish second or lower in any race.

(6) No horse shall receive allowance of weight nor be relieved of extra weight for having been beaten in one (1) or more races, however, this subsection shall not prohibit maiden allowances or allowances to horse that have not won a race within a specified period or a race of a specified value.

(7) Penalties incurred and allowances due in steeplechase or hurdle races shall not apply to races on the flat, and vice versa.

(8) In determining eligibility, allowances and penalties, the reports, records, and statistics as published in the Daily Racing Form and the monthly chart books, or corresponding official publications of any foreign country, shall be considered official, but may be corrected until forty-five (45) minutes prior to post time of the race.

(9) Horses winning races at unrecognized meetings shall not be penalized for such winnings in races run thereafter under the jurisdiction of the commission. The maiden allowance, however, shall be lost by the winning of a race at any unrecognized meeting.

(10) Excepting in handicaps, fillies two (2) years old shall be allowed three (3) pounds, and fillies and mares three (3) years old and upward shall be allowed five (5) pounds before September 1, and three (3) pounds thereafter in races where competing against horses of the opposite sex.

(11) In all races of one (1) mile or over, other than maiden races, races for nonwinners at a mile or over, stakes races or handicaps, any horse which has never won at a distance of one (1) mile or over, shall be allowed three (3) pounds weight allowance in addition to any other allowances to which it may be entitled in the race; such allowance shall be claimed at time of entry.

(12) The following is the scale of weights for age, and shall be carried when not otherwise specified in the condition of the race:

SCALE OF WEIGHTS

Distance	Age	January/ February	March/ April	May	June	July	August	September	October	November/ December
	2	---	---	---	---	---	105	108	111	114
One-half	3	117	119	121	123	125	126	127	128	129
Mile	4	130	130	130	130	130	130	130	130	130
	5 and up	130	130	130	130	130	130	130	130	130
	2	---	---	---	---	---	102	105	108	111
Six	3	114	117	119	121	123	125	126	127	128
Furlongs	4	129	130	130	130	130	130	130	130	130
	5 and up	130	130	130	130	130	130	130	130	130
	2	---	---	---	---	---	---	96	99	102
	3	107	111	113	115	117	119	121	122	123
One Mile	4	127	128	127	126	126	126	126	126	126
	5 and up	128	128	127	126	126	126	126	126	126
	2	---	---	---	---	---	---	---	---	---
One Mile	3	101	107	111	113	116	118	120	121	122
and a	4	125	127	127	126	126	126	126	126	126
Quarter	5 and up	127	127	127	126	126	126	126	126	126
	2	---	---	---	---	---	---	---	---	---
One mile	3	98	104	108	111	114	117	119	121	122
and a half	4	124	126	126	126	126	126	126	126	126
	5 and up	126	126	126	126	126	126	126	126	126
	3	96	102	106	109	112	114	117	119	120
Two Miles	4	124	126	126	126	126	125	125	124	124
	5 and up	126	126	126	126	126	125	125	124	124

In race if intermediate lengths, the weights
for the shorter distance shall be carried

(13) Jockeys shall be weighed out for their respective mounts by the clerk of scales not less than fifteen (15) minutes before post time (see also 810 KAR 1:009, Section 11(1)).

(14) A jockey's weight shall include his clothing, boots, goggles, saddle and its attachments, or any other equipment except as specified. None of the following items shall be included in the jockey's weight: whip, bridle, bit or reins, safety helmet, blinkers, goggles, or number cloth (see also 810 KAR 1:009, Section 11(4)).

(15) Five (5) pounds shall be the limit of overweight any horse is permitted to carry (see also 810 KAR 1:009, Section 11(2)).

(16) Only valets furnished by the association shall assist jockeys in weighing out.

(17) After a race has been run, the jockey shall ride promptly to the finish line, dismount, and present himself to the clerk of scales to be weighed in. He shall carry over to the scales all pieces of equipment with which he weighed out.

(18) Each jockey shall weigh in at the same weight as that at which he weighed out, and if short of it by more than two (2) pounds, the stewards shall investigate and when warranted take disciplinary action against the individual or individuals responsible for the violation. When warranted, such action shall include disqualification of the horse from receiving what would otherwise be its share of the purse. ~~[his mount shall be disqualified.]~~

(19) No jockey shall weigh in at more than two (2) pounds over the weight at which he weighed out, except insofar as said weight may have been affected by the elements.

(20) If a jockey is prevented from riding his mount to the finish line because of an accident or illness either to himself or his horse, he may walk or be carried to the scales, or he may be excused by the stewards from weighing in.

WAYNE G. LYSTER, III, Chairman

APPROVED BY AGENCY: December 13, 1994

FILED WITH LRC: February 15, 1995 at 8 a.m.

PUBLIC HEARING: A public hearing will be held on March 24, 1995, at 10 a.m. at the offices of the Kentucky Racing Commission located at the Kentucky Horse Park, 4063 Iron Works Pike, Building B, Lexington, Kentucky 40511. Those interested in attending the hearing should contact in writing: Bernard J. Hettel, Executive Director, Kentucky Racing Commission, 4063 Iron Works Pike, Building B, Lexington, Kentucky 40511.

REGULATORY IMPACT ANALYSIS

Contact Person: Bernard J. Hettel

(1) Type and number of entities affected: Racing associations that offer thoroughbred racing. Six (6) licensed associations.

(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. Permits races to be posted official faster; no direct or indirect 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. Permits races to be posted official faster; no direct or indirect costs or savings.

(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 reporting or paperwork will be required. Compliance will be done by racing stewards.

2. Second and subsequent years: No reporting or paperwork will be required. Compliance will be done by racing stewards.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Modernizes procedure. No costs or savings.

2. Continuing costs or savings: Modernizes procedure. No costs or savings.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Modernizes procedure. No costs or savings.

(4) Assessment of anticipated effect on state and local revenues: There are none.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: There are no increased costs, therefore no revenue considerations.

(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 response to offering of public hearing any adverse economic effect would be negligible.

(b) Kentucky: No response to offering of public hearing any adverse economic effect would be negligible.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Current method is time consuming an outdated. This change keeps Kentucky horse racing competitive.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Public interest served by the faster posting of the official sign.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Does not affect environment or public health.

(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:

(a) Necessity of proposed regulation if in conflict: Modernization of racing operation.

(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? Not applied because of the racing commission's desire to serve the public by removing a cumbersome, outdated method of posting races official. All races and jockeys are treated equally.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky Racing Commission
(Proposed Amendment)

810 KAR 1:016. Running of the race.

RELATES TO: KRS 230.210 to 230.360

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: To regulate conditions under which thoroughbred racing shall be conducted in Kentucky. The function of this administrative regulation outlines the requirements relating to the running of a race.

Section 1. Post Time. Post time for the first race on each racing day shall be approved by the commission. Post time for subsequent races on the same program shall be fixed by the pari-mutuels manager. At tracks where night racing is conducted, no race shall be started after 11:55 p.m.

Section 2. Horses in Paddock not to be Touched. No person shall

touch a horse while in the paddock except its licensed owner, its licensed trainer, authorized stable personnel, the paddock judge, the horse identifier, its assigned valet, a steward, a farrier, or an outrider.

Section 3. Trainer Responsibility. The trainer shall be responsible for arrival in the paddock, at the time prescribed by the paddock judge, of each horse entered by the trainer and shall supervise the saddling of the horse. If a trainer is to be absent from a track where his horses are participating in races, he shall provide his own assistant trainer or licensed trainer to substitute for him during his absence.

Section 4. Withdrawal of a Horse. Every horse whose starting is obligatory shall run the course; except, the stewards may order the withdrawal of a horse at any time up to the actual start of a race.

Section 5. Walkover. If at the time for saddling, only one (1) horse or horses owned by only one (1) stable shall be weighed out, the horse or horses of single ownership shall be ridden past the stewards' stand, go to the post and then move over the course before determination of the winner.

Section 6. Parade to the Post; Time. All horses shall parade and carry their declared weight from the paddock to the starting post, the parade shall pass the stewards' stand. After passing the stewards' stand once, horses may break formation and canter, warm up, or go as they please to the post. The parade to the post shall not exceed twelve (12) minutes from the time the field enters upon the track, except in cases of unavoidable delay. If a jockey is thrown on the way to the post, the jockey shall remount at the point at which thrown. If the jockey is so injured as to require a substitute jockey to be named for the horse by the stewards, the horse shall be returned to the paddock where the horse shall be remounted by a substitute jockey.

Section 7. Lead Pony. When, by permission of the paddock judge, a horse is led to the post by a pony, the horse may be excused from parading with the other horses. The horse shall en route to the post, pass the stewards' stand. Lead ponies may be excluded from the saddling enclosure or walking ring, at the discretion of the stewards and paddock judge.

Section 8. Control of Horses and Jockeys by Starter. The horses and jockeys shall be under the control of the starter from the moment they enter the track until the race is started. If an injury occurs to any jockey or his equipment malfunctions, the starter may grant a delay to permit the substitution of a jockey or repair of equipment. During the delay, the starter may permit any jockey to dismount. If a horse breaks through the gate or unseats its jockey after any of the field is loaded in the starting gate, and the horse is not immediately taken in hand by the outrider and brought back for reloading, the starter shall unload the horses in the gate. The starter shall reload the horses in their proper order when the runaway horse is brought back to position for reloading. All causes of delay shall be reported by the starter to the stewards. No person other than the jockey, starter, or assistant starter shall be permitted to strike a horse or attempt, by shouting or other fashion, to assist the horse in getting a start.

Section 9. Starting Gate to be Used. A starting gate approved by the commission shall be used in starting all races on the flat except in cases permitted by the stewards. If a race is started without a starting gate, there shall be no start until, and no recall after, the assistant starter has dropped his flag in answer to the starter.

Section 10. Horses Left at Post. (1) If a door at the front of the starting gate fails to open properly and timely when the starter dispatches the field or if a horse inadvertently has not been loaded in his scheduled position in the starting gate when the field is dispatched, thereby causing the horse to be left at the post, the starter shall immediately report the circumstance to the stewards who shall immediately post the "inquiry" sign on the infield results board and advise the public to hold all mutuel tickets. After consulting with the starter and viewing the patrol films or video tapes, the stewards then shall determine whether the horse was precluded from obtaining a fair start.

(2) If the stewards find the horse was precluded from obtaining a fair start, the stewards shall rule the horse a nonstarter and shall order money wagered on the horse deducted from the pari-mutuel pool and refunded to holders of pari-mutuel tickets thereon; except if the horse ruled a nonstarter is part of a mutuel entry and another horse in the entry is not left at the post, there shall be no pari-mutuel refund.

(3) Stakes fees for the ruled nonstarter shall be refunded to the owner.

(4) The starter may, in his discretion, place an unruly or fractious horse on the outside of the starting gate and one (1) length behind the starting line. If the horse so stationed outside the starting gate by the starter dwells or refuses to break with the field and thereby left at the post, there shall be no refund of pari-mutuel wagers thereon nor refund of stakes fees paid therefor.

Section 11. Horses Failing to Finish. Any horse which starts in a race, but does not cross the finish line, or is not ridden across the finish line by the jockey with whom it starts the race shall be declared unplaced. Any portion of the purse that may normally accrue to the horse shall revert to the association.

Section 12. Fouls. A leading horse when clear is entitled to any part of the track. If a leading horse or any other horse in a race, swerves or is ridden to either side so as to interfere with, intimidate, or impede any other horse or jockey, or to cause same, such shall be deemed a foul. If a jockey strikes another horse or jockey, it is a foul. If in the opinion of the stewards, a foul alters the finish of a race, any offending horses may be disqualified by the stewards.

Section 13. Stewards to Determine Foul Riding. Every jockey shall be responsible for making his best effort to control and guide his mount in such a way as not to cause a foul. The stewards shall take cognizance of riding which results in a foul, irrespective of whether an objection is lodged. If in the opinion of the stewards, a foul is committed as a result of a jockey not making his best effort to control and guide his mount to avoid a foul, whether intentionally or through carelessness or incompetence, the jockey may be penalized at the discretion of the stewards.

Section 14. Horses to be Ridden Out. Every horse in every race shall be ridden so as to win or finish as near as possible to first and demonstrate the best and fastest performance of which it is capable at the time. No horse shall be eased up without adequate cause, even if it has no apparent chance to earn a portion of the purse money. A jockey who unnecessarily causes a horse to shorten stride may be penalized at the discretion of the stewards. Stewards shall take cognizance of marked reversal of form of all horses and shall conduct inquiries of the licensed owner, licensed trainer, and all other persons connected with the horse suspected of unformful racing. If the stewards find that the horse was deliberately restrained or impeded in any way by any means so as not to win or finish as near as possible to first, any person found to have contributed to such circumstance may be penalized at the
discretion of the stewards.

Section 15. Use of Whips, Other Means of Altering Performance. Whips shall be used uniformly and the stewards shall take cognizance of unusual use or nonuse of a whip by a jockey. No appliance, electrical or mechanical, other than the ordinary whip, shall be used

to affect the speed of a horse in a race or workout. No sponge or other object may be used to interfere with the respiratory system of a horse. Use or nonuse of ordinary racing equipment shall be consistent and any change thereof shall be approved by the stewards.

Section 16. Official Order of Finish as to Pari-mutuel Payoff. When satisfied that the order of finish is correct and that the race has been properly run in accordance with the rules and administrative regulations of the commission, the stewards shall order that the official order of finish be confirmed and the official sign posted for the race. The decision of the stewards as to the official order of finish for pari-mutuel wagering purposes is final and no subsequent action shall set aside or alter such official order of finish for the purposes of pari-mutuel wagering. ~~[If foul riding or other cause for disqualification of any horses in a race is brought to the attention of the stewards by the time the last jockey in a race has been weighted in, the stewards shall rule on the extent of disqualification, if any, and shall determine the placing of the horses in the official order of finish for purposes of pari-mutuel payoff. After the stewards have caused the "official" sign to be flashed on the infield result board, the order of finish so declared official shall be final, and no right of appeal thereof shall exist, insofar as the pari-mutuel payoff is concerned. Any subsequent change in the order of finish or award of purse money after the result of a race has been so declared official by the stewards shall in no way affect the pari-mutuel payoff.]~~

WAYNE G. LYSTER, III, Chairman

APPROVED BY AGENCY: December 13, 1994

FILED WITH LRC: February 15, 1995 at 8 a.m.

PUBLIC HEARING: A public hearing will be held on March 24, 1995, at 10 a.m. at the offices of the Kentucky Racing Commission located at the Kentucky Horse Park, 4063 Iron Works Pike, Building B, Lexington, Kentucky 40511. Those interested in attending the hearing should contact in writing: Bernard J. Hettel, Executive Director, Kentucky Racing Commission, 4063 Iron Works Pike, Building B, Lexington, Kentucky 40511.

REGULATORY IMPACT ANALYSIS

Contact Person: Bernard J. Hettel

(1) Type and number of entities affected: Racing associations that offer thoroughbred racing. Six (6) licensed associations.

(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. Permits races to be posted official faster. No direct or indirect 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. Permits races to be posted official faster. No direct or indirect costs or savings.

(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 reporting or paperwork will be required; compliance will be done by racing stewards.

2. Second and subsequent years: No reporting or paperwork will be required; compliance will be done by racing stewards.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Modernizes procedure. No costs or savings.

2. Continuing costs or savings: Modernizes procedure. No costs or savings.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Modernizes procedure. No costs or savings.

(4) Assessment of anticipated effect on state and local revenues: There are none.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: There are no increased costs, therefore no revenue considerations.

(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 response to offering of public hearing any adverse economic effect would be negligible.

(b)Kentucky: No response to offering of public hearing any adverse economic effect would be negligible.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Current method is time consuming and outdated. This change keeps Kentucky horse racing competitive.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Public interest served by the faster posting of the official sign.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Does not affect environment or public health.

(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:

(a) Necessity of proposed regulation if in conflict: Modernization of racing operation.

(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? Not applied because of the racing commission's desire to serve the public by removing a cumbersome, outdated method of posting races official. All races need to be treated in the same manner.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky Racing Commission
(Proposed Amendment)

810 KAR 1:017. Objections and complaints.

RELATES TO: KRS 230.210 to 230.360

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: To regulate conditions under which thoroughbred racing shall be conducted in Kentucky. The function of this administrative regulation relates to the requirements and procedures in lodging of objections and complaints.

Section 1. Persons Eligible to Lodge Objections or Complaints. Objections or complaints against a horse or jockey entered in a race shall be received only when duly lodged by the owner or authorized agent of the owner, the trainer, or the jockey, of another horse engaged in the same race and whose horse suffered or may suffer by the alleged violation of an administrative regulation. An inquiry may also be made by a racing official.

Section 2. Form for Objections and Complaints. Objections as to interference or fouls occurring during the running of the race shall be lodged with the stewards in any manner which the commission may prescribe by rule. ~~[Objections as to interference or fouls occurring during the running of the race may be lodged orally with the clerk of scales or with the stewards.]~~ All other objections or complaints shall be made in writing and bear the signature of the complainant. Objections or complaints lodged during a race meeting shall be addressed to the stewards. Objections or complaints lodged after the

termination of a race meeting shall be addressed to the commission secretary at the commission general office. An objection or complaint once lodged shall not withdrawn without permission of the stewards.

Section 3. Time for Lodging Objections or Complaints. Objections or complaints based on the following violations administrative regulation shall be lodged by persons aggrieved thereby within the time prescribed; except the stewards may declare a horse ineligible or disqualified at any time:

(1) At least one (1) hour before post time, if objection is based on incorrect weight allowance claimed for a horse entered to race.

(2) Before the race has been posted as official on the infield result board, if objection is based on interference by a horse, improper course run by a horse, foul riding by a jockey, or any other matter occurring during and incident to the running of the race.

(3) Not later than one (1) year after the race was run, if the objection or complaint is based on fraudulent or willful misstatement in entry under which a horse has run.

(4) Not later than forty-eight (48) hours, exclusive of Sunday, after the race was run, if objections or complaints are based on any other violation of an administrative regulation.

Section 4. Final Determination of Objections to Acts in Race. The stewards shall make all findings of fact as to all matters occurring during and incident to the running of a race; shall determine all objections, and inquiries based on interference by a horse, improper course run by a horse, foul riding by a jockey, and all other matters occurring during and incident to the running of a race; and, shall determine the extent of disqualification, if any, of horses in a race for a foul committed during the race. Findings of fact and determination shall be final and no appeal may be taken thereon. In determining the extent of disqualification, the stewards in their discretion may:

(1) Disqualify and place the offending horse, and any horses coupled with it as an entry, behind any horse that as may have suffered by reason of the foul;

(2) Disqualify and declare the offending horse, and any horses coupled with it as an entry, unplaced;

(3) Disqualify the offending horse, and any horses coupled with it as an entry, from participation in all or any part of the purse;

(4) Declare void, a track record set or equaled by a disqualified horse, or any horses coupled with it as an entry;

(5) Affirm the place judges' order of finish and suspend a jockey, if in the stewards' opinion the foul riding had no affect on the order of finish;

(6) Disqualify the offending horse and not suspend the jockey if in the stewards' opinion the interference to another horse in a race was not the result of an intentional foul or careless riding on the part of the jockey.

Section 5. Dispute of a Race after Declared Official for Pari-mutuel Payoff. If the result of a race is placed in dispute by the lodging of an objection or complaint or by discovery of an alleged violation of an administrative regulation, after the race has been declared official for pari-mutuel payoff, then pending final determination of the disputed race:

(1) Purse money and trophy to which the horse objected to may have been entitled shall be withheld and placed in escrow by the association until final adjudication of the dispute; except, any portion of the purse money whose distribution would not be affected by the determination of the dispute, at the discretion of the stewards, may be distributed.

(2) If purse money or trophy has been awarded to an owner prior to the lodging of an objection or discovery of an alleged violation of an administrative regulation which places the outcome of a race in dispute, the money or trophy shall be returned immediately to the association on order of the stewards. Upon final adjudication of the dispute, the person deemed to be entitled to the purse money or trophy shall be entitled to an order of recovery from any person or association holding same.

(3) The horse which crossed the finish line first and any other horse for which the race is claimed, shall be liable for all penalties attaching to the winner of that race until the matter if finally adjudicated.

Section 6. Determination of a Disputed Race. The stewards shall determine all objections, complaints, or alleged violations of administrative regulation lodged or discovered after a race has been declared official for pari-mutuel payoff and shall issue a ruling thereon. If the stewards find that an administrative regulation was violated, the stewards may penalize the persons responsible, disqualify any horses in the disputed race, and award the purse money and trophy in accordance with any resulting revised order of finish in the disputed race.

Section 7. Revised Order of Finish after Race Declared Official for Pari-mutuel Payoff. If a horse is disqualified after a race has been declared official for pari-mutuel payoff and thereby causes revision of the order of finish in the race:

(1) The pari-mutuel payoff shall in no way be affected.

(2) The stewards shall be responsible for causing appropriate corrections to be made in official records for the race and in racing statistics as may pertain to the respective horses, jockeys, trainers, owners, breeders, sires, dams, and broodmare sires, by reporting such corrections to the racing secretary and to the Daily Racing Form.

Section 8. Complaints Against Officials. All complaints or protests by any licensee based on any decision or act of a racing official other than the stewards, or concerning any matter as may occur on association grounds not provided for by Sections 4 and 5 of this regulation shall be made in writing, signed by the complainant, and submitted to the stewards. All complaints or protests by any persons based on any decision, act, or conduct of the stewards shall be submitted to the commission, as provided by 810 KAR 1:020.

WAYNE G. LYSTER, III, Chairman

APPROVED BY AGENCY: December 13, 1994

FILED WITH LRC: February 15, 1995 at 8 a.m.

PUBLIC HEARING: A public hearing will be held on March 24, 1995, at 10 a.m. at the offices of the Kentucky Racing Commission located at the Kentucky Horse Park, 4063 Iron Works Pike, Building B, Lexington, Kentucky 40511. Those interested in attending the hearing should contact in writing: Bernard J. Hettel, Executive Director, Kentucky Racing Commission, 4063 Iron Works Pike, Building B, Lexington, Kentucky 40511.

REGULATORY IMPACT ANALYSIS

Contact Person: Bernard J. Hettel

(1) Type and number of entities affected: Horse owners, horse trainers, jockeys, authorized agents of horse owners. Number will vary by size of starters in a race.

(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. Modernizes method of lodging an objection occurring during the running of a race; no direct or indirect 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. Modernizes method of lodging an objection occurring during the running of a race; no direct or indirect costs or savings.

(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 reporting or paperwork will be required. Compliance will be done by race stewards.

2. Second and subsequent years: No reporting or paperwork will be required. Compliance will be done by race stewards.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Modernizes procedure. No costs or savings.

2. Continuing costs or savings: Modernizes procedure. No costs or savings.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Modernizes procedure. No costs or savings.

(4) Assessment of anticipated effect on state and local revenues: There are none.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: There are no increased costs, therefore no revenue considerations.

(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 response to offering of public hearing any adverse economic effect would be negligible.

(b) Kentucky: No response to offering of public hearing andy adverse economic effect would be negligible.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Current method is time consuming and outdated. This change keeps Kentucky horse racing competitive.

(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 change in conjunction with others serves the public in a faster posting of the race as official.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Does not affect environment or public health.

(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:

(a) Necessity of proposed regulation if in conflict: Modernization of racing operation.

(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? (Explain why tiering was or was not used.) Not applied because of the Racing Commission's desire to serve the public by removing a cumbersome, outdated method of lodging an objection occurring during the running of a race and all races will use this procedure.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky Racing Commission
(Proposed Amendment)

810 KAR 1:025. Licensing thoroughbred racing.

RELATES TO: KRS 230.280, 230.290, 230.300, 230.310, 230.320

STATUTORY AUTHORITY: KRS 230.215

NECESSITY AND FUNCTION: To regulate conditions under which thoroughbred racing shall be conducted in Kentucky. The function of this administrative regulation is to establish the licensing procedures and requirements for participation in thoroughbred racing.

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

(2) Licensee shall abide by all rulings, and decisions of the stewards and all decisions by the stewards shall remain in force unless reversed or modified only by the commission upon proper appeal.

(a) Rulings and decisions of the stewards may be appealed to the commission, except those made by the stewards as to:

1. Findings of fact as occurred during and incident to the running of a race; and

2. A determination of the extent of disqualification of horses in a race for fouls committed during the race.

(b) Excepted rulings and decisions by the stewards shall be final with no right of review by the commission.

(3)(a) A licensee shall consent to a reasonable search of his property in his possession by the commission or its representatives, the property being restricted to that on association grounds and including tack rooms, living or sleeping quarters, motor vehicles, trunks, boxes, and containers of any sort.

(b) Licensee shall consent to seizure of any object which may be evidence indicating a violation of an administrative regulation.

(c) A licensee shall cooperate in every way with the commission or its representatives during the conduct of an investigation, to include responding correctly under oath to the best of his knowledge to all questions asked by the commission or its representatives pertaining to racing matters.

(4)(a) A licensed trainer shall be responsible for the condition of horses in his charge and shall be held to a high standard of care in taking all precautions as are reasonable and necessary to safeguard the horses from tampering.

(b) Upon a finding of a positive for a prohibited medication, drug, or substance, in a saliva, urine, blood, or other specimen taken from a horse, the trainer of the horse shall have the burden of proof showing freedom from negligence in the exercise of a high degree of care in safeguarding the horse from tampering.

Section 2. The commission may issue a license to an association which applies for a license to conduct a thoroughbred race meeting on days as the commission may deem appropriate.

Section 3. Grounds for Refusal, Suspension, or Revocation of a License. The commission in its discretion may refuse to issue a license to an applicant, or may suspend or revoke a license issued, or order disciplinary measures, on the following grounds:

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

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

(3) Falsification, misrepresentation, or omission of required information in a license application to the commission.

(a) Failure to disclose to the commission complete ownership or beneficial interest in a horse entered to be raced; or

(b) Misrepresentation or attempted misrepresentation in connection with the sale of a horse or other matter pertaining to racing or registration of thoroughbreds;

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

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

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

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

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

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

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

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

(12) Possession on association grounds, without written permission from the commission or stewards, of:

(a) Firearms;

(b) Battery, buzzer, or electrical device; or

(c) Other appliance other than an ordinary whip which could be used to alter the speed of a horse in a race or workout;

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

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

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

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

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

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

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

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

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

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

(21) A licensee's failure to satisfy a judgment rendered against him, for goods, supplies, services or fees furnished him and used in the course of his licensed occupation, constitutes a failure to meet the financial responsibility requirements of KRS 230.310. Lack of a showing of legal and just cause for not satisfying said judgement is inconsistent with the best interests of racing and the maintenance of honesty, integrity and high quality thereof and is cause for suspension of the license and denial of any renewal of same.

Section 4. License Applications for Associations. Persons or legal entities desiring to conduct thoroughbred racing in the Commonwealth shall apply to the commission for an association license. The application shall be made in writing on application forms prescribed by the commission. Applications shall be filed at the commission general office on or before September 1 of the year preceding the calendar year in which the license is to be in force. Applications shall not be acted upon by the commission until the commission is satisfied a full disclosure has been made. The application shall contain:

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

(2) Names and addresses of all officers, directors, stockholders, and other persons owning or controlling a beneficial interest in the association with the degree of ownership or type of interest shown;

(3) Names and addresses of persons capable of exercising any control over affairs of the association as trustee or guardian or lessor, or mortgagee, or fiduciary;

(4) Corporations, partnerships, or other legal entities which own or control a beneficial interest in the association directly, or through other corporations or legal entities, shall similarly file with the application lists showing the names and addresses of all officers, directors, stockholders, and other persons owning or controlling a beneficial interest in the legal entities with the degree of ownership or type of interest pertaining to the ownership or interest;

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

(6) Names of racing officials and persons responsible for track security and fire protection;

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

(8) An operating report on forms prescribed by the commission if the applicant is currently licensed; or

(9) Other information as the commission may from time to time require to ascertain the fitness of the applicant to conduct racing.

Section 5. License Application for Participants in Racing. (1)(a) Any person other than an association required to be licensed by Section 1 of this administrative regulation and desiring to participate in thoroughbred racing in the Commonwealth may apply to the commission for a license.

(b)The application shall be made in writing on application forms prescribed by the commission and filed at the commission general office or with the commission license administrator at the association on or after January 2 of the calendar year in which the license is to be in force, but not later than twenty-four (24) hours after applicant has arrived on association grounds.

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

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

(4)(a) Applications from persons, corporations, partnerships, lessors, or other legal entities involving more than one (1) individual person desiring to race horses in the Commonwealth shall, in addition to designating the person or persons to represent the entire ownership of the horses, be accompanied by documents which fully disclose the identity and degree and type of ownership held by all individual persons who own or control a present or reversionary interest in the horses.

(b) Applications shall not be acted upon by the commission until the commission is satisfied a full disclosure has been made.

(5)(a) Applications from persons desiring to treat, or prescribe for, or attend any horse on association grounds as a practicing veterinarian, shall be accompanied by evidence that the person is currently licensed as a veterinarian by the Commonwealth of Kentucky.

(b) An accredited practicing veterinarian not licensed by the commission or the Commonwealth, however, may with permission of the stewards in an emergency be called in as a consultant, or to serve as a veterinarian for one (1) horse on a temporary basis, and shall not be considered as participating in racing in this state.

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

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

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

(a) Thirty-five (35) dollars - owner license, trainer, assistant trainer, veterinarian, dental technician, blacksmith, farrier, or apprentice farrier license; jockey, farm manager/agent, racing official, steward, testing laboratory employee; racing department employee license, racing secretary, assistant racing secretary, director of racing, starter and assistant starter, paddock judge, patrol judge, placing judge, timer;

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

(c) Forty-five (45) dollars - jockey agent;

(d) Ten (10) dollars - association employee and occupational license, photo finish operator, film patrol or video tape operator and projectionist, association security department including police chief, detectives, policemen, watchmen, firemen, ambulance drivers and attendants; track superintendent, groundsmen, mechanics, carpenters; maintenance department manager and employees, admission department manager and employees; concessions manager and employees, parking manager and employees; all other persons employed by the association; vendor employees;

(e) Five (5) dollars - stable employee license (foreman, exercise boy, groom, hotwalker, watchman, or pony boy);

(f) Twenty (20) dollars - mutuel department employee license;

(g) Thirty (30) dollars - life colors.

Section 6. Licensing Committee. (1) The commission may appoint a licensing committee including the executive director and commission steward or their designated representative.

(2) The licensing committee shall review all applications for all licenses, and forward the applications to the commission with recommendations, subject to security checks, for final action.

(3) The licensing committee may issue to a license applicant a temporary permit to participate in the activity for which a license application was made pending administrative processing and final action on license application by the commission.

Section 7. The validity of a license does not preclude or infringe on the common law rights of associations to eject or exclude persons, licensed or unlicensed, from association grounds.

Section 8. Possession of License Required. Persons required to be licensed by these administrative regulations shall not participate in any activity required to be licensed on association grounds during a race meeting without having been issued a valid license and having the license in his possession. Licenses specified under Section 5(9)(b) through (f) of this administrative regulation shall include a color photograph of the licensee and shall be openly displayed on the backside of association grounds at all times.

Section 9. Applicability of Rules and Rulings to Household. Administrative regulations pertaining to, and rulings against, licensees shall apply in like force to the spouse and members of the immediate family or households of the licensee, unless there is a showing on the part of an affected spouse, or affected member of the immediate family or household of the licensee, and the stewards in their discretion so find, that the continuation of participation in racing by the affected person shall in no way circumvent the intent of the administrative regulation, or effect of the ruling, by permitting a person under the control or direction of the licensee to serve in essence as a substitute for a suspended licensee, or person ineligible to participate in a particular activity.

Section 10. Notice for Discontinuance of Employment. (1) Licensed associations, racing officials, owners, trainers, jockeys, agents, farriers, stable employees, and all other licensees who have accepted with advance notice the conditions under which a race meeting is planned to be conducted, shall before terminating employment, engagements, or activities under such conditions, so notify the commission and respective interested persons or associations of his intention at least fifteen (15) days before termination.

(2) The commission shall upon notice to parties in interest conduct a hearing on the matter.

(3) If the commission finds that the cause of termination is unreasonable, unlawful, or contrary to these administrative regulations, the commission shall so advise all parties in interest and shall take appropriate action against offending parties.

(4) If the commission finds that the cause of termination is reasonable, lawful, and not contrary to these administrative regulations, the commission shall so advise all parties in interest and shall use its best efforts to settle the dispute.

WAYNE G. LYSTER, III, Chairman

APPROVED BY AGENCY: December 13, 1994

FILED WITH LRC: February 15, 1995 at 8 a.m.

PUBLIC HEARING: A public hearing will be held on March 24, 1995, at 10 a.m. at the offices of the Kentucky Racing Commission located at the Kentucky Horse Park, 4063 Iron Works Pike, Building B, Lexington, Kentucky 40511. Those interested in attending the hearing should contact in writing: Bernard J. Hettel, Executive Director, Kentucky Racing Commission, 4063 Iron Works Pike, Building B, Lexington, Kentucky 40511.

REGULATORY IMPACT ANALYSIS

Contact Person: Bernard J. Hettel

(1) Type and number of entities affected: All persons requiring a license to participate in racing.

(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. Requires licensee to be financially responsible. This requirement will benefit persons offering goods and services to licensees.

(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. Requires licensee to be financially responsible. This requirement will benefit persons offering goods and services to licensees.

(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 reporting or paperwork will be required. Compliance will be done by racing commission licensing committee.

2. Second and subsequent years: No reporting or paperwork will be required. Compliance will be done by racing commission licensing committee.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Policy previous. This confirmed by regulation. No costs or savings.

2. Continuing costs or savings: Policy previous. This confirmed by

regulation. No costs or savings.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Policy previous. This confirmed by regulation. No costs or savings.

(4) Assessment of anticipated effect on state and local revenues: There are none.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: There are no increased costs, therefore no revenue considerations.

(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 response to offering of public hearing any adverse economic effect would be negligible. This will be of immense benefit to business people offering goods and services to licensees. It will also purge the dishonest and financially irresponsible.

(b) Kentucky: No response to offering of public hearing any adverse economic effect would be negligible. This will be of immense benefit to business people offering goods and services to licensees. It will also purge the dishonest and financially irresponsible.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Requiring financial responsibility serves the best interests of racing and the maintenance of honesty and integrity.

(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 regulation will promote honesty and integrity of racing participants.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Does not affect environment or public health.

(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:

(a) Necessity of proposed regulation if in conflict: There are none.

(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? Not applied because of the Racing Commission's desire to protect persons rendering goods, supplies, services, or fees furnished to racing participants and all licensees will be subject to the regulation.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky Racing Commission
(Proposed Amendment)

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

RELATES TO: KRS 230.210 et seq.

STATUTORY AUTHORITY: KRS 230.260

NECESSITY AND FUNCTION: To regulate conditions under which thoroughbred racing shall be conducted in Kentucky. The function of this administrative regulation is to establish requirements for entry, subscription and declaration of thoroughbred horses in order to race.

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

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

Section 2. Entering Required. A horse shall not be qualified to start in any race unless it has been and continues to be duly entered in a race. Entries or subscriptions for any horse, or the transfer of same, may be refused or cancelled by the association without notice or reason given.

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

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

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

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

(a) A horse shall not race, unless correctly identified to the satisfaction of the stewards as being a horse duly entered.

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

(c) Horses requiring the use of medication, drugs or substances to prevent exercise induced pulmonary hemorrhaging (EIPH)/bleeding, shall be registered with the commission veterinarian. Horses so registered shall remain, and removal shall require commission veterinarian approval. After inclusion, additional notification shall not be required. Horses which are not properly registered shall not be permitted to race with antibleeder medications, drugs, or substances. Registration shall be made prior to entry. The racing program will indicate usage.

(5) Alterations, except an error corrected with the permission of the stewards, shall not be made in an entry after the closing of entries.

(6) A horse shall not be entered in two (2) races to be run on the same day.

(7)(a) A horse which has not started in the past forty-five (45) days shall not be permitted to start unless it has at least one (1) published workout within twenty (20) days of entry at a distance satisfactory to the stewards of the meeting.

(b) A horse starting for the first time shall not be permitted to start unless it has three (3) published workouts, one (1) of which is from the starting gate, and one (1) which is within twenty (20) days of entry.

(c) If a horse has done the requisite workout, but through no fault of the trainer, the workout does not appear in the past performances, it shall be permitted to start and the correct workout shall be publicly displayed on the bulletin boards where photo finishes are shown at least fifteen (15) minutes prior to the first race and for the duration of the day's racing.

(d) The workouts shall be displayed on the television monitors and tote board for fifteen (15) minutes prior to the first race.

(e) A horse which has never started shall not be entered until the trainer has produced satisfactory evidence to indicate to the starter that it has been adequately schooled from the starting gate.

Section 4. Stabling Requirement. Entries shall not be accepted for any horse not stabled on association grounds where the race is to be run, unless its stabling elsewhere has been approved by the commission in its approved off-track stable list.

Section 5. Limitation as to Spouses. Entries in a race shall not be accepted for a horse owned wholly or in part by, or trained by, a

person whose spouse is under license suspension at the time of the entry. If the license of a jockey has been suspended for a routine riding offense, the stewards may waive the application of this section as to the duly licensed spouse of the suspended jockey.

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

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

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

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

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

(6) In allowance races, permission may be granted by the commission to uncouple mutuel entries of horses sharing common ties through training, which are owned by different owners, to create six (6) separate betting interests. In the event more than one (1) mutuel entry is uncoupled, pari-mutuel wagering on daily double, exacta, quinella, or other such wagering allowed by stature shall be prohibited.

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

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

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

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

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

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

Section 8. Closings. (1) Entries for purse races and subscriptions to stakes races shall close at the time designated by the association in previously published conditions for the races.

(a) If a race is not split, an entry, subscription, or declaration shall not be accepted after closing time.

(b) If a purse race fails to fill, or in case of an emergency, the racing secretary may extend the closing time, provided the approval of a steward has been obtained.

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

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

Section 9. Number of Starters in a Race. (1) The maximum number of starters in any race shall be limited to the number of starting positions afforded by the association starting gate and extensions approved by the commission as can be positioned across the width of the track at the starting point for the race. The maximum number of starters further shall be limited by the number of horses which, in the opinion of the stewards, considering the safety of the horses and riders, and the distance from the start to the first turn, may be afforded a fair and equal start.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Preferences shall not be given to a horse otherwise eligible for a race if it also is entered for a race on the succeeding day.

Section 14. Arrears. Unless approved by the racing secretary, horse shall not be entered or raced unless its owner has paid all stakes fees owed.

Section 15. Declarations. Declarations shall be made in the same form, time, and procedure as required for the making of entries. Declarations shall be irrevocable. A declaration fee shall not be required by any licensed association.

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

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

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

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

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

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

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

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

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

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

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

WAYNE G. LYSTER, III, Chairman

APPROVED BY AGENCY: December 13, 1994

FILED WITH LRC: February 15, 1995 at 8 a.m.

PUBLIC HEARING: A public hearing will be held on March 24, 1995, at 10 a.m. at the offices of the Kentucky Racing Commission located at the Kentucky Horse Park, 4063 Iron Works Pike, Building B, Lexington, Kentucky 40511. Those interested in attending the hearing should contact in writing: Bernard J. Hettel, Executive Director, Kentucky Racing Commission, 4063 Iron Works Pike, Building B, Lexington, Kentucky 40511.

REGULATORY IMPACT ANALYSIS

Contact Person: Bernard J. Hettel

(1) Type and number of entities affected: Horse owners desiring to uncouple in specific allowance races and horse owners desiring to scratch horses from daily double races.

(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. Permit greater flexibility for horse owners to participate. More liberal scratch consideration in daily double races. No direct or indirect 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. Permit greater flexibility for horse owners to participate. More liberal scratch consideration in daily double races. No direct or indirect costs or savings.

(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 reporting or paperwork required. Compliance will be done by racing stewards.

2. Second and subsequent years: No reporting or paperwork required. Compliance will be done by racing stewards.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Modernizes procedures for entering horses to race and scratching horses from daily double races.

2. Continuing costs or savings: Modernizes procedures for entering horses to race and scratching horses from daily double races.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: There are none.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: There are no increased costs, therefore no revenue considerations.

(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 response to offering of public hearing; any adverse economic effect would be negligible.

(b) Kentucky: No response to offering of public hearing; any adverse economic effect would be negligible.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Current regulations are very restrictive and outdated.

(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 permit horses owners greater opportunities to share in the purse distributions of Kentucky tracks.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Does not affect environment or public health.

(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:

(a) Necessity of proposed regulation if in conflict: Modernization of racing and greater flexibility for horse owners.

(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. Tiering was necessary because of the classification of races by industry standard.

CABINET FOR HUMAN RESOURCES
Department for Health Services
Division of Environmental Health
and Community Safety
(Proposed Amendment)

902 KAR 100:040. General provisions for specific licenses.

RELATES TO: KRS 211.842 to 211.852, 211.990(4)

STATUTORY AUTHORITY: KRS 194.050, 211.090, 211.844

NECESSITY AND FUNCTION: KRS 211.844 authorizes the Cabinet for Human Resources to provide by administrative regulation for the regulation and licensing of the possession or use of sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste. This administrative regulation provides general provisions for the issuance of radioactive material licenses to possess, use, and transfer radioactive material within Kentucky.

Section 1. [~~Applicability. This administrative regulation applies to the licensing of persons who possess, use, or transfer radioactive material within Kentucky.~~

~~Section 2.~~] License Requirement. Except for persons exempted by 902 KAR 100:015 and 902 KAR 100:045, a person shall not manufacture, produce, receive, possess, use, transfer, own, or acquire radioactive material except as authorized in a specific or general license issued in accordance with 902 KAR Chapter 100. Authority to transfer possession or control by the manufacturer, processor, or producer of equipment, devices or commodity, or other products containing radioactive material whose subsequent possession, use, transfer and disposal by other persons are exempted from regulatory requirements may be obtained only from the U.S. Nuclear Regulatory Commission, Washington, D. C. 20555.

Section 2. [~~3.~~] Types of Licenses. (1) Licenses for radioactive material shall be of two (2) types:

(a) General; and

(b) Specific.

(2) Except as specified in 902 KAR 100:050, general licenses shall be:

(a) [~~are~~] Effective without the filing of an application with the cabinet or the issuance of licensing documents to the licensee; and

(b) [~~. The general license is~~] Subject to other applicable requirements of 902 KAR Chapter 100 and limitations of 902 KAR 100:050.

(3) [~~All~~] Specific licenses shall require:

(a) The submission of an application to the cabinet; and

(b) The issuance of a licensing document by the cabinet.

(4) The license[~~s~~] shall be subject to applicable requirements of 902 KAR Chapter 100 and to limitations specified in the licensing document.

Section 3. [~~4.~~] Filing of Application for a Specific License[~~s~~]. (1) An application for "specific license" shall be filed with the Cabinet for Human Resources on "Form RPS-7". The form may be obtained from the cabinet at 275 East Main Street, Frankfort, Kentucky 40621, between 8 a.m. and 4:30 p.m., Monday through Friday.

(2)(a) The cabinet may at a time after the filing of the original application, and before the expiration of the license, require further statements in order to enable the cabinet to determine whether:

1. The application shall [~~should~~] be granted or denied; or

2. [~~whether~~] A license shall [~~should~~] be modified or revoked.

(b) Prelicensing visits may be made to the applicant's facility for the purpose of obtaining information in addition to that furnished in the original application.

(c) [~~(b)~~] If the applicant or licensee fails to respond to a request in writing forwarded by certified mail for additional information within thirty (30) days of the date of the receipt of the request, or within another [~~ether~~] specified time if health and safety are threatened, the cabinet may suspend, modify or revoke the license in accordance with 902 KAR 100:170 or deny the application.

(3) The application shall be signed by the applicant or licensee or a person duly authorized to act for and on his behalf.

(4) An application for a license may include a request for a license authorizing one (1) or more activities if the application specifies the additional activities and complies with the provisions of 902 KAR Chapter 100 relating to specific licenses.

(5) The applicant may incorporate in the application, by reference, information contained in previous applications, statements, or reports filed with the cabinet, if references are clear and specific.

Section 4. [~~5.~~] General Requirements for the Issuance of a Specific License[~~s~~]. (1) A license application shall be approved if the cabinet determines [~~that~~]:

(a) The applicant is qualified by reason of training and experience to use the radioactive material in question for the purpose requested in accordance with 902 KAR Chapter 100 and in a manner as to minimize danger to public health and safety or property;

(b) The applicant's proposed equipment, facilities, and procedures are adequate to minimize danger to public health and safety or property;

(c) The issuance of the license will not be adverse [~~inimical~~] to the health and safety of the public; and

(d) The applicant satisfies applicable special requirements in 902 KAR Chapter 100.

(2) For an application for a license to receive and possess radioactive material which the cabinet determines will significantly affect the quality of the environment, the following shall apply:

(a) The secretary of the cabinet or his designee shall, before commencement of construction of the plant or facility in which the activity is to [~~will~~] be conducted, weigh the environmental, economic, technical, and other benefits against environmental costs and consider available alternatives;

(b) A license application may be approved if the cabinet determines after consideration of the factors described in paragraph (a) of this subsection, that the action called for is the issuance of the proposed license, with appropriate conditions to protect environmental values;

(c) Commencement of construction prior to the determination shall be grounds for denial of a license to receive and possess radioactive material in the plant or facility.

1. As used in this subsection, the term "commencement of construction" means clearing of land, excavation, or other substantial action that would adversely affect the environment of a site.

2. The term shall not mean site exploration, necessary roads for site exploration, borings to determine foundation conditions, or other preconstruction monitoring or testing to establish background information related to the suitability of the site or the protection of environmental values.

(3)(a) The licensee shall notify the cabinet in writing, immediately following the filing of a voluntary or involuntary petition for bankruptcy under a[~~ny~~] chapter of Title 11 (bankruptcy) of the United States Code by or against:

1. The licensee;

2. An entity (as that term is defined in 11 USC 101(14)) controlling the licensee or listing the license or licensee as property of the estate; or

3. An affiliate (as that term is defined in 11 USC 101(2)) of the licensee.

(b) This notification shall indicate:

1. The bankruptcy court in which the petition for bankruptcy was filed; and

2. The date of the filing of the petition.

(4) Information provided to the cabinet by an applicant for a license or by a licensee or information required by 902 KAR Chapter 100, orders or license conditions to be maintained by the applicant or licensee shall be complete and accurate in all material aspects.

Section 5. [~~6.~~] Issuance of Specific Licenses. (1) Upon a determination that an application meets the requirements of KRS 211.842 to 211.852 and 902 KAR Chapter 100, the cabinet may issue a specific license authorizing the proposed activity in a form [~~and~~] containing conditions and limitations as it deems appropriate or necessary.

(2) The cabinet may incorporate in a license when issued, or thereafter by appropriate rule, 902 KAR Chapter 100, or order, or as otherwise specified in Section 13 [~~14~~] of this administrative regulation, additional requirements and conditions with respect to the licensee's receipt, possession, use, and transfer of radioactive material subject to 902 KAR Chapter 100 as it deems appropriate or necessary in order to:

(a) Minimize danger to public health and safety or property;

(b) Require reports and the keeping of records, and provide for inspections of activities under the license as may be appropriate or necessary; and

(c) Prevent loss or theft of licensed material.

Section 6. [~~7.~~] Specific Terms and Conditions of Licenses. (1) A license issued pursuant to this administrative regulation shall be subject to the provisions of KRS 211.842 to 211.852, 902 KAR Chapter 100, and orders of the cabinet.

(2) Neither the license nor a right under the license shall be assigned or otherwise transferred in violation of the provisions of KRS 211.842 to 211.852.

(3) A [~~Each~~] person licensed by the cabinet under 902 KAR Chapter 100 shall confine his use and possession of the radioactive material(s) licensed to the locations and purposes authorized in the license.

Section 7. [~~8.~~] Expiration and Termination of Licenses. (1) Except as specified in subsection (9) of this section and in Section 8(2) [~~9(2)~~] of this administrative regulation, a specific license shall expire at midnight on the day, in the month and year stated in the license.

(2) A licensee shall notify the cabinet promptly, in writing, and request termination of the license if the licensee decides to terminate [~~all~~] activities involving materials authorized under the license. This notification and request for termination of the license shall include:

(a) The reports and information specified in subsection (3)(d) and (e) of this section; and

(b) A plan for completion of decommissioning if required by subsection (4) of this section or by license condition.

(3) If a licensee does not submit an application for license renewal under Section 8(2) [~~9(2)~~] of this administrative regulation, the licensee, on or before the expiration date specified in the license, shall:

(a) Terminate use of radioactive material;

(b) Remove radioactive contamination to the extent practicable except for those procedures covered by subsection (4) of this section;

(c) Properly dispose of radioactive material;

(d) File the "Disposition of Radioactive Material", "Form RPS-10", [~~shall be filed~~] with the Cabinet for Human Resources. The form may be obtained from the cabinet at 275 East Main Street, Frankfort, Kentucky 40621, between 8 a.m. and 4:30 p.m., Monday through Friday; and

(e) Conduct a radiation survey of the premises where the licensed activities were carried out and submit a report of the result of this survey, unless the licensee demonstrates that the premises are suitable for release for unrestricted use in some other manner. The licensee shall, as appropriate:

1. Report levels of radiation in units of microrads per hour of beta and gamma radiation at one (1) centimeter and gamma radiation at one (1) meter from surfaces, and report levels of radioactivity, including alpha, in units of disintegrations per minute (or microcuries) per 100 square centimeters removable and fixed for surfaces, microcuries per milliliter for water, and picocuries per gram for solids such as soils or concrete; and

2. Specify the survey instrument(s) used and certify that each instrument is properly calibrated and tested.

(4) In addition to the information required under paragraphs (d) and (e) of this subsection, the licensee shall submit a plan for completion of decommissioning if the procedures necessary to carry out decommissioning have not been previously approved by the cabinet and may [~~could~~] increase potential health and safety impacts to workers or to the public as in the following cases:

(a) Procedures would involve techniques not applied routinely during cleanup or maintenance operations; or

(b) Workers may be entering areas not normally occupied in which surface contamination and radiation levels are significantly higher than routinely encountered during operation; or

(c) Procedures would result in significantly greater airborne concentrations of radioactive materials than are present during operation; or

(d) Procedures would result in significantly greater releases of radioactive material to the environment than those associated with operation.

(5) Procedures with potential health and safety impacts shall [~~may~~] not be carried out prior to approval of the decommissioning plan.

(6) The proposed decommissioning plan, if required by subsection (4) of this section or by license condition, shall include:

(a) Description of planned decommissioning activities;

(b) Description of methods used to assure protection of workers and the environment against radiation hazards during decommissioning;

(c) A description of the planned final radiation survey; and

(d) An updated detailed cost estimate for decommissioning, comparison of that estimate with present funds set aside for decommissioning; and

(e) A plan for assuring the availability of adequate funds for completion of decommissioning.

(7) The proposed decommissioning plan may be approved by the cabinet if the information in the plan demonstrates that the decommissioning shall be completed as soon as is reasonable and the health and safety of workers and the public shall be adequately protected.

(8) Upon approval of the decommissioning plan by the cabinet,

the licensee shall complete decommissioning in accordance with the approved plan. As a final step in decommissioning, the licensee shall again submit the information required in subsection (3)(e) of this section and shall certify the disposition of accumulated wastes from decommissioning.

(9) If the information submitted under subsection (3)(e) or (8) of this section does not adequately demonstrate that the premises are suitable for release for unrestricted use, the cabinet shall inform the licensee of [~~the~~] appropriate further actions required for termination of license.

(10) A specific license continues in effect, beyond the expiration date if necessary, with respect to possession of residual radioactive material present as contamination until the cabinet notifies the licensee in writing that the license shall be terminated. During this time, the licensee shall:

(a) Limit actions involving radioactive material to those related to decommissioning; and

(b) Continue to control entry to restricted areas until they are suitable for release for unrestricted use and the cabinet notifies the licensee in writing that the license shall be terminated.

(11) Specific licenses shall be terminated by written notice to the licensee when the cabinet determines that:

(a) Radioactive material has been properly disposed;

(b) Reasonable effort has been made to eliminate residual radioactive contamination, if present; and

(c) A radiation survey has been performed which demonstrates that the premises are suitable for release for unrestricted use; or

(d) Other information submitted by the licensee is sufficient to demonstrate that the premises are suitable for release for unrestricted use.

Section 8. [~~9.~~] Renewal of License. (1) An application[~~s~~] for renewal of specific licenses shall be filed in accordance with 902 KAR Chapter 100.

(2) If a licensee, not less than thirty (30) days prior to expiration of his existing license, has filed an application in proper form for renewal or for a new license authorizing the same activities, the existing license shall not expire until the application has been finally determined by the cabinet.

Section 9. [~~10.~~] Amendment of Licenses. (1) Applications for amendment of a license at the request of the licensee shall be filed in accordance with 902 KAR Chapter 100 and shall specify the respects in which the licensee desires his license to be amended and the grounds for the amendment.

(2) Every five (5) years or at the request of the cabinet, the licensee shall be required to amend the license in its entirety by submitting a complete application.

Section 10. [~~11.~~] Cabinet Action on Applications to Renew or Amend. In considering an application by a licensee to renew or amend his license, the cabinet shall apply the requirements of 902 KAR Chapter 100.

Section 11. [~~12.~~] Inalienability of Licenses. A license issued or granted under 902 KAR Chapter 100 or right to possess or utilize radioactive material granted by a license issued under 902 KAR Chapter 100 shall not be transferred, assigned, or otherwise disposed of, through transfer of control of a license to a [~~any~~] person unless the cabinet, after securing full information, finds that the transfer is in accordance with the requirements of 902 KAR Chapter 100 and gives its consent in writing.

Section 12. [~~13.~~] Transfer of Material. (1) A licensee shall not transfer radioactive material except as authorized by this administrative regulation.

(2) Except as stated in the license and subject to the provisions of subsections (3) and (4) of this section, a licensee may transfer radioactive material subject to the acceptance of the transferee to a person:

(a) [~~To a person~~] Exempt from the requirements for a license as specified in this administrative regulation to the extent permitted under the exemption;

(b) [~~To persons~~] Authorized to receive radioactive material under terms of a general license as specified in 902 KAR 100:050, or its equivalent, or a specific license or equivalent licensing document, issued by the cabinet, the U.S. Nuclear Regulatory Commission, or an Agreement State;

(c) [~~To persons~~] Otherwise authorized to receive radioactive material by the federal government or an agency thereof, the cabinet, or an Agreement State; or

(d) As otherwise authorized by the cabinet in writing.

(3) Before transferring radioactive material to a specific licensee of the cabinet, U.S. Nuclear Regulatory Commission, or an Agreement State or to a general licensee who is required to register with the cabinet, U.S. Nuclear Regulatory Commission, or [~~with~~] an Agreement State prior to receipt of the radioactive material, the licensee transferring the material shall verify that the transferee's license authorizes the receipt of the type, form, and quantity of radioactive material to be transferred.

(4) The following methods for the verification required by this administrative regulation are acceptable:

(a) The transferor may have in his possession, and read, a current copy of the transferee's specific license or registration certificate;

(b) The transferor may have in his possession a written certificate by the transferee that he is authorized by license or registration certificate to receive the type, form, and quantity of radioactive material to be transferred, specifying the license or registration certificate number, issuing agency and expiration date;

(c) For emergency shipments, the transferor may accept oral certification by the transferee that the transferee is authorized by license or registration certificate to receive the type, form, and quantity of radioactive material to be transferred, specifying the license or registration certificate number, issuing agency, and expiration date; if the oral certification is confirmed in writing within ten (10) days;

(d) The transferor may obtain other sources of information compiled by a reporting service from official records of the cabinet, the U.S. Nuclear Regulatory Commission, or the licensing agency of an Agreement State as to the identity of licensees and the scope and expiration dates of licenses and registration; or

(e) When none of the methods of verification described in paragraphs (a) through (d) of this subsection are readily available or when a transferor desires to verify that information received by one (1) of such methods is correct or up-to-date, the transferor may obtain and record confirmation from the cabinet, U.S. Nuclear Regulatory Commission, or the licensing agency of an Agreement State that the transferee is licensed to receive the radioactive material.

(5) Shipment and transport of radioactive material shall meet the requirements of 902 KAR Chapter 100.

Section 13. [~~14.~~] Modification, Revocation, and Suspension of Licenses. (1) The terms and conditions of a license shall be subject to amendment, revision, or modification or the license may be suspended or revoked by reason of amendments to or violation of KRS 211.842 to 211.852, 902 KAR Chapter 100, or orders issued by the cabinet.

(2) A license may be revoked, suspended, or modified, in whole or in part, for:

(a) A material false statement in the application or in a statement of fact required under provisions of KRS 211.842 to 211.852;

(b) [~~Because of~~] Conditions revealed by application or statement of fact;

(c) A report, record, or inspection, or other means which would warrant the cabinet to refuse to grant a license on an original application; or

(d) A [For] violation of, or failure to observe the terms and conditions of KRS 211.842 to 211.852, or of the license, or of rules, 902 KAR Chapter 100, or orders of the cabinet.

(3) Except in cases of willful violation or those in which the public health, interest, or safety requires otherwise, a license shall not be modified, suspended, or revoked unless, prior to the institution of proceedings:

(a) Facts or conduct which may warrant this action shall have been called to the attention of the licensee in writing; and

(b) The licensee shall have been accorded an opportunity to demonstrate or achieve compliance with [all] lawful requirements.

(4) A licensee whose license is suspended or revoked, shall have a right to a hearing in a manner set forth in 902 KAR 100:170.

Section 14. [15.] Retention of Records. (1) A person who receives radioactive material in accordance with a license issued under 902 KAR Chapter 100 shall keep records showing the receipt, transfer, and disposal of radioactive material.

(2)(a) Records of receipt of radioactive material which are required by subsection (1) of this section shall be maintained as long as the licensee retains possession of the radioactive material and for two (2) years following transfer or disposal of the radioactive material.

(b) Records of transfer of radioactive material shall be maintained by the licensee who transferred the material for five (5) years after the transfer.

(c) Records of disposal of radioactive material shall be maintained in accordance with 902 KAR 100:021.

(3) Other records required by 902 KAR Chapter 100 or by a license condition shall be maintained for the period specified in 902 KAR Chapter 100. If the retention period is not specified by 902 KAR Chapter 100 or license condition, the records shall be permanently maintained unless the cabinet authorizes their disposition upon proper application for their destruction.

(4) Records required to be maintained by 902 KAR Chapter 100 may be the original, a reproduced copy or a microform if duly authenticated by authorized personnel and capable of producing a clear and legible copy after storage for the period specified by 902 KAR Chapter 100.

Section 15. [16.] Financial Assurance and Recordkeeping for Decommissioning. (1)(a) An applicant for a specific license authorizing the possession and use of unsealed radioactive material, except source material, with a half-life greater than 120 days and in quantities exceeding 10E5 times the applicable quantities set forth in 902 KAR 100:030, Section 1 [2] shall submit a decommissioning funding plan as described in subsection (5) of this section. The decommissioning funding plan shall also be submitted if a combination of isotopes is involved if R divided by 10E5 is greater than one (1) (i.e., unity rule), where R is defined as the sum of the ratios of the quantity of each isotope to the applicable value in 902 KAR 100:030, Section 1 [2].

(b) An applicant for a specific license authorizing the possession and use of more than 100 millicuries of source material in a readily dispersible form shall submit a decommissioning funding plan as described in subsection (5) of this section.

(c) An applicant for a specific license authorizing possession and use of quantities of source material greater than ten (10) millicuries but less than or equal to 100 millicuries in a readily dispersible form shall either:

1. Submit a decommissioning funding plan as described in subsection (5) of this section; or

2. Submit a certification that financial assurance for decommissioning has been provided in the amount of $150,000 using one (1) of the methods described in subsection (6) of this section. For an applicant, this certification may state that the appropriate assurance shall be obtained after the application has been approved and the license issued but prior to the receipt of radioactive [licensed] material. As part of the certification, a copy of the financial instrument obtained to satisfy the requirements of subsection (6) of this section shall be submitted to the cabinet.

(2) An applicant for a specific license authorizing possession and use of radioactive material, except source material and sealed special nuclear material sources, with a half-life greater than 120 days and in quantities specified in subsection (4) of this section shall either:

(a) Submit a decommissioning funding plan as described in subsection (5) of this section; or

(b) Submit a certification that financial assurance for decommissioning has been provided in the amount prescribed by subsection (4) of this section using one (1) of the methods described in subsection (6) of this section. For an applicant, this certification may state that the appropriate assurance shall be obtained after the application has been approved and the license issued but prior to the receipt of radioactive [licensed] material. As part of the certification, a copy of the financial instrument obtained to satisfy the requirements of subsection (6) of this section shall be submitted to the cabinet.

(3)(a) A [Each] holder of a specific license issued on or after January 1, 1995, which is of a type described in subsection (1) or (2) of this section, shall provide financial assurance for decommissioning in accordance with the criteria set forth in this section.

(b) A [Each] holder of a specific license issued before January 1, 1995, and of a type described in subsection (1)(a) or (b) of this section shall submit, on or before January 1, 1995, a decommissioning funding plan or a certification of financial assurance for decommissioning in an amount at least equal to $750,000 in accordance with the criteria set forth in this section. If the licensee submits the certification of financial assurance rather than a decommissioning funding plan at this time, the licensee shall include a decommissioning funding plan in an application for amending the license in its entirety.

(c) A [Each] holder of a specific license issued before January 1, 1995, and of a type described in subsection (1)(c) or (2) of this section shall submit, on or before January 1, 1995, a certification of financial assurance for decommissioning or a decommissioning funding plan in accordance with the criteria set forth in this section.

(4) Table of required amounts of financial assurance for decommissioning by quantity of material:

(a) Greater than 10E4 but less than or equal to 10E5 times the applicable quantities of 902 KAR 100:030, Section 1 [2], in unsealed form. For a combination of isotopes, if R, as defined in subsection (1) of this section divided by 10E4 is greater than one (1) but R divided by 10E5 is less than or equal to one (1) - $750,000.

(b) Greater than 10E3 but less than or equal to 10E4 times the applicable quantities of 902 KAR 100:030, Section 1 [2], in unsealed form. For a combination of isotopes, if R, as defined in subsection (1) of this section, divided by 10E3 is greater than one (1) but R divided by 10E4 is less than or equal to one (1) - $150,000.

(c) Greater than 10E10 times the applicable quantities of 902 KAR 100:030, Section 1 [2], in sealed sources or plated foils other than sealed special nuclear material sources. For a combination of isotopes, if R, as defined in subsection (1) of this section, divided by 10E10 is greater than one (1) - $75,000.

(5) A [Each] decommissioning funding plan shall contain a cost estimate for decommissioning and a description of the method of assuring funds for decommissioning from subsection (6) of this section, including means of adjusting cost estimates and associated funding levels periodically over the life of the facility.

(6) Financial assurance for decommissioning shall be provided by [one (1) or more of the following methods]:

(a) [Prepayment.] A prepayment [shall be] deposited prior to the start of operation into an account segregated from licensee assets and outside the licensee's administrative control of cash or liquid

assets so that the amount of funds would be sufficient to pay decommissioning costs. Prepayment may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities.

(b) A surety method, insurance, or other guarantee method.

1. If the licensee defaults, these methods guarantee that decommissioning costs shall be paid.

2. A surety method may be in the form of a surety bond, letter of credit, or line of credit.

3. A parent company guarantee of funds for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in Section 16 [~~17~~] of this administrative regulation.

4. A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of this section.

5. A guarantee of funds by the applicant or licensee for decommissioning costs based on a financial test may be used if the guarantee and test are conducted pursuant to Section 17 of this administrative regulation.

6. A guarantee by the applicant or licensee shall not be used in combination with other financial methods to satisfy the requirement of this section, or in a situation where the applicant or licensee has a parent company holding majority control of the voting stock of the company.

7. Surety method or insurance used to provide financial assurance for decommissioning shall contain the following conditions:

a. [~~1.~~] The surety method or insurance shall be open-ended or, if written for a specified term, such as five (5) years, shall be renewed automatically unless ninety (90) days or more prior to the renewal date, the issuer notifies the cabinet, the beneficiary, and the licensee of its intention not to renew. The surety method or insurance shall also provide that the full face amount be paid to the beneficiary automatically prior to the expiration without proof of forfeiture if the licensee fails to provide a replacement acceptable to the cabinet within thirty (30) days after receipt of notification of cancellation.

b. [~~2.~~] The surety method or insurance shall be payable to a trust established for decommissioning costs. The trustee and trust shall be acceptable to the cabinet. An acceptable trustee includes an appropriate state or federal government agency or an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

c. [~~3.~~] The surety method or insurance shall remain in effect until the cabinet has terminated the license.

(c) An external sinking fund in which deposits are made at least annually, coupled with a surety method or insurance, the value of which may decrease by the amount being accumulated in the sinking fund.

1. An external sinking fund shall be a fund established and maintained by setting aside funds periodically in an account segregated from licensee assets and outside the licensee's administrative control in which the total amount of funds shall be sufficient to pay decommissioning costs at the time termination of operation is expected.

2. An external sinking fund may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities.

3. The surety or insurance provisions shall be as stated in paragraph (b) of this subsection.

(d) In the case of a state, or local government licensee, a statement of intent containing a cost estimate for decommissioning or an amount based on the table in subsection (4) of this section, and indicating that funds for decommissioning shall be obtained when necessary.

(7) A person licensed under this administrative regulation shall keep records of information important to the safe and effective decommissioning of the facility in an identified location until the license is terminated by the cabinet. If records of relevant information are kept for other purposes, reference to these records and their locations may be used. Information the cabinet considers important to decommissioning consists of:

(a) Records of spills or other unusual occurrences involving the spread of contamination in and around the facility, equipment, or site. These records may be limited to instances when contamination remains after cleanup procedures or if [~~when~~] there is reasonable likelihood that contaminants may have spread to inaccessible areas as in the case of possible seepage into porous materials like concrete. These records shall include known information on identification of involved nuclides, quantities, forms and concentrations.

(b) As-built drawings and modifications of structures and equipment in restricted areas where radioactive materials are used or stored, and of locations of possible inaccessible contamination such as buried pipes which may be subject to contamination. If required drawings are referenced, [~~each~~] relevant documents need not be indexed individually. If drawings are not available, the licensee shall substitute appropriate records of available information concerning these areas and locations.

(c) A list of the following, contained in a single document and updated every two (2) years, except for areas containing only sealed sources, provided the sources have not leaked or no contamination remains after a leak, or radioactive materials having half-lives of less than sixty-five (65) days:

1. Areas designated and formerly designated restricted areas as defined in 902 KAR 100:010, Section 1(196). For requirements prior to January 26, 1994, see 902 KAR 100:010, Section 1(110) contained in the 1990 edition of 902 KAR Chapter 100 of the Kentucky Administrative Regulations, June 27, 1990;

2. Areas outside of restricted areas that require documentation pursuant to paragraph (a) of this subsection;

3. Areas outside of restricted areas where current and previous wastes have been buried as documented under 902 KAR 100:021, Section 11;

4. Areas outside of restricted areas which contain radioactive material so that, if the license expired, the licensee shall be required to either decontaminate the area to unrestricted release levels or apply for approval for disposal under 902 KAR 100:021, Section 2.

(d) [~~(c)~~] Records of the cost estimate performed for the decommissioning funding plan or of the amount certified for decommissioning, and records of the funding method used for assuring funds if either a funding plan or certification is used.

Section 16. [~~17.~~] Criteria Relating to Use of Financial Tests and Parent Company Guarantees for Providing Reasonable Assurance of Funds for Decommissioning. An applicant or licensee may provide reasonable assurance of the availability of funds for decommissioning based on obtaining a parent company guarantee that funds shall be available for decommissioning costs and on a demonstration that the parent company passes a financial test. This section establishes criteria for passing the financial test and for obtaining the parent company guarantee.

(1) Financial test. To pass the financial test, the parent company shall meet the criteria of either paragraph (a) or (b) of this subsection:

(a) The parent company shall have:

1. Two (2) of the following three (3) ratios: A ratio of total liabilities to net worth less than two (2.0); a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than one-tenth (0.1); and a ratio of current assets to current liabilities greater than one and one-half (1.5); and

2. Net working capital and tangible net worth [~~each~~] at least six (6) times the current decommissioning cost estimates (or prescribed amount if a certification is used); and

3. Tangible net worth of at least $10 million; and

4. Assets located in the United States amounting to at least ninety (90) percent of total assets or at least six (6) times the current decommissioning cost estimates (or prescribed amount if certification is used).

(b) The parent company shall have:

1. A current rating for its most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's; and

2. Tangible net worth at least six (6) times the current decommissioning cost estimate (or prescribed amount if a certification is used); and

3. Tangible net worth of at least $10 million; and

4. Assets located in the United States amounting to at least ninety (90) percent of total assets or at least six (6) times the current decommissioning cost estimates (or prescribed amount if certification is used).

(c) The parent company's independent certified public accountant shall have compared the data used by the parent company in the financial test, which is derived from the independently audited, year-end financial statements for the latest fiscal year, with the amounts in the financial statement. In connection with that procedure the licensee shall inform the cabinet within ninety (90) days of matters coming to the auditor's attention which cause the auditor to believe that the data specified in the financial test should be adjusted and that the company no longer passes the test.

(d)1. After the initial financial test, the parent company shall repeat the passage of the test within ninety (90) days after the close of each succeeding fiscal year.

2. If the parent company no longer meets the requirements of paragraphs (a) and (b) of this subsection, the licensee shall send notice to the cabinet of intent to establish alternate financial assurance as specified in this administrative regulation. The notice shall be sent by certified mail within ninety (90) days after the end of the fiscal year for which the year-end financial data show that the parent company no longer meets the financial test requirements. The licensee shall provide alternate financial assurance within 120 days after the end of that fiscal year.

(2) Parent company guarantee. The terms of a parent company guarantee which an applicant or licensee obtains shall provide that:

(a) The parent company guarantee shall remain in force unless the guarantor sends notice of cancellation by certified mail to the licensee and the cabinet. Cancellation shall ~~[may]~~ not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both licensee and the cabinet as evidenced by the return receipts.

(b) If the licensee fails to provide alternate financial assurance as specified in this administrative regulation within ninety (90) days after receipt by the licensee and the cabinet of a notice of cancellation of the parent company guarantee from the guarantor, the guarantor shall provide alternative financial assurance in the name of the licensee.

(c) The parent company guarantee and financial test provisions shall remain in effect until the cabinet has terminated the license.

(d) If a trust is established for decommissioning costs, the trustee and trust shall be acceptable to the cabinet. An acceptable trustee includes an appropriate state or federal government agency or an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

Section 17. Criteria Relating to Use of Financial Test and Self-guarantees for Providing Reasonable Assurance of Funds for Decommissioning. (1) An applicant or licensee may provide reasonable assurance of the availability of funds for decommissioning based on furnishing its own guarantee that funds will be available for decommissioning costs and on a demonstration that the company passes the financial test of subsection (4) of this section.

(2) The terms of self-guarantee are in subsection (7) of this section.

(3) This section establishes criteria for passing the financial test for the self-guarantee and establishes the terms for self-guarantee.

(4) To pass the financial test, a company shall meet the following criteria:

(a) Tangible net worth at least ten (10) times the total current decommissioning cost estimate, or the current amount required if certification is used, for decommissioning activities for which the company is responsible as self-guaranteeing licensee and as parent-guarantor;

(b) Assets located in the Unites States amounting to at least ninety (90) percent of total assets or at least ten (10) times the total current decommissioning cost estimate, or the current amount required if certification is used, for decommissioning activities for which the company is responsible as self-guaranteeing licensee and as parent-guarantor; and

(c) A current rating for its most recent bond issuance of AAA, AA or A as issued by the Standard and Poors, or Aaa, Aa, or A as issued by Moodys.

(5) To pass the financial test, a company shall meet the following additional criteria:

(a) The company has at least one (1) class of equity securities registered under the Securities Exchange Act of 1934;

(b) The company's independent certified public accountant has compared the data used by the company in the financial test which is derived from the independently audited, year end financial statements for the latest fiscal year, with the amounts in the financial statement;

(c) In connection with the procedure in subsection (5)(b) of this section, the licensee provides the cabinet within ninety (90) days of matters coming to the attention of the auditor that cause the auditor to believe:

1. The data specified in the financial test needs to be adjusted; and

2. The company no longer passes the test; and

(d) After the initial financial test, the company repeats passage of the test within ninety (90) days after the close of each succeeding fiscal year.

(6) If the licensee no longer meets the requirements of subsection (4) of this section, the licensee shall provide immediate notice to the cabinet of its intent to establish alternate financial assurance as specified this administrative regulation within 120 days of the notice.

(7) The terms of self-guarantee which an applicant or licensee furnishes shall provide that:

(a) The guarantee remains in effect unless the licensee provides notices of cancellation by certified mail to the Manager, Radiation Control Branch, 275 East Main Street, Frankfort, Kentucky 40621. Cancellation shall not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by the cabinet, as evidenced by the return receipt;

(b) Alternative financial assurance as specified in this administrative regulation shall be provided within ninety (90) days following receipt by the cabinet of notice of cancellation of the guarantee;

(c) The guarantee and financial test provisions remain in effect until the cabinet has terminated the license or until another financial assurance method acceptable to the cabinet has been put in effect by the licensee.

(d) The licensee promptly forwards to the cabinet and the licensee's independent auditor reports covering the latest fiscal year filed by the licensee with the Securities and Exchange Commission pursuant to the requirements of Section 13 of the Security and Exchange Act of 1934;

(e) If the licensee's most recent bond issuance ceases to be rated in a category of "A" or above by either Standard and Poors or Moodys, the licensee shall provide notice in writing of the fact to the cabinet within twenty (20) days after publication of the change by the rating service. If the licensee's most recent bond issuance ceases to be rated in a category of "A" or above by both Standard and Poors and Moodys, the licensee no longer meets the requirements of subsection (4) of this section; and

(f) The applicant or licensee shall provide to the cabinet a written guarantee, a written commitment by a corporate officer, which states

the licensee shall fund and carry out the required decommissioning activities or, upon issuance of an order by the cabinet, the licensee shall set up and fund a trust in the amount of the current cost estimates for decommissioning.

Section 18. Reporting Requirements. (1) Immediate report. A licensee shall directly notify the Cabinet for Human Resources, Radiation Control Branch as soon as possible but not later than four (4) hours after the discovery of an event that prevents immediate protective actions necessary to avoid exposure to radiation or radioactive materials or releases of radioactive materials that could exceed regulatory limits. These events may include fires, explosions, toxic gas release.

(2) Twenty-four (24) hour report. A licensee shall notify the Cabinet for Human Resources, Radiation Control Branch within twenty-four (24) hours after the discovery of the following events involving radioactive material:

(a) An unplanned contamination event that:

1. Requires access to the contaminated area, by workers or the public, to be restricted for more than twenty-four (24) hours by imposing additional radiological controls or by prohibiting entry into the area;

2. Involves a quantity of material greater than five (5) times the lowest annual limit on intake specified in 902 KAR 100:019, Section 44 for the material; and

3. Has access to the area restricted for a reason other than to allow isotopes with a half-life of less than twenty-four (24) hours to decay prior to decontamination.

(b) An event in which equipment is disabled or fails to function as designed if:

1. The equipment is required by regulation or license condition to prevent releases exceeding regulatory limits, to prevent exposures to radiation and radioactive material exceeding regulatory limits, or to mitigate the consequences of an accident;

2. The equipment is required to be available and operable when it is disabled or fails to function; and

3. Redundant equipment is not available and operable to perform the required safety function.

(c) An event that requires unplanned medical treatment at a medical facility of an individual with spreadable radioactive contamination on the individual's clothing or body.

(d) An unplanned fire or explosion damaging radioactive material or a device, container, or equipment containing radioactive material if:

1. The quantity of material involved is greater than five (5) times the lowest annual limit on intake specified in 902 KAR 100:019, Section 44 for the radioactive material; and

2. The damage affects the integrity of the radioactive material or its container.

(3) Reports by licensees in response to the requirements of this section shall be made as follows:

(a) Licensees shall be required to make reports by subsections (1) and (2) of this section by telephone to the Cabinet for Human Resources, Radiation Control Branch at (502) 564-3700 from 8 a.m.-4:30 p.m. Monday through Friday and at (502) 564-8715 at other hours. To the extent that the information is available at the time of notification, the information provided in these reports shall include:

1. The caller's name and call back telephone number;

2. A description of the event, including date and time;

3. The exact location of the event;

4. The isotopes, quantities, and chemical and physical form of the radioactive material involved; and

5. Available personnel radiation exposure data.

(b) A licensee who makes a report required by subsections (1) and (2) of the section shall submit a written follow-up report within thirty (30) days of the initial report. Written reports prepared pursuant to 902 KAR Chapter 100 may be submitted to fulfill this requirement if the reports contain the necessary information and the appropriate distribution is made. These written reports shall be sent to the Manager, Radiation Control Branch, 275 East Main Street, Frankfort, Kentucky, 40621. The report shall include the following:

1. A description of the event, including the probable cause and the manufacturer and model number, if applicable, of equipment that failed or malfunctioned;

2. The exact location of the event;

3. The isotopes, quantities, and chemical and physical form of the radioactive material involved;

4. Date and time of the event;

5. Corrective actions taken or planned and results of evaluations or assessments; and

6. The extent of exposures of individuals to radiation or to radioactive materials without identification of individuals by name.

RICE C. LEACH, M.D., Commissioner
MASTEN CHILDERS, II, Secretary
APPROVED BY AGENCY: February 1, 1995
FILED WITH LRC: February 15, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for March 21, 1995, at 9 a.m. in the Vital Statistics Conference Room, First Floor, Cabinet for Human Resources Building. However, this hearing will be cancelled unless interested persons notify the following office in writing by March 16, 1995 of their desire to appear and testify at the hearing: William K. Moore, Deputy Counsel, Administrative Law, Department of Law, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Contact Person: John A. Volpe, Ph.D.

(1) Type and number of entities affected: 400 radioactive material licensees, and other persons who handle radioactive material.

(2) Direct and indirect costs or savings 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 hearing was requested and no 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 hearing was requested and no comments were received.

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

1. First year: Telephone and written reports of radiological incidents and methods to provide reasonable assurance of funding for decommissioning and decontamination.

2. Second and subsequent years: Depends on the occurrence of radiological incidents.

(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 to the administrative agency.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Radiological incidents will be reported to the U.S. Nuclear Regulatory Commission via the Materials Events Database.

(4) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Fees from the licensing of radioactive material users.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising

from administration regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No comments were received.

(b) Kentucky: No comments were received.

(7) Assessment of alternative methods: reasons why alternatives were rejected: No alternatives were available due to compliance with U.S. Nuclear Regulatory Commission.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The benefit is a uniform mechanism for licenses to address radiological incidents and provide reasonable assurance of funding for decommissioning and decontamination.

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

(c) If detrimental effect would result, explain detrimental effect: Detrimental effects could be the uncontrolled release of radioactive material resulting from a radiological incident. Without financial assurance, decommissioning and decontamination may not be possible.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No conflict with statutes or administrative regulations. Some of the requirements of 902 KAR 100:040 are present in 902 KAR 100:019 with regard to notification of incidents; however, requirements in 902 KAR 100:019 are not detailed for specific licensees. No overlap with financial assurance requirements for decommissioning and decontamination.

(a) Necessity of 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? Tiering is applied for financial assurance since all specific licenses may not need to meet these requirements for decontamination and decommissioning. Tiering is not applied for radiological notifications since all specific license shall report radiological incidents.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 10 CFR 30, 34, 39, and 40 as promulgated by the U.S. Nuclear Regulatory Commission.

2. State compliance standards. This provides requirements for radiological incidents notifications and a method to provide reasonable assurance of funding for decommissioning and decontamination.

3. Minimum or uniform standards contained in the federal mandate. This amendment will bring about compatibility with U.S. Nuclear Regulatory Commission's requirements.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

CABINET FOR HUMAN RESOURCES
Department for Health Services
Division of Environmental Health
and Community Safety
(Proposed Amendment)

902 KAR 100:100. Industrial radiography.

RELATES TO: KRS 211.842 to 211.852, 211.990(4), 10 CFR 34, 71, 21 CFR 1020.40

STATUTORY AUTHORITY: KRS 194.050, 211.090, 211.844, 10 CFR 34, 71, 21 CFR 1020.40

NECESSITY AND FUNCTION: KRS 211.844 authorizes the Cabinet for Human Resources to provide by administrative regulation for the registration and licensing of the possession or use of sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste. This administrative regulation provides radiation safety requirements for industrial radiographic operations and applies to licensees or registrants who use sources of radiation for industrial radiography.

Section 1. Performance Provisions for Radiography Equipment. Equipment used in industrial radiographic operations shall meet the following criteria:

(1) Radiographic exposure devices and associated equipment shall meet the provisions specified in American National Standard (ANSI) N43.9-1991, "Gamma Radiography-Specifications for Design and Testing of Apparatus" (1991) [~~N432-1980, "Radiological Safety for the Design and Construction of Apparatus for Gamma Radiography"~~].

(2)(a) A radiographic exposure device[~~s~~] shall have attached to it by the user, a durable, legible, clearly visible label bearing the following:

1. Chemical symbol and mass number of the radionuclide in the device;

2. Activity and date on which this activity was last measured;

3. Model and serial number of the sealed source;

4. Manufacturer of the sealed source; and

5. Name, address, and telephone number of the licensee or registrant.

(b) Radiographic exposure devices intended for use as Type B transport containers shall meet the applicable provisions of 10 CFR 71.

(c) Modification of exposure devices and associated equipment shall be prohibited, unless the design of a replacement component, including source holder, source assembly, controls, or guide tubes, shall [~~will~~] not compromise the design safety features of the system.

(3) In addition to the provisions specified in subsections (1) and (2) of this section, the following provisions shall apply to radiographic exposure devices and associated equipment that allow the source to be moved out of the device for routine operation:

(a) The coupling between the source assembly and the control cable shall be designed in a manner that the source assembly cannot:

1. Become disconnected if cranked outside the guide tube; and

2. Be unintentionally disconnected under normal and reasonably foreseeable abnormal conditions.

(b) The device shall automatically secure the source assembly if it is cranked back into the fully shielded position within the device. The securing system shall only be released by a deliberate operation on the exposure device.

(c) The outlet fittings, lock box, and drive cable fittings on a [~~each~~] radiographic exposure device shall be equipped with safety plugs or covers which shall be installed during storage and transportation to protect the source assembly from water, mud, sand, or other foreign matter.

(d) A sealed source or source assembly shall have attached to it or engraved on it, a durable, legible, visible label with the words: "DANGER-RADIOACTIVE". The label shall not interfere with the safe operation of the exposure device or associated equipment.

(e) The guide tube shall have passed:

1. The crushing tests for the control tube as specified in ANSI N43.9 [~~2~~]; and

2. A kinking resistance test that closely approximates the kinking forces likely to be encountered during use.

(f) Guide tubes shall be used if moving the source out of the device.

(g) An exposure head or similar device designed to prevent the source assembly from passing out the end of the guide tube shall be attached to the outermost end of the guide tube during radiographic

operations.

(h) The guide tube exposure head connection shall withstand the tensile test for control units specified in ANSI N43.9 [2].

(i) Source changers shall provide a system for assuring that the source cannot be accidentally withdrawn from the changer if connecting or disconnecting the drive cable to or from a source assembly.

(j) Newly manufactured radiographic exposure devices and associated equipment acquired by licensees after January 1, 1994, shall comply with the provisions of this section.

(k) Radiographic exposure devices and associated equipment in use after January 10, 1996, shall comply with the provisions of this section.

Section 2. Limits on Levels of Radiation for Radiographic Exposure Devices and Storage Containers. (1) Radiographic exposure devices measuring less than four (4) inches (ten (10) centimeters) from the sealed source storage position to an exterior surface of the device shall have no radiation level in excess of fifty (50) milliroentgens per hour (mR/hr) at six (6) inches (fifteen (15) centimeters) from an exterior surface of the device.

(2) Radiographic exposure devices measuring a minimum of four (4) inches from the sealed source storage position to an exterior surface of the device, and storage containers for sealed sources or outer containers for radiographic exposure devices shall have no radiation level in excess of 200 milliroentgens per hour (mR/hr) at an exterior surface and ten (10) mR/hr at 39.4 inches (one (1) meter) from an exterior surface.

(3) The radiation levels specified shall be with the sealed source in the shielded ("off") position.

(4) Subsections (1), (2), and (3) of this section shall apply to equipment manufactured prior to January 10, 1992. After January 10, 1996 [1992], radiographic equipment other than storage containers and source changers shall meet the provisions of Section 1 of this administrative regulation, and Section 2 [1] of this administrative regulation shall apply only to storage containers (source changers).

Section 3. Locking of Sources of Radiation. (1) Sources of radiation shall be provided with a lock or outer locked container designed to prevent unauthorized or accidental production of radiation or removal or exposure of a sealed source from its shielded position.

(a) An exposure device or its container shall be kept locked except:

1. If under the direct surveillance of a radiographer or radiographer's assistant; or

2. As [may be] authorized by Section 16 of this administrative regulation.

(b) A storage container and source changer shall be:

1. Provided with a lock; and

2. Kept locked if containing sealed sources, except if the container is under the direct surveillance of a radiographer or radiographer's assistant.

(2) Radiographic exposure devices, source changers, and storage containers shall be locked and surveyed to assure that the sealed source is in the shielded position prior to being:

(a) Moved from one (1) location to another; and

(b) Secured at a given location.

Section 4. Storage Precautions. (1) Locked radiographic exposure devices, source changers, storage containers, and other sources of radiation, including radiation machines, shall be physically secured to prevent tampering or removal by unauthorized personnel.

(2) Radiographic exposure devices, source changers, and transport containers that contain radioactive material shall not be stored in residential locations. This provision shall not apply to storage of radioactive material in a vehicle in transit for use at temporary job sites if:

(a) The licensee complies with subsection (3) of this section; and

(b) The vehicle does not constitute a permanent storage location as described in subsection (4) of this section.

(3) If a vehicle is used for storage of radioactive material, a vehicle survey shall be performed after securing radioactive material in the vehicle and before transport to ensure that radiation levels shall not exceed the limits specified in 902 KAR 100:019, Section 10(b), at the exterior surface of the vehicle.

(4) A storage or use location shall be considered permanent if:

(a) Radioactive material is stored at the location for more than ninety (90) days; and

(b) One (1) or more of the following applies to the location:

1. Telephone service is established by the licensee;

2. Industrial radiographic services are advertised for or from the location; or

3. Industrial radiographic operations are conducted at other sites due to arrangements made from the location.

Section 5. Radiation Survey Instruments. (1) A licensee or registrant shall maintain sufficient calibrated and operable radiation survey instruments to make physical radiation surveys as required by this administrative regulation and 902 KAR 100:019, Section 12(1).

(2) A radiation survey instrument shall be calibrated:

(a) At energies appropriate for use;

(b) At intervals not to exceed three (3) months;

(c) After each instrument servicing so that accuracy within plus or minus twenty (20) percent may [can] be demonstrated;

(d) At two (2) points located approximately one-third (1/3) and two-thirds (2/3) of full-scale for linear scale instruments;

(e) Midrange of each decade, and at two (2) points of at least one (1) decade for logarithmic scale instruments; and

(f) Appropriate points for digital instruments.

(3) Records of these calibrations shall be maintained for two (2) years after the calibration date for inspection by the cabinet.

(4) Instrumentation required by this section shall have a range so that two (2) milliroentgens per hour through one (1) roentgen per hour may be measured.

(5) A radiation survey instrument shall be checked with a radiation source at the beginning of each day of use and at the beginning of each work shift to ensure it is working properly.

Section 6. Leak Testing, Repairing, Tagging, Opening, Modification, and Replacement of Sealed Sources. (1) The replacement of a sealed source fastened to or contained in a radiographic exposure device, and leak testing, repairing, tagging, opening, or other modification of a sealed source shall be performed only by persons specifically authorized by the cabinet, the U.S. Nuclear Regulatory Commission, or an Agreement State.

(2) A sealed source shall be tested for leakage and contamination pursuant to [in accordance with] 902 KAR 100:060. Records of leak test results shall be maintained for inspection by the cabinet:

(a) For six (6) months after the next required leak test is performed; or

(b) Until the sealed source is transferred or disposed.

(3) A sealed source not fastened to or contained in a radiographic exposure device shall have permanently attached to it a durable tag at least one (1) inch square bearing:

(a) The prescribed radiation caution symbol in conventional colors, magenta or purple on a yellow background; and

(b) At least the instructions: "Danger - Radioactive Material - Do Not Handle - Notify Civil Authorities if Found."

Section 7. Quarterly Inventory. (1) A licensee or registrant shall conduct a quarterly physical inventory to account for sealed sources and radiography exposure devices received or possessed by him.

(2) Records of the inventories shall be maintained for two (2) years from the date of the inventory for inspection by the cabinet. The records of inventories shall include:

(a) Quantities and kinds of radioactive material;
(b) Location of sealed sources;
(c) Date of the inventory;
(d) Name of the individual making the inventory; and
(e) Manufacturer, model number, and serial number of sealed sources and radiography exposure devices.

Section 8. Utilization Logs. A licensee or registrant shall maintain current logs, which shall be kept available for inspection by the cabinet for two (2) years from the date of the recorded event, at the address specified in the license or on the registration, showing for each source of radiation the following information:
(1) A description (or make and model number) of each source of radiation or storage container in which a sealed source is located;
(2) Identity of the radiographer to whom assigned;
(3) Site where used and dates of use; and
(4) Date each source of radiation is removed from storage and returned to storage.

Section 9. Inspection and Maintenance of Radiographic Exposure Devices, Storage Containers, and other Sources of Radiation. (1) A licensee or registrant shall ensure that checks for obvious defects in radiation machines, radiographic exposure devices, storage containers, and source changers are performed prior to each day of use.
(2) A licensee or registrant shall conduct a program for inspection and maintenance of radiation machines, radiographic exposure devices, storage containers, and source changers to assure proper functioning of components important to safety prior to the first use, and subsequently at intervals not to exceed three (3) months. Appropriate parts shall be maintained as specified by the manufacturer.
(3) If an inspection reveals damage to components critical to radiation safety, the device shall be:
(a) Removed from service; and
(b) Labeled as defective until repairs have been made.
(4) Records of inspection and maintenance shall be kept for two (2) years for inspection by the cabinet.

Section 10. Permanent Radiographic Installations. Permanent radiographic installations having high radiation area entrance controls of the type described in 902 KAR 100:019, Section 14(1)(b), ~~and~~ (c), and (2) shall also meet the following provisions:
(1) The entrance used for personnel access to the high radiation area shall have both visible and audible warning signals to warn of the presence of radiation.
(a) The visible signal shall be activated by radiation.
(b) The audible signal shall be activated if an attempt is made to enter the installation while the source is exposed.
(2) The control device or alarm system shall be tested for proper operation at the beginning of each day of equipment use. (a) If a control device or alarm system is operating improperly, it shall be immediately labeled as defective and repaired before industrial radiographic operations are resumed.
(b) Records of these tests shall be maintained for inspection by the cabinet for two (2) years from the date of the test.

Section 11. Training and Testing of Radiographers and Radiographers' Assistants. (1) A licensee or registrant shall not permit an individual to act as a radiographer as defined in 902 KAR 100:010 until the individual has:
(a) Been instructed in the subjects outlined in Section 19 ~~20~~ of this administrative regulation;
(b) Received copies of, instructions in, and demonstrated an understanding of the following:
1. Provisions contained in this administrative regulation;
2. Other applicable provisions of 902 KAR 100:019, 100:035, 100:070, and 100:165 ~~Chapter 100~~;
3. Conditions of the license or registration certificate issued by the cabinet; and
4. Licensee's or registrant's approved operating and emergency procedures;
(c) Demonstrated competence to use the sources of radiation, radiation exposure devices, related handling tools, and survey instruments which shall be employed at his assignment; and
(d) Successfully demonstrated an understanding of the instructions in this subsection by successful completion of a:
1. Written test; and
2. Field examination on the subjects covered.
(2) A licensee or registrant shall not permit an individual to act as a radiographer's assistant as defined in 902 KAR 100:010 until the individual has:
(a) Received copies of, and instructions in, the licensee's or registrant's approved operating and emergency procedures;
(b) Demonstrated competence to use, under the personal supervision of the radiographer, the sources of radiation, radiographic exposure devices, related handling tools, and radiation survey instruments which may be employed in his assignment; and
(c) Successfully demonstrated an understanding of the instructions in this subsection by:
1. Written or oral test; and
2. Field examination on the subjects covered.
(3) Records of the above training, including copies of written tests and dates of oral tests and field examinations, shall be maintained by a licensee or registrant for inspection by the cabinet for three (3) years following termination of employment.

Section 12. Operating and Emergency Procedures. A licensee's or registrant's operating and emergency procedures shall include instructions in at least the following:
(1) The handling and use of sources of radiation to be employed so that no individual is likely to be exposed to radiation doses in excess of the limits established in 902 KAR 100:019, Section 3;
(2) Methods and occasions for conducting radiation surveys;
(3) Methods for controlling access to radiographic areas;
(4) Methods and occasions for locking and securing sources of radiation;
(5) Personnel monitoring and the use of personnel monitoring equipment, including steps that shall be taken immediately by radiography personnel if a pocket dosimeter is found to be off-scale;
(6) Transportation to field locations, including:
(a) Packing of sources of radiation in vehicles;
(b) Posting of vehicles; and
(c) Control of sources of radiation during transportation;
(7) Minimizing exposure of individuals if an accident occurs;
(8) The procedure for notifying proper personnel if an accident occurs;
(9) Maintenance of records; and
(10) The inspection and maintenance of radiographic exposure devices, source changers, storage containers, and other sources of radiation.

Section 13. Personnel Monitoring Control. (1) A licensee or registrant shall not permit an individual to act as a radiographer or radiographer's assistant unless, during radiographic operations, the individual wears a direct reading pocket dosimeter; an alarm ratemeter; and a film badge or a thermoluminescent dosimeter (TLD).
(a) The wearing of an alarm~~ing~~ ratemeter shall not be required for permanent radiography facilities in which other appropriate alarming or warning devices are in routine use.
(b) Pocket dosimeters shall have a range from zero to at least 200 milliroentgens and be recharged daily or at the start of a ~~each~~ shift.
(c) A film badge or thermoluminescent dosimeter shall be assigned to, and worn by, only one (1) individual.

(2) Pocket dosimeters shall be read and exposures recorded at least once daily.

(a) If a pocket dosimeter is discharged beyond its range:

1. The film badge or thermoluminescent dosimeter shall be immediately processed;

2. Radiographic operations by the individual shall cease; and

3. The individual shall not return to work with sources of radiation until a determination of the radiation exposure has been made.

(b) Reports received from the film badge or thermoluminescent dosimeter processor and records of daily pocket dosimeter readings shall be kept for inspection until the cabinet authorizes their disposal.

(3) If a film badge or thermoluminescent dosimeter is lost or damaged, the worker shall cease work immediately until:

(a) A replacement film badge or thermoluminescent dosimeter is provided; and

(b) The exposure is calculated for the time period from issuance to loss or damage of the film badge or thermoluminescent dosimeter.

(4) Pocket dosimeters shall be checked for correct response to radiation at periods not to exceed one (1) year.

(a) Acceptable dosimeters shall read within plus or minus thirty (30) percent of the true radiation exposure.

(b) Records of this check shall be maintained for inspection by the cabinet for two (2) years from the date of the check.

(5)(a) An alarm ratemeter shall:

1. Be checked to ensure that the alarm functions properly (sounds) prior to use at the start of each shift;

2. Be set to give an alarm signal at a preset dose rate of 500 mR/hr;

3. Require special means to change the preset alarm functions; and

4. Be calibrated at periods not to exceed one (1) year for correct response to radiation.

(b) Acceptable ratemeters shall alarm within plus or minus twenty (20) percent of the true radiation dose rate.

Section 14. Documents Required at Temporary Job Sites. A licensee or registrant conducting industrial radiography at a temporary site shall have the following records available at that site for inspection by the cabinet:

(1) A copy of the operating and emergency procedures;

(2) A current copy of the radioactive material license or registration certificate;

(3) A copy of 902 KAR 100:019 [~~020~~], 902 KAR 100:100, and 902 KAR 100:165;

(4) Survey records required by Section 20 of this administrative regulation and 902 KAR 100:019, Section 31, for the period of operation at the site;

(5) Daily pocket dosimeter records for the period of operation at the site; and

(6) The latest instrument calibration and leak test record for specific devices in use at the site. Acceptable records include tags or labels affixed to the device or survey meter.

Section 15. Specific Provisions for Radiographic Personnel Performing Industrial Radiography. (1) At a job site, the following shall be supplied by a licensee or registrant:

(a) At least one (1) operable, calibrated survey instrument; (b) A current whole body personnel monitor (TLD or film badge) for each individual;

(c) An operable, calibrated pocket dosimeter with a range of zero to 200 milliroentgens for each worker;

(d) Appropriate barrier ropes and signs; and

(e) An alarm[~~ing~~] ratemeter for each individual.

(2) Industrial radiographic operations shall not be performed if the items in subsection (1) of this section are not available at the job site or are inoperable.

(3) During an inspection by the cabinet, the cabinet inspector may terminate an operation if items in subsection (1) of this section are not available and operable. Operations shall not be resumed until conditions are met.

Section 16. Security. During each radiographic operation, a radiographer or radiographer's assistant shall maintain [~~a~~] direct surveillance of the operation to protect against unauthorized entry into a high radiation area, except if the high radiation area is:

(1) Equipped with a control device or an alarm system as described in 902 KAR 100:019, Section 14(1) or (2); or

(2) Locked to protect against unauthorized or accidental entry.

Section 17. Posting. Except as otherwise exempt in 902 KAR 100:019, Section 25, areas in which radiography is being performed shall be conspicuously posted as required in 902 KAR 100:019, Section 24(1) and (2).

Section 18. Special Provisions and Exemptions for Cabinet X-ray Systems. (1) Systems for cabinet radiography designed to allow admittance of individuals shall:

(a) Comply with applicable provisions of this administrative regulation and 902 KAR 100:019, Section 10; and

(b) Be evaluated at intervals not to exceed one (1) year to assure compliance with the applicable provisions as specified in Section 15(1)(a) of this administrative regulation. Records of these evaluations shall be maintained for inspection by the cabinet for a period of two (2) years after the evaluation.

(2) If a system is a certified cabinet x-ray system, it shall comply with applicable provisions of this administrative regulation and 21 CFR 1020.40.

(3) Certified cabinet x-ray systems designed to exclude individuals from the interior of the cabinet shall be exempt from the provisions of this administrative regulation, except operating personnel shall be provided with a film badge or a thermoluminescent dosimeter.

(a) A report of the results of the film badge or thermoluminescent dosimeter shall be maintained for inspection by the cabinet.

(b) A registrant shall not permit an individual to operate a cabinet x-ray system until the individual has:

1. Received a copy of, and instruction in, the operating procedures for the unit; and

2. Demonstrated competence in its use.

(c) Records which demonstrate compliance with this subsection shall be maintained for inspection by the cabinet until disposition is authorized by the cabinet.

(d) Tests for proper operation of high radiation area control devices or alarm systems, if applicable, shall be conducted, recorded, and maintained as described in Section 10 of this administrative regulation.

(e) A registrant shall perform an evaluation, at intervals not to exceed one (1) year, to determine compliance with 902 KAR 100:019, Section 10.

1. If a system is a certified cabinet x-ray system, it shall be evaluated at intervals not to exceed one (1) year to determine compliance with 21 CFR 1020.40.

2. Records of these evaluations shall be maintained for inspection by the cabinet for a period of two (2) years after the evaluation.

(4) Certified cabinet x-ray systems shall be maintained in compliance with 21 CFR 1020.40, unless prior approval has been granted by the cabinet under 902 KAR 100:015, Section 7.

Section 19. Minimum Training Requirements for Industrial Radiographers. Industrial radiographers shall receive minimum training in the following areas:

(1) Fundamentals of radiation safety:

(a) Characteristics of radiation;

(b) Units of radiation dose (mrem) and quantity of radioactivity (curie);

(c) Significance of radiation dose:

1. Radiation protection standards;
2. Biological effects of radiation dose;
3. Case histories of radiography accidents;
(d) Levels of radiation from sources of radiation;
(e) Methods of controlling radiation dose:
1. Working time;
2. Working distance[~~e~~];
3. Shielding;
(2) Radiation detection instrumentation to be used:
(a) Use of radiation survey instruments:
1. Operation;
2. Calibration;
3. Limitations;
(b) Survey techniques;
(c) Use of personnel monitoring equipment:
1. Film badges;
2. Pocket dosimeters;
3. Thermoluminescent dosimeters;
4. Alarm ratemeters;
(3) Radiographic equipment to be used:
(a) Remote handling equipment;
(b) Operation and control of radiographic exposure devices and sealed sources, including pictures or models of source assemblies (pigtails);
(c) Storage and transport containers and source changers;
(d) Operation and control of x-ray equipment;
(e) Collimators;
(4) Provisions of 10 CFR 34 and 902 KAR Chapter 100; and
(5) The licensee's or registrant's written operating and emergency procedures.

Section 20. Radiation Surveys and Survey Records. (1) A radiographic operation shall not be conducted unless calibrated and operable radiation survey instrumentation, as described in Section 5 of this administrative regulation, is available and used at each location of radiographic operations.

(2) A survey with a radiation survey instrument shall be made after each radiographic exposure to determine that the sealed source has been returned to its shielded position.

(a) The entire circumference of the radiographic exposure device shall be surveyed.

(b) If the radiographic exposure device has a source guide tube, the survey shall also include the guide tube.

(3) A survey shall be made of the storage area if a radiographic exposure device is being placed in storage.

(4) A physical radiation survey required by Section 3 of this administrative regulation shall be made to determine that each sealed source is in its shielded position prior to securing the radiographic exposure device, storage container, or source changer in a storage area.

(5) A physical radiation survey shall be made after a [~~each~~] radiographic exposure using radiographic machines to determine that the machine is "off".

(6) Records shall be kept of surveys and maintained for inspection by the cabinet for two (2) years after completion of the survey. If the survey was used to determine an individual's exposure, the records of the survey shall be maintained until the cabinet authorizes their disposition.

Section 21. Required Administrative Procedures for Industrial Radiography Program. (1) Licensees and registrants shall have an adequate program for training radiographers and radiographers' assistants, and submit to the cabinet a schedule or description of the program which specifies the:

(a) Initial training;
(b) Periodic training;
(c) On-the-job training;
(d) Means to be used by the licensee or registrant to determine the radiographer's knowledge and understanding of and ability to comply with 902 KAR Chapter 100, [~~and~~] licensing requirements, and the licensee's or registrant's operating and emergency procedures; and
(e) Means to be used by the licensee or registrant to determine the radiographer's assistant's knowledge and understanding of, and ability to comply with, the licensee's or registrant's operating and emergency procedures.

(2) A licensee or registrant shall establish and submit to the cabinet satisfactory written operating and emergency procedures.

(3) A licensee or registrant shall submit to the cabinet a description of its inspection program adequate to ensure that license provisions, administrative regulations, and the licensee's or registrant's operating and emergency procedures shall be followed by radiographers and radiographers' assistants. The inspection program shall:

(a) Include observation of the performance of each radiographer and radiographer's assistant during an actual radiographic operation at intervals not to exceed three (3) months;

(b) Provide that, if a radiographer or a radiographer's assistant has not participated in a radiographic operation for more than three (3) months since the last inspection, the individual's performance shall be observed and recorded the next time the individual participates in a radiographic operation; and

(c) Include the retention of inspection records on the performance of radiographers or radiographers' assistants for two (2) years.

(4) A licensee or registrant shall submit to the cabinet a description of his overall organizational structure pertaining to the radiography program, including:

(a) Specified delegations of authority; and
(b) Responsibility for operation of the program.

(5) A licensee who desires to conduct his own leak tests shall establish adequate procedures to be followed in leak testing sealed sources for possible leakage and contamination, and shall submit to the cabinet a description of the procedures including:

(a) Instrumentation to be used;
(b) Method of performing tests (for example [~~e.g.~~], points on equipment to be smeared and method of taking a smear); and
(c) Pertinent experience of the person who will perform the test.

Section 22. Supervision of Radiographer's Assistant. If a radiographer's assistant uses radiographic exposure devices, sealed sources, or related source handling tools, or conducts radiation surveys required by Section 20 of this administrative regulation to determine that the sealed source has returned to the shielded position after an exposure, the radiographer's assistant shall be under the personal supervision of a radiographer. The personal supervision shall include the radiographer:

(1) Being physically present at the site where sources of radiation and associated equipment are being used;

(2) Watching the performance of the operations referred to in this section by the radiographer's assistant; and

(3) [~~(b)~~] Being in a proximity that immediate assistance may be given if required.

Section 23. Reporting Requirements. (1) In addition to the reporting requirements specified in 902 KAR 100:040, Section 18, a licensee shall provide a written report to the Cabinet for Human Resources, Radiation Control Branch within thirty (30) days of the occurrence of the following incidents involving radiographic equipment:

(a) Unintentional disconnection of the source assembly from the control cable;

(b) Inability to retract the source assembly to its fully shielded position and secure it in this position; or

(c) Failure of a component, critical to safe operation of the device,

to properly perform its intended function.

(2) The licensee shall include the following information in a report submitted under subsection (1) of this section:

(a) A description of the equipment problem;

(b) Cause of an incident, if known;

(c) Manufacturer and model number of equipment involved in the incident;

(d) Place, time and date of the incident;

(e) Actions taken to establish normal operations;

(f) Corrective actions taken or planned to prevent recurrence; and

(g) Qualifications of personnel involved in the incident.

(3) Reports of overexposures submitted under 902 KAR 100:019, Section 40, involving failure of safety components of radiography equipment shall also include the information specified in subsection (2) of this section.

Section 24. [~~23.~~] Material Incorporated by Reference. The American National Standard (ANSI) N43.9-1991, "Gamma Radiography-Specifications for Design and Testing of Apparatus" (1991) [~~N432-1980, "Radiological Safety for the Design and Construction of Apparatus for Gamma Radiography," (January 1981)~~], is incorporated by reference. A copy of the "Gamma Radiography-Specifications for Design and Testing of Apparatus" [~~"Radiological Safety for the Design and Construction of Apparatus for Gamma Radiography"~~] may be viewed or obtained at the Office of the Commissioner of Health Services, 275 East Main Street, Frankfort, Kentucky 40621, 8 a.m. until 4:30 p.m., Monday through Friday.

RICE C. LEACH, M.D., Commissioner
MASTEN CHILDERS, II, Secretary

APPROVED BY AGENCY: February 1, 1995

FILED WITH LRC: February 15, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for March 21, 1995, at 9 a.m. in the Vital Statistics Conference Room, First Floor, Cabinet for Human Resources Building. However, this hearing will be cancelled unless interested persons notify the following office in writing by March 16, 1995 of their desire to appear and testify at the hearing: William K. Moore, Deputy Counsel, Administrative Law, Department of Law, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Contact Person: John A. Volpe, Ph.D.

(1) Type and number of entities affected: 15 industrial radiographic operations are impacted.

(2) Direct and indirect costs or savings 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 hearing was requested and no 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 hearing was requested and no comments were received.

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

1. First year: Telephone and written reports of radiological incidents.

2. Second and subsequent years: Depends on the occurrence of radiological incidents.

(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 to the administrative agency.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Radiological incidents will be reported to the U.S. Nuclear Regulatory Commission via the Materials Events Database.

(4) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Fees from the licensing of radioactive material users.

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

(a) Geographical area in which administrative regulation will be implemented: No comments were received.

(b) Kentucky: No comments were received.

(7) Assessment of alternative methods: reasons why alternatives were rejected: No alternatives were available due to compliance with U.S. Nuclear Regulatory Commission.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The benefit is a uniform mechanism for licenses to address radiological incidents.

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

(c) If detrimental effect would result, explain detrimental effect: Detrimental effects could be radiation exposure of industrial radiographers.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No conflict with statutes or administrative regulations. Some of the requirements of 902 KAR 100:100 are present in 902 KAR 100:019 with regard to notification of incidents; however, requirements in 902 KAR 100:019 are not detailed for industrial radiographers.

(a) Necessity of 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? Tiering is not applied for radiological notifications since all radiographers shall report radiological incidents.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 10 CFR 34 as promulgated by the U.S. Nuclear Regulatory Commission.

2. State compliance standards. This provides requirements for radiological incidents notifications.

3. Minimum or uniform standards contained in the federal mandate. This amendment will bring about compatibility with U.S. Nuclear Regulatory Commission's requirements.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

CABINET FOR HUMAN RESOURCES
Department for Health Services
Division of Environmental Health
and Community Safety
(Proposed Amendment)

902 KAR 100:142. Wire line service operations.

RELATES TO: KRS 211.842 to 211.852, 211.990(4), 10 CFR 39.77

STATUTORY AUTHORITY: KRS 194.050, 211.090, 211.844, 10 CFR 39.77

NECESSITY AND FUNCTION: [~~The Cabinet for Human Resources is empowered by~~] KRS 211.844 authorizes the Cabinet for Human Resources to provide by regulation for the registration and licensing of the possession or use of sources [~~any source~~] of ionizing or electronic product radiation and the handling and disposal of radioactive waste. [~~The purpose of~~] This administrative regulation provides [~~is to provide~~] radiation safety requirements for persons using sources of radiation for wire line service operations including radioactive markers, mineral exploration and subsurface tracer studies.

Section 1. Agreement with Well Owner or Operator. A [~~Applicability. The requirements in this regulation apply to all licensees or registrants who use sources of radiation for wire line service operations including radioactive markers, mineral exploration and subsurface tracer studies.~~

~~Section 2. Prohibition. No~~] licensee shall not perform wire line service operations with a sealed source[~~(s)~~] in a [~~any~~] well or well-bore unless, prior to commencement of the operation, the licensee has a written agreement with the well operator, well or land owner, or drilling contractor that:

(1) If [~~In the event~~] a sealed source is lodged downhole, a reasonable effort at recovery shall [~~will~~] be made;

(2) If [~~In the event~~] a decision is made to abandon the sealed source downhole, the requirements of this administrative regulation shall be met;

(3) A person shall not attempt to recover a sealed source in a manner, which, in the licensee's opinion, may result in its rupture;

(4) The radiation monitoring required in Section 20 of this administrative regulation shall be performed;

(5) If the environment, equipment, or personnel are contaminated with radioactive material, decontamination shall be performed prior to release from the site or for unrestricted use; and

(6) If the sealed source is classified as not retrievable after reasonable efforts at recovery have been expended, the requirements of Section 23 of this administrative regulation shall be met.

(7) The licensee shall retain a copy of the written agreement with the well operator, well or land owner, or drilling contractor for two (2) years after completion of the well logging operations.

Section 2. [~~3.~~] Limits on Levels of Radiation. Radioactive materials shall be used, stored, and transported in [~~such~~] a manner that the requirements of 902 KAR 100:019 [~~020~~] and 902 KAR 100:070, shall be [~~as applicable, are~~] met.

Section 3. [~~4.~~] Storage Precautions. (1) [~~Each~~] Sources of radiation, except accelerators, shall be provided with a lockable storage [~~and/~~]or transport container. The container shall be provided with a lock (or tamper seal for calibration sources) to prevent unauthorized removal of, or exposure to, the source of radiation.

(2) Sources of radiation shall be stored in a manner which shall [~~will~~] minimize the danger from explosion or fire.

Section 4. [~~5.~~] Transport Precautions. Transport containers shall be physically secured to the transporting vehicle to prevent accidental loss, tampering, or unauthorized removal.

Section 5. [~~6.~~] Radiation Survey Instruments. (1) The licensee or registrant shall maintain sufficient calibrated and operable radiation survey instruments at each field station to make physical radiation surveys as required by this administrative regulation and by 902 KAR 100:019 [~~020~~].

(2) Instrumentation required by this section shall be capable of measuring one-tenth (0.1) milliroentgen per hour through at least fifty (50) milliroentgens per hour.

(3) A [~~(2) Each~~] radiation survey instrument shall be calibrated:

(a) At intervals not to exceed six (6) months and after each instrument servicing;

(b) At energies and exposure levels appropriate for use; and

(c) So [~~Such~~] that accuracy within plus or minus twenty (20) percent of the true radiation level may [~~can~~] be demonstrated on each scale.

(4) [~~(3)~~] Records of calibration shall be maintained for a period of two (2) years for inspection by the cabinet.

Section 6. [~~7.~~] Leak Testing of Sealed Sources. Sealed sources of radioactive material shall be tested for leakage and contamination pursuant to [~~in accordance with~~] 902 KAR 100:060.

Section 7. [~~8.~~] Quarterly Inventory. (1) A [~~Each~~] licensee or registrant shall conduct a quarterly physical inventory to account for [~~all~~] sources of radiation received or possessed by the licensee or registrant [~~him~~].

(2) Records of inventories shall be maintained for two (2) years from the date of the inventory for inspection by the cabinet and shall include:

(a) The quantities and kinds of sources of radiation;

(b) The location where sources of radiation are assigned;

(c) The date of the inventory; and

(d) The name of the individual conducting the inventory.

Section 8. [~~9.~~] Utilization Records. A [~~Each~~] licensee or registrant shall maintain current records, which shall be kept available for inspection by the cabinet for two (2) years from the date of the recorded event showing the following information for each source of radiation:

(1) A description (or make and model number or serial number) of each source of radiation used;

(2) The identity of the logging supervisor responsible for the radioactive material and identity of logging assistant present; [~~individual or field unit to whom assigned;~~]

(3) Locations where used and dates of use; and

(4) In the case of tracer materials and radioactive markers, the utilization record shall also indicate the radionuclide and activity used at a particular well site.

Section 9. [~~10.~~] Design and Performance Criteria for Sealed Sources used in Downhole Operations. (1) A [~~Each~~] sealed source, except those containing radioactive material in gaseous form, used in downhole operations shall, as a minimum, meet the following criteria:

(a) Be of double encapsulated construction; and

(b) Contain radioactive material whose chemical and physical form shall be [~~are~~] as insoluble and nondispersible as practicable. [~~; and~~

~~(c) Have been individually pressure tested to 25,000 pounds per square inch absolute without failure.~~]

(2) For sealed sources, except those containing radioactive material in gaseous form, in the absence of a certificate from a transferor certifying that an individual or a prototype sealed source meets the above criteria, the sealed source shall not be put into use until the [~~such~~] determinations and testing have been performed.

(3) A [Each] sealed source or sealed source prototype, except those containing radioactive material in gaseous form, used in downhole operations, shall be certified by the manufacturer, or other testing organization acceptable to the cabinet, as meeting the sealed source performance requirements for temperature, impact, vibration, puncture, and pressure tests for oil well-logging as contained in the American National Standard N542, "Sealed Radioactive Sources, Classification."

(4) Certification documents shall be maintained for inspection by the cabinet for a period of two (2) years after source disposal.

(5) For sources abandoned downhole, certification [such] documents shall be maintained until their disposal is authorized by the cabinet.

Section 10. [11.] Labeling. (1) A [Each] source, source holder, or logging tool containing radioactive material shall bear a durable, legible, and clearly visible marking or label which has, as a minimum, the standard radiation symbol without color requirement and the following wording: DANGER (or CAUTION) RADIOACTIVE.

(2) This labeling shall be on the smallest component, for example, [(i.e.,] source, source holder, or logging tool[)], that is transported as a separate piece of equipment.

(3) A [(2) Each] transport container shall have permanently attached to it a durable legible and clearly visible label which has, as a minimum, the standard radiation symbol and the following wording: DANGER (or CAUTION) RADIOACTIVE. Notify civil authorities (or name of company) if found.

Section 11. [12.] Inspection and Maintenance. (1) A [Each] licensee or registrant shall conduct, at intervals not to exceed six (6) months, a program of inspection of sealed sources and inspection and maintenance of source holders, logging tools, source handling tools, storage containers, transport containers, uranium sinker bars, and injection tools to assure proper labeling, operation, and physical condition.

(2) Records of inspection and maintenance shall be maintained for a period of two (2) years for inspection by the cabinet.

(3) [(2)] If an [any] inspection conducted pursuant to this section reveals damage to labeling or components critical to radiation safety, the device shall be removed from service until repairs have been made.

(4) [(3)] The repair, opening, or [any] other modification of a [any] sealed source shall be performed only by persons specifically authorized to do so by the cabinet, the U. S. Nuclear Regulatory Commission, or an Agreement State.

(5) If a sealed source is stuck in the source holder, the licensee shall not perform any operation, for example drilling, cutting, or chiseling on the source holder unless the licensee is specifically licensed by the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state to perform the operation.

Section 12. [13.] Training Requirements. (1) A [No] licensee or registrant shall not permit an [any] individual to act as a logging supervisor until the [such] individual:

(a) Has successfully completed a course recognized by the cabinet, an Agreement State, or the U. S. Nuclear Regulatory Commission, covering the subjects outlined in Section 24 of this administrative regulation and shall have demonstrated an understanding of the subjects [thereof];

(b) Has received copies of and demonstrated an understanding of the following:

1. The requirements contained in this administrative regulation;

2. Other applicable provisions of 902 KAR Chapter 100 [the cabinet's radiation regulations];

3. The conditions of the license or registration certificate issued by the cabinet; and

4. The licensee's or registrant's approved operating and emergency procedures; [and]

(c) Has completed on-the-job training and demonstrated competence in the [to] use of sources of radiation, related handling tools, and radiation survey instruments which shall [will] be employed in his assignment; and

(d) Has demonstrated an understanding of the requirements in paragraphs (a) and (b) of this subsection by successfully completing a written test.

(2) A [No] licensee or registrant shall not permit an [any] individual to act as a logging assistant until the [such] individual:

(a) Has read and received instruction in the licensee's or registrant's operating and emergency procedures, the requirements contained in this administrative regulation, and other applicable provisions of 902 KAR Chapter 100 [the cabinet's radiation regulations] and shall have demonstrated understanding of the subjects; [thereof; and]

(b) Has demonstrated competence to use, under the personal supervision of the logging supervisor, the sources of radiation, related handling tools and radiation survey instruments which will be employed in his assignment; and

(c) Has demonstrated understanding of the requirements in paragraphs (a) and (b) of this subsection by successfully completing a written or oral test.

(3) A [Each] licensee or registrant shall maintain employee training records, for inspection by the cabinet for two (2) years following termination of employment.

Section 13. [14.] Operating and Emergency Procedures. The licensee's or registrant's operating and emergency procedures shall include instructions in at least the following:

(1) The handling and use of sources of radiation to be employed so [such] that an [no] individual is not likely to be exposed to radiation doses in excess of the limits established in 902 KAR 100:019, Section 3 [020];

(2) The handling and use of radioactive material including the use of sealed sources in wells without surface casing for protecting fresh water aquifers, if appropriate;

(3) The use of remote handling tools for handling sealed source and radioactive tracer material except low-activity calibration sources;

(4) [(2)] Methods and occasions for conducting radiation surveys including surveys for detecting contamination;

(5) [(3)] Methods and occasions for locking and securing sources of radiation;

(6) [(4)] Personnel monitoring and the use of personnel monitoring equipment;

(7) [(5)] Transportation to temporary job sites and field stations, including:

(a) Packaging of sources of radiation in the vehicles;

(b) Placarding of vehicles, if needed; and

(c) Physically securing [of] sources of radiation during transportation to prevent accidental loss, tampering or unauthorized removal;

(8) [(6)] Minimizing exposures of individuals from inhalation and ingestion of radioactive tracer material [in the event of an accident];

(9) [(7)] The procedure for notifying proper personnel in the event of an accident;

(10) [(8)] Maintenance of records, including records generated by logging personnel at temporary jobsites;

(11) [(9)] The inspection of sealed sources;

(12) [and] The inspection and maintenance of source holders, logging tools, source handling tools, storage containers, transport containers, uranium sinker bars, and injection tools;

(13) [(10)] The procedures that shall [to] be followed in the event a sealed source is lodged downhole; [and]

(14) [(11) The procedures to be used for] Picking up, receiving, and opening packages containing radioactive material;

(15) Decontamination of the environment, equipment and personnel, if tracers are used; and

(16) Actions to be taken if a sealed source is ruptured or a sealed source is lodged in a well, including steps to:

(a) Prevent the spread of contamination;

(b) Minimize inhalation and ingestion of radioactive material; and

(c) Obtain suitable radiation survey instruments as required by Section 6 of this administrative regulation.

Section 14. [~~15.~~] Personnel Monitoring. (1) A [~~No~~] licensee or registrant shall not permit an [~~any~~] individual to act as a logging supervisor or logging assistant [~~to assist in the handling of sources of radiation~~] unless the [~~each such~~] individual wears either a film badge or a thermoluminescent dosimeter (TLD) [~~at all times~~] during well service operations utilizing sources of radiation.

(2) A [~~Each~~] film badge or thermoluminescent dosimeter (TLD) shall be assigned to and worn by only one (1) individual.

(3) Film badges shall be replaced monthly and TLDs replaced at least quarterly.

(4) After replacement, a film badge or TLD shall be promptly processed.

(5) [~~(2)~~] Personnel monitoring records shall be maintained for inspection by the cabinet until it authorizes their disposal.

Section 15. [~~16.~~] Security. During [~~each~~] logging or tracer applications, the logging supervisor or other designated employee shall maintain direct surveillance of the operation to protect against unauthorized or unnecessary entry into a restricted area.

Section 16. [~~17.~~] Handling Tools. The licensee shall provide and require the use of tools that shall [~~will~~] assure remote handling of sealed sources other than low activity calibration sources.

Section 17. [~~18.~~] Tracer Studies. (1) Protective gloves and other appropriate protective clothing shall be used by [~~all~~] personnel handling radioactive tracer material.

(2) Care shall be taken to avoid ingestion or inhalation of radioactive material.

(3) A [~~(2) No~~] licensee shall not permit injection of radioactive material into potable aquifers without prior written authorization from the cabinet.

Section 18. [~~19.~~] Particle Accelerators. A [~~No~~] licensee or registrant shall not permit aboveground testing of particle accelerators which results in the production of radiation except in areas or facilities controlled or shielded so that the requirements of 902 KAR 100:019 shall be [~~020 are~~] met.

Section 19. [~~20.~~] Radiation Surveys. (1) Radiation surveys [~~or calculations~~] shall be made and recorded of each area where radioactive materials are stored and used.

(2) Radiation surveys [~~or calculations~~] shall be made and recorded of the radiation levels in occupied positions and on the exterior of each vehicle used to transport radioactive materials.

(3) The [~~Such~~] surveys [~~or calculations~~] shall include each source of radiation and combination of sources of radiation transported in the vehicle.

(4) [~~(3)~~] After removal of the sealed source from the logging tool and before departing the job site, the logging tool detector shall be energized, or a survey meter used, to assure that the logging tool is free of contamination.

(4) Radiation surveys shall be made and recorded at the job site or well head for [~~each~~] tracer operations except for those using hydrogen-3, carbon-14, and sulfur-35. [~~At tracer jobs, a radiation survey instrument shall be used.~~]

(5) The [~~Such~~] surveys shall include radiation levels prior to and after the operation.

(6) [~~(5)~~] Records required pursuant to this section shall include:

(a) The dates;

(b) The identification of the individual[~~(s)~~] making the survey;

(c) Identification of survey instrument[~~(s)~~] used; and

(d) An exact description of the location of the survey.

(7) Records of these surveys shall be maintained for inspection by the cabinet for two (2) years after completion of the survey.

Section 20. Radioactive Contamination Control. (1) If the licensee has reason to believe that, as a result of an operation involving a sealed source, the encapsulation of the sealed source may be damaged by the operation, the licensee shall conduct a radiation survey, including a contamination survey, during and after the operation.

(2) If the licensee detects evidence that a sealed source has ruptured or radioactive materials have caused contamination, the licensee shall initiate immediately the emergency procedures required by Section 13 of this administrative regulation.

(3) If contamination results from the use of radioactive material in well logging, the licensee shall decontaminate work areas, equipment, and unrestricted areas.

(4) During efforts to recover a sealed source lodged in the well, the licensee shall continuously monitor, with an appropriate radiation detection instrument or a logging tool with a radiation detector, the circulating fluids from the well, if present, to check for contamination resulting from damage to the sealed source.

Section 21. Records Required at Field Stations. A [~~Each~~] licensee or registrant maintaining field stations from which well service operations are conducted shall have copies of the following records available at each station for inspection by the cabinet:

(1) Appropriate license or certificate of registration;

(2) Operating and emergency procedures;

(3) A copy of 902 KAR 100:019, 100:142, and 100:165; [~~Applicable regulations;~~]

(4) Survey records required pursuant to Section 19 [~~20~~] of this administrative regulation;

(5) Quarterly inventories required pursuant to Section 7 [~~8~~] of this administrative regulation;

(6) Utilization records required pursuant to Section 8 [~~9~~] of this administrative regulation;

(7) Records of inspection and maintenance required pursuant to Section 11 [~~12~~] of this administrative regulation;

(8) Records of the latest survey instrument calibration pursuant to Section 6 of this administrative regulation;

(9) Records of the latest leak test results pursuant to Section 6 [~~7~~] of this administrative regulation; and

(10) Training records required by Section 12 of this administrative regulation.

Section 22. Records Required at Temporary Job Sites. (1) A [~~Each~~] licensee or registrant conducting well service operations at a temporary job site shall have the following records available at that site for inspection by the cabinet:

(a) Operating and emergency procedures;

(b) Survey records required pursuant to Section 19 [~~20~~] of this administrative regulation for the period of operation at the site; [~~and~~]

(c) Evidence of current calibration for the radiation survey instruments in use at the site; and

(d) The shipping papers for the transportation of radioactive materials.

(2) In addition to the record requirements of this section, at each temporary job site where well service operations are being conducted under cabinet authorization granted pursuant to 902 KAR 100:065, a licensee or registrant shall have the following records [~~shall be~~] available for inspection by the cabinet:

(a) Current leak test records for the sealed sources in use at the site; [~~and~~]

(b) The appropriate license, certification of registration or

equivalent document; and

(c) Shipping papers for the transport of radioactive material.

Section 23. Notification of Incidents and Lost Sources. (1) The licensee shall immediately notify by telephone the Cabinet for Human Resources, Radiation Control Branch at (502) 564-3700 from 8 a.m.- 4:30 p.m. Monday through Friday and at (502) 564-8715 at other hours and within thirty (30) days, by confirmatory letter to the Manager, Radiation Control Branch, 275 East Main Street, Frankfort, Kentucky 40621, if the licensee knows or has reason to believe that a sealed source has been ruptured.

(2) The letter shall:

(a) Designate the well or other location;

(b) Describe the magnitude and extent of the escape of radioactive materials;

(c) Assess the consequences of the rupture; and

(d) Explain efforts planned or being taken to mitigate these consequences.

(3) The licensee shall notify the Cabinet for Human Resources, Radiation Control Branch of the theft or loss of radioactive materials, radiation overexposures, excessive levels and concentrations of radiation, and certain other accidents as required by 902 KAR 100:019, Sections 38, 39 and 40 and 902 KAR 100:040, Section 18. [Notification of incidents and sources lost in other than downhole logging operations shall be made in accordance with appropriate provisions of 902 KAR 100:020, Section 16.]

(4) If [(2) Whenever] a sealed source or device containing radioactive material is lodged downhole, the licensee shall:

(a) Monitor at the surface for the presence of radioactive contamination with a radiation survey instrument or logging tool during [logging tool] recovery operations; and

(b) Notify the Cabinet for Human Resources, Radiation Control Branch, immediately by telephone at (502) 564-3700 from 8 a.m. - 4:30 p.m., Monday through Friday and at (502) 564-8715 at other hours if radioactive contamination is detected at the surface or if the source appears to be damaged.

(5) If [(3) When] it becomes apparent that efforts to recover the radioactive source shall [will] not be successful, the licensee shall:

(a) Advise the well-operator of this administrative [the] regulation[s] regarding abandonment and an appropriate method of abandonment which shall include:

1. The immobilization and sealing in place of the radioactive source with a cement plug;

2. The setting of a whipstock or other deflection device; and

3. The mounting of a permanent identification plaque, containing information required by this section, at the surface of the well;

(b) Notify the Cabinet for Human Resources, Radiation Control Branch by telephone at (502) 564-3700 from 8 a.m. - 4:30 p.m., Monday through Friday and at (502) 564-8715 at other hours, giving the circumstances of the loss, and request approval of the proposed abandonment procedures; and

(c) File a written report with the Manager, Radiation Control Branch, 275 East Main Street, Frankfort, Kentucky 40621 [cabinet] within thirty (30) days of the abandonment, which provides [setting forth] the following information:

1. Date of occurrence and a brief description of attempts to recover the source;

2. Description of the radioactive source involved, including radionuclide, quantity, and chemical and physical form;

3. Surface location and identification of well;

4. Results of efforts to immobilize and seal [set] the source in place;

5. Depth of the radioactive source;

6. Depth of the top of the cement plug;

7. Depth of the well; and

8. Information contained on the permanent identification plaque.

(6) If [(4) Whenever] a sealed source containing radioactive material is abandoned downhole, the licensee shall provide a permanent plaque for posting the well or well-bore. This plaque shall:

(a) Be constructed of long-lasting material, for example, [such as] stainless steel, brass, bronze, or Monel. The size of the plaque shall [should] be convenient for use on active or inactive wells, for example, [; e.g.,] a seven (7) inch square and one-eighth (1/8) inch thick. Letter size of the word "Caution" shall [should] be approximately twice the letter size of the rest of the information, for example, [; e.g.,] one-half (1/2) inch and one-fourth (1/4) inch letter size, respectively; and

(b) Contain the following engraved information on its face:

1. The word "Caution;"

2. The radiation symbol (color not required);

3. The date of abandonment;

4. The name of the well operator or well owner;

5. The well name and well identification number(s) or other designation;

6. The sealed source(s) by radionuclide, and quantity of activity;

7. The source depth, and the depth to the top of the plug;

8. An appropriate warning, depending on the specific circumstances of an [each] abandonment, for example, [such as] "Do not drill below plug depth;" or "Do not enlarge casing;" and

9. The words "Do not reenter hole before contacting Radiation Control Branch, Kentucky Cabinet for Human Resources."

(7) [(c)] The licensee shall immediately notify the Cabinet for Human Resources, Radiation Control Branch by telephone at (502) 564-3700 from 8 a.m. - 4:30 p.m. Monday through Friday and at (502) 564-7815 at other hours and [subsequently] by confirming letter, within thirty (30) days, to the Manager, Radiation Control Branch, 275 East Main Street, Frankfort, Kentucky 40621 if the licensee knows or has reason to believe that radioactive material has been lost in or to an underground potable water source.

(8) The [Such] notice shall designate the well location and shall describe the magnitude and extent of loss of radioactive material, assess the consequences of the [such] loss, and explain efforts planned or being taken to mitigate consequences.

Section 24. Minimum Training Requirements for Logging Supervisors. [All] Logging supervisors shall receive minimum training in the following areas:

(1) Fundamentals of radiation safety:

(a) Characteristics of gamma, neutron and x-radiation;

(b) Units of radiation dose (mrem); [and]

(c) Quantity of radioactivity (curie); [and]

(d) [(c)] Significance of radiation dose:

1. Radiation protection standards; and

2. Biological effects of radiation dose;

(e) [(d)] Levels of radiation from sources of radiation;

(f) [(e)] Methods of controlling radiation dose:

1. Working time;

2. Working distance; and

3. Shielding; and

(g) Radiation safety practices including prevention of contamination and methods of decontamination;

(2) Radiation detection instrumentation to be used:

(a) Use of radiation survey instruments:

1. Operation;

2. Calibration; and

3. Limitations;

(b) Survey techniques; and

(c) Use of personnel monitoring equipment;

(3) Equipment to be used:

(a) Remote handling equipment;

(b) Sources of radiation;

(c) Storage and transport containers; and

(d) Operation and control of equipment;

(4) The requirements of 10 CFR Part 39 and 902 KAR Chapter

100 [~~pertinent federal and state regulations~~];

(5) The licensee's or registrant's written operating and emergency procedures;

(6) The licensee's or registrant's recordkeeping procedures; and

(7) Case histories of well logging accidents.

Section 25. Material Incorporated by Reference. American National Standard N542, "Sealed Radioactive Sources, Classification", ANSI N542-1977, Revision of N5.10-1968, (July 1978), is incorporated by reference. A copy of the "Sealed Radioactive Sources, Classification" may be viewed or obtained at the Office of the Commissioner of Health Services, 275 East Main Street, Frankfort, Kentucky 40621, 8 a.m. until 4:30 p.m., Monday through Friday.

RICE C. LEACH, M.D., Commissioner
MASTEN CHILDERS, II, Secretary

APPROVED BY AGENCY: February 1, 1995

FILED WITH LRC: February 15, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for March 21, 1995, at 9 a.m. in the Vital Statistics Conference Room, First Floor, Cabinet for Human Resources Building. However, this hearing will be cancelled unless interested persons notify the following office in writing by March 16, 1995 of their desire to appear and testify at the hearing: William K. Moore, Deputy Counsel, Administrative Law, Department of Law, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Contact Person: John A. Volpe, Ph.D.

(1) Type and number of entities affected: Ten (10) wire line operations are impacted.

(2) Direct and indirect costs or savings 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 hearing was requested and no 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 hearing was requested and no comments were received.

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

1. First year: Telephone and written reports of radiological incidents.

2. Second and subsequent years: Depends on the occurrence of radiological incidents.

(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 to the administrative agency.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Radiological incidents will be reported to the U.S. Nuclear Regulatory Commission via the Materials Events Database.

(4) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Fees from the licensing of radioactive material users.

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

(a) Geographical Area in which administrative regulation will be implemented: No comments were received.

(b) Kentucky: No comments were received.

(7) Assessment of alternative methods: reasons why alternatives were rejected: No alternatives were available due to compliance with U.S. Nuclear Regulatory Commission.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The benefit is a uniform mechanism for licenses to address radiological incidents.

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

(c) If detrimental effect would result, explain detrimental effect: Detrimental effects could be: (1) Impacts on workers health and safety; and (2) Release of radioactive material resulting from a radiological incident.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No conflict with statutes or administrative regulations. Some of the requirements of 902 KAR 100:142 are present in 902 KAR 100:019 with regard to notification of incidents; however, requirements in 902 KAR 100:019 are not detailed for wire line operations.

(a) Necessity of 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? Tiering is not applied for radiological notifications since all wire line operations shall report radiological incidents.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 10 CFR 39 as promulgated by the U.S. Nuclear Regulatory Commission.

2. State compliance standards. This provides requirements for radiological incident notification.

3. Minimum or uniform standards contained in the federal mandate. This amendment will bring about compatibility with U.S. Nuclear Regulatory Commission's requirements.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development
(Proposed Amendment)

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

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

STATUTORY AUTHORITY: KRS 194.050, 205.200(2)

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

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

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

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

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

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

(b) [~~(c)~~] Identifies and resolves barriers to the extent possible; and

(c) [~~(d)~~] Delivers JOBS related services to the participant.

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

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

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

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

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

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

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

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

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

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

(1) Is a child who:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Education below the postsecondary level shall include:

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

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

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

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

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

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

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

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

(a) Job search shall be provided in a group setting where a participant is taught job-seeking skills, and may include a phone bank from which he contacts potential employers;

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

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

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

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

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

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

(c) At the conclusion of the OJT, the participant shall be retained

as a regular employee.

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

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

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

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

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

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

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

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

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

(a) An AWEP assignment shall be made with [~~limited to a~~] for-profit entities. [~~health care facility such as:~~

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

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

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

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

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

(f) The agency shall reassess and revise, if necessary, the individual's employability plan at the conclusion of participation in the component. [~~:~~

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

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

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

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

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

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

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

(e) The agency shall reassess and revise if necessary, the individuals employability plan at the conclusion of participation in the component. [~~:~~

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

(10) Post secondary education may be provided if:

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

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

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

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

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

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

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

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

(e) The assessment shall be based on:

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

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

(a) An employment goal for the participant;

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

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

(d) Other needs of the family.

(3) Special participation requirements for education.

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

1. The parent is not otherwise exempt; and
2. The parent lacks a high school diploma or has basic skills in reading or math below the 8.9 grade level.

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

1. The parent fails to make good progress in successfully completing educational activities; or
2. Prior to any assignment of the individual to educational activities it is determined, based on an educational assessment and the employment goal established in the individual's employability plan, that participation in education activities is inappropriate for the parent.

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

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

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

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

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

(4) The participant shall be attending:

(a) A JTPA-funded training program; or

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

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

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

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

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

1. GED;

2. Adult basic education;

3. Literacy; or

4. Other educational activities which could lead to employment.

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

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

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

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

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

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

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

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

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

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

(a) At the request of a JOBS participant;

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

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

(2) The conciliation shall be conducted by:

(a) The DSI;

(b) The DES; or

(c) Both agencies jointly.

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

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

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

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

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

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

(b) Dependent care is:

1. Not available for a dependent child;

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

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

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

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

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

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

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

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

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

(h) The participant is temporarily incarcerated;

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

1. Age;

2. Race;

3. Sex;

4. Color;

5. Disability;

6. Religious beliefs;

7. National origin; or

8. Political beliefs;

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

1. Consistently not being paid on schedule; or

2. The presence of a risk to the individual's health or safety;

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

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

(m) A household emergency occurs, such as:

1. Death of a member of the immediate family;

2. Entry into a spouse abuse center;

3. Natural disaster;

4. Court appearance;

5. Victim of crime; or

6. Flooded basement; [~~or~~]

(n) The participant receives a temporary military assignment;

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

(p) The participant is enrolled in a component activity which is not scheduled for the entire month, such as:

1. Summer school break; or

2. July break for adult education providers;

(q) The participant is employed and receiving wages for thirty (30) or more hours per week.

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

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

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

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

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

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

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

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

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

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

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

(c) In a case based on unemployment, the agency shall not take into account the needs of the second parent, unless the second parent:

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

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

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

(a) PA-33C, revised 1/92;
(b) PA-33D, revised 1/92;
(c) PA-218A, revised 7/94 [~~2/93~~];
(d) PA-219, revised 7/94 [~~11/92~~];
(e) JOBS-105, revised 6/91;
(f) JOBS-201, revised 1/91;
(g) JOBS-202, revised 10/94 [~~10/90~~];
(h) JOBS-204, revised 1/94; [~~and~~]
(i) JOBS-205, revised 8/91;
(j) JOBS-205A, revised 5/94;
(k) JOBS-245A, revised 2/94; and
(l) JOBS-246A, revised 2/94.

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

JOHN CLAYTON, Commissioner
MASTEN CHILDERS II, Secretary

APPROVED BY AGENCY: February 14, 1995

FILED WITH LRC: February 15, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 21, 1995 at 9 a.m. at the Health Services Auditorium, 1st Floor, CHR Building. Individuals interested in attending this hearing shall notify this agency in writing by March 16, 1995 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 K. Moore, Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4th Floor West, Frankfort, Kentucky 40621, (502) 564-7900.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Marty Mason, Director

(1) Type and number of entities affected: Currently, the AWEP component is only available in five counties in Kentucky. In December 1994, there were only 4 JOBS participants placed in the AWEP component. We believe the provisions in this amendment that apply to AWEP participants will have a minimum impact to any entities. The removal of the six month assessment for AWEP and OWEP participants should also have a minimal affect. Plans will be reassessed and revised at the end of participation in each of the components. Participants can spend their time obtaining work experience rather than duplicating information currently being shared by the provider and the participant. The provisions relating to the two new good cause reasons should also have a minimum impact to any entities.

(2) Direct and indirect cost or savings 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 comment received: None, written comments that were received did not address this issue.

(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: None, written comments that were received did not address this issue.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: The provisions that apply to the AWEP component will not require any additional compliance, reporting or paperwork requirements, but rather should decrease some of the paperwork currently being duplicated by eliminating the six month reassessment.

1. First year following implementation: See comments above.
2. Second and subsequent years: See comments above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings: This amendment should have a minimal fiscal impact on the cabinet. As of December 1994, the AWEP component was offered in only five counties and only four JOBS participants were AWEP placements. The provision regarding the elimination of the six month assessment should not have a fiscal impact nor will the addition of two new good cause reasons for not participating in the JOBS program.

1. First year: See direct and indirect cost or savings.
2. Continuing cost or savings: Same as item #1.
3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No additional requirements but with the elimination of the six month reassessment, there should be a reduction in the duplicate paperwork currently being completed by cabinet staff.

(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: JOBS Title IV-A and 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: None, written comments that were received did not address this issue.

(b) Kentucky: None, written comments that were received did not address this issue.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No other alternative methods were discussed.

(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: Not applicable.

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Eligibility conditions for AFDC must be applied on a consistent and equitable basis in accordance with federal regulations at 45 CFR 233.10(a)(1).

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 CFR 250

2. State compliance standards. The state compliance standards are the same as the federal minimum requirements.

3. Minimum or uniform standards contained in the federal mandate. All states are required to allow for good cause when JOBS participants are noncompliant or fail to accept employment when found.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. No

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. No

PROPOSED ADMINISTRATIVE REGULATIONS RECEIVED THROUGH NOON, FEBRUARY 1, 1995

GENERAL GOVERNMENT CABINET
Kentucky Department of Agriculture

302 KAR 20:075. Identification of "farm fresh" cattle.

RELATES TO: KRS Chapter 257
STATUTORY AUTHORITY: KRS 257.030
NECESSITY AND FUNCTION: To provide sellers of cattle a mechanism for identifying cattle as "farm fresh".

Section 1. (1) When delivered for sale at any stockyard, all cattle under eighteen (18) months of age that have not been delivered or sold at any stockyard within the previous twenty-seven (27) days may be identified as "farm fresh" cattle. The seller, or his agent, is responsible for making this designation to the stockyard upon delivery by use of a form approved by the Kentucky State Board of Agriculture. Animals delivered more than twenty-four (24) hours before any sale shall not be considered farm fresh. There shall be reasonable notice provided to potential buyers by the stockyard at the time of sale that the cattle are "farm fresh."

(2) Any person found by the department to have misrepresented cattle as farm fresh may be subject to said penalties set forth in KRS 257.990.

ED LOGSDON, Chairman
APPROVED BY AGENCY: December 15, 1994
FILED WITH LRC: February 15, 1995 at 8 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation will be held on Monday, March 27, 1995 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 March 22, 1995, 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: Stockyard owners and sellers of cattle.
(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 effects 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 effects on 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: All sellers of cattle will have to designate on a form at the stockyard whether cattle are "farm fresh."
2. Second and subsequent years: Same requirements.
(3) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: Minimal cost. Current personnel will be used to enforce.
2. Continuing costs or savings: Same
3. Additional factors increasing or decreasing costs: Same
(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:
(a) Geographical area in which administrative regulation will be implemented: This will be better for the health of cattle thereby increasing the revenues received from the sale of cattle.
(b) Kentucky: Same
(7) Assessment of alternative methods; reasons why alternatives were rejected: This regulation has been extensively discussed by interested parties and this seems to be the most reasonable solution.
(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 regulation furthers Kentucky health and disease control initiatives for cattle.
(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. All sellers of cattle are treated the same.

DEPARTMENT OF CORRECTIONS
Division of Local Facilities

501 KAR 12:010. Definitions.

RELATES TO: KRS 610.267
STATUTORY AUTHORITY: KRS 610.267
NECESSITY AND FUNCTION: KRS 610.267 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for youth alternative centers. This administrative regulation sets forth definitions.

Section 1. Definitions. (1) "Youth alternative center" means a nonsecure facility under the jurisdiction of the county jailer or an administrator located in a county which operates a secure detention facility. The center shall be used only for the detention of juveniles and shall not be a part of a county jail or other facility which houses adult offenders.
(2) "Jailer" means the duly elected or appointed official charged with the overall responsibility of administering the center.
(3) "Staff" means deputy jailers and other personnel involved in

the supervision, custody, care, or treatment of residents in the center.

(4) "Resident" means any juvenile who has been approved for placement by order of a court.

(5) "Medical authority" means the person or persons licensed and certified to provide medical care to residents in the center.

(6) "Resident sleeping area" means a room or group of rooms which provide sleeping space for the resident population.

(7) "Resident living area" means all areas other than sleeping areas which provide space for activities.

JACK LEWIS, Commissioner

APPROVED BY AGENCY: February 14 1995

FILED WITH LRC: February 15, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for March 23, 1995, at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Jack Damron, Department of Corrections, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact Person: Jack Damron

(1) Type and number of entities affected: Counties which operate secure detention facilities (two).

(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: None

(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: 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) 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: 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: Was tiering applied: No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution

FISCAL NOTE ON LOCAL GOVERNMENT

(1) Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

(2) State what unit, part or division of local government this administrative regulation will affect. County jailers and secure detention centers.

(3) State the aspect or service of local government to which this administrative regulation relates. This regulation relates to the local juvenile correctional system.

(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 (+/-): 0

Expenditures (+/-): 0

Other Explanation: At present there are only two (2) counties that have secure detention facilities. Counties with secure detention which construct youth alternative centers should realize savings in the future.

DEPARTMENT OF CORRECTIONS
Division of Local Facilities

501 KAR 12:020. Administration; management.

RELATES TO: KRS 610.267

STATUTORY AUTHORITY: KRS 610.267

NECESSITY AND FUNCTION: KRS 610.267 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for youth alternative centers. This administrative regulation sets forth procedures to be followed for the administration and management of youth alternative centers.

Section 1. Policy and Procedures - Organization. (1) The jailer or administrator shall develop and maintain an organizational chart and an operations manual of policy and procedure which has been adopted by the fiscal court and filed with the Department of Corrections.

(2) The written policy and procedures manual shall be made available to employees.

(3) The operations manual shall include the following aspects of the center's operation:

(a) Administration;
(b) Fiscal management;
(c) Personnel;
(d) Security and control;
(e) Sanitation and management;
(f) Medical services;
(g) Food services;
(h) Emergency and safety procedures;
(i) Classification;
(j) Resident programs;

(k) Resident services; and
(l) Admission and release.
(4) The operations manual shall be reviewed and updated at least annually. All revisions shall be marked with the effective date and filed with the Department of Corrections.

Section 2. Public Information. (1) The jailer shall develop and implement a procedure for the dissemination of information about the center to the public, to government agencies, and to the media. The public and residents shall have access to the procedure;
(2) Representatives of the media shall have access to the facility, consistent with the preservation of the juvenile's privacy and the maintenance of order and security in the facility;
(3) All official statements to the news media, relating to center administration policy, shall be made by the jailer only or his designee;
(a) Governmental agencies shall be provided with information pertinent only to their specific function and with the consent of the resident; and
(4) No information shall be released that is detrimental to another resident.

Section 3. Information Systems. The jailer shall establish and maintain an information system which shall comply with the requirements of this section.
(1) Center information and resident records shall be retained in written form or within computer records.
(2) Center information and resident records shall be stored in a secure manner so that they are protected from theft, loss, tampering, and destruction. Written guidelines shall specify the length of time a resident record shall be maintained after a resident's release from custody and the conditions under which archives are maintained.
(3) A written report shall be made of all extraordinary or unusual occurrences within forty-eight (48) hours of the occurrence. This report shall be placed in the resident or center record. Extraordinary or unusual occurrences shall include:
(a) Death of a resident;
(b) Attempted suicide or suicide;
(c) Serious injury, whether accidental or self-inflicted;
(d) Attempted escape or escape from center;
(e) Fire;
(f) Riot;
(g) Battery, whether by a staff member or resident;
(h) Sexual assaults; and
(i) Occurrence of contagious or infectious disease which poses a serious medical threat to the center.
(4) The center shall keep a log of daily activity.
(5) Each center shall maintain records on the types and hours of training completed by each employee. A current and accurate personnel record shall be maintained on each employee. Each employee shall have access to his individual record.

Section 4. Resident Records. (1) The information required by Title 501 of the Kentucky Administrative Regulations for admission and release shall be retained for each resident. Other information retained in each resident's center record shall include:
(a) Court orders;
(b) Personal property receipts;
(c) Infraction reports;
(d) Reports of disciplinary actions;
(e) Program involvement; and
(f) Caseworker assigned, if known;
(g) Unusual occurrences and in the case of death of a resident, disposition of the resident's property and remains.
(2) Medical records shall be maintained as required by Title 501 of the Kentucky Administrative Regulations.
(3) The jailer shall ensure that resident records are safeguarded in accordance with relevant federal and state laws and regulations.
(4) The jailer shall require that residents sign a "Release of Information Consent Form" prior to the release of information to individuals other than law enforcement or court officials. A copy of the signed consent form shall be maintained in the resident's record. This form shall include:
(a) Name of person, agency or organization requesting information;
(b) Name of facility releasing information;
(c) Specific information to be disclosed;
(d) Purpose of the information;
(e) Date consent form is signed;
(f) Signature of resident; and/or legal guardian as required by law;
(g) Signature of employee witnessing the resident's signature.

JACK LEWIS, Commissioner
APPROVED BY AGENCY: February 14 1995
FILED WITH LRC: February 15, 1995 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for March 23, 1995, at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Jack Damron, Department of Corrections, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact Person: Jack Damron
(1) Type and number of entities affected: Counties which operate secure detention facilities (two).
(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: None
(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: 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) 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: 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: Was tiering applied: No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution

FISCAL NOTE ON LOCAL GOVERNMENT

(1) Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

(2) State what unit, part or division of local government this administrative regulation will affect. County jailers and secure detention centers.

(3) State the aspect or service of local government to which this administrative regulation relates. This regulation relates to the local juvenile correctional system.

(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 (+/-): 0

Expenditures (+/-): 0

Other Explanation: At present there are only two (2) counties that have secure detention facilities. Counties with secure detention which construct youth alternative centers should realize savings in the future.

DEPARTMENT OF CORRECTIONS
Division of Local Facilities

501 KAR 12:030. Fiscal management.

RELATES TO: KRS 610.267

STATUTORY AUTHORITY: KRS 610.267

NECESSITY AND FUNCTION: KRS 610.267 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for youth alternative centers. This administrative regulation sets forth fiscal management procedures to be followed in youth alternative centers.

Section 1. Budgeting and Accounting. The center's budget and fiscal records shall be kept in accordance with the general records of the center.

Section 2. Canteen. As provided in KRS 441.135, each jailer or administrator may establish a canteen to provide residents with items approved by the jailer which are not supplied by the center.

JACK LEWIS, Commissioner

APPROVED BY AGENCY: February 14 1995

FILED WITH LRC: February 15, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for March 23, 1995, at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Jack Damron, Department of Corrections, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact Person: Jack Damron

(1) Type and number of entities affected: Counties which operate secure detention facilities (two).

(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: None

(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: 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) 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: 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: Was tiering applied: No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution

FISCAL NOTE ON LOCAL GOVERNMENT

(1) Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

(2) State what unit, part or division of local government this

administrative regulation will affect. County jailers and secure detention centers.

(3) State the aspect or service of local government to which this administrative regulation relates. This regulation relates to the local juvenile correctional system.

(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 (+/-): 0

Expenditures (+/-): 0

Other Explanation: At present there are only two (2) counties that have secure detention facilities. Counties with secure detention which construct youth alternative centers should realize savings in the future.

DEPARTMENT OF CORRECTIONS
Division of Local Facilities

501 KAR 12:040. Personnel.

RELATES TO: KRS 610.267

STATUTORY AUTHORITY: KRS 610.267

NECESSITY AND FUNCTION: KRS 610.267 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for youth alternative centers. This administrative regulation sets forth personnel procedures to be followed in youth alternative centers.

Section 1. Staffing. (1) Each center shall provide twenty-four (24) hour awake supervision.

(2) When female residents are housed in the center, the center shall provide female staff to perform twenty-four (24) hour awake supervision.

Section 2. Background Checks; Qualifications. (1) Prior to employment, all employees of the center shall be subject to a thorough background investigation to include criminal, medical, and employment histories.

(2) All employees of the center shall be at least twenty-one (21) years of age.

Section 3. Compensation. All employees of the center shall receive salaries at least equal to the state minimum wage law except where federal minimum wage law has to be applied.

Section 4. Training. All staff shall receive a minimum of forty (40) hours annual in-service training as approved by the Department of Corrections.

Section 5. Policy and Procedures. Written policy shall specify that equal employment opportunities exist for all positions.

Section 6. Code of Ethics. (1) The jailer or administrator shall make available to all employees a written code of ethics.

(2) The written code of ethics shall be incorporated in the center's policy and procedures manual and shall include the following:

(a) Employees shall not:

1. Exchange personal gifts or favors with residents, their family, or friends;

2. Accept any form of bribe or unlawful inducement;

3. Perform duties under the influence of intoxicants or consume intoxicants while on duty;

4. Violate or disobey established rules, administrative regulations, or lawful orders from a superior;

5. Discriminate against any residents on the basis of race, religion, creed, gender, national origin, or other individual characteristics;

6. Employ corporal punishment or unnecessary physical force;

7. Subject residents to any form of unwarranted physical or mental abuse;

8. Intentionally demean or humiliate residents;

9. Bring any type of weapon or item declared as contraband into the center without proper authorization;

10. Engage in critical discussion of staff members or residents in the presence of residents;

11. Divulge confidential information without proper authorization;

12. Withhold information which, in so doing, threatens the security of the center, its staff, visitors, or the community;

13. Through negligence, endanger the well-being of self or others;

14. Engage in any form of business or profitable enterprise with residents; or

15. Inquire about, disclose, or discuss details of a resident's charge other than as may be absolutely necessary in performing official duties.

(b) Employees shall:

1. Comply with all established rules, administrative regulations, and lawful orders from superiors;

2. Treat all residents in a fair, impartial manner; and

3. Report all violations of the code of ethics to the jailer.

(3) Any employee violation of this code of ethics shall be made a part of that employee's personnel file.

JACK LEWIS, Commissioner

APPROVED BY AGENCY: February 14 1995

FILED WITH LRC: February 15, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for March 23, 1995, at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Jack Damron, Department of Corrections, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact Person: Jack Damron

(1) Type and number of entities affected: Counties which operate secure detention facilities (two).

(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: None

(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: 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) 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: 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: Was tiering applied: No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution

FISCAL NOTE ON LOCAL GOVERNMENT

(1) Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

(2) State what unit, part or division of local government this administrative regulation will affect. County jailers and secure detention centers.

(3) State the aspect or service of local government to which this administrative regulation relates. This regulation relates to the local juvenile correctional system.

(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 (+/-): 0

Expenditures (+/-): 0

Other Explanation: At present there are only two (2) counties that have secure detention facilities. Counties with secure detention which construct youth alternative centers should realize savings in the future.

DEPARTMENT OF CORRECTIONS
Division of Local Facilities

501 KAR 12:050. Physical plant.

RELATES TO: KRS 610.267

STATUTORY AUTHORITY: KRS 610.267

NECESSITY AND FUNCTION: KRS 610.267 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for youth alternative centers. This administrative regulation sets forth standards and procedures to be followed in the design and construction of youth alternative centers.

Section 1. Purpose. The purpose of this administrative regulation is to provide minimum standards for the renovation and construction of youth alternative centers and for measuring compliance of existing centers in accordance with KRS 610.267.

Section 2. Consultation. The Department of Corrections shall provide for any county government which wishes to construct or remodel a youth alternative center, a consultant knowledgeable in the design, utilization, and operation of youth alternative centers. The consultant shall meet with the appropriate officials of that county and advise them concerning:

(1) Site selection;

(2) Probable need as it relates to capacity and types of residents to be housed;

(3) Sources of financing for constructing;

(4) Laws and administrative regulations relating to treatment of residents;

(5) Laws and administrative regulations relating to facilities for residents;

(6) Sources of revenue for operations of the center;

(7) Probable cost for operation of the center; and

(8) Potential for shared facilities with adjoining counties.

Section 3. Site Acceptance. No center shall be built without site acceptance by the Department of Corrections. The following criteria shall be considered in site selection:

(1) Size;

(2) Proximity to courts;

(3) Proximity to community resources;

(4) Availability of public transportation;

(5) Environmental health;

(6) Adequate parking; and

(7) Provisions for future expansion.

Section 4. Construction Documents. Prior to the renovation or construction of any youth alternative center, plans and specifications shall be submitted to the Department of Corrections for review and approval. Plans and specifications for youth alternative center renovation or construction shall contain the following criteria and documentation:

(1) A programming phase containing an:

(a) Evaluation of existing facility;

(b) Population analysis;

(c) Space requirements based on population analysis and standards for the center and site outlined in these Kentucky minimum standards for youth alternative centers;

(d) Staffing analysis;

(e) Cost analysis to include construction and operation cost;

(f) Financing alternatives, if applicable;

(g) Design-construction time schedule;

(h) Summary and recommendations; and

(i) Information concerning the programming phase shall only be submitted:

1. On major renovation or new construction; and

2. For information review purposes.

(2) A schematic phase containing:

(a) Scale drawings of each floor plan with all proposed rooms and areas one-eighth (1/8) inch minimum;

(b) Scale drawings of the site, locating the building, parking and other facilities one (1) inch = fifty (50) feet;

(c) Documentation of site as to:

1. Size;

2. Proximity to courts;

3. Proximity to community resources;

4. Availability of public transportation;

5. Environmental health;

6. Adequate parking; and

7. Provisions of future expansion.

(d) Sections through the proposed structure indicating ceiling heights of rooms, mechanical spaces, roof slopes and other related information;

(e) Scale elevation drawings of all exterior walls;

(f) Schematic cost estimate to include revised construction and operation costs; and

(g) A revised design-construction time schedule.

(3) A design development phase containing:

(a) Scale drawings on each floor plan with all proposed rooms and areas with their dimensions one-eighth (1/8) inch minimum;

(b) All necessary construction drawings including construction details;

(c) Specifications for all materials and workmanship;

(d) A proposed contract with general and special conditions;

(e) Engineering calculations for the foundation, structure, heating, ventilating, air conditioning, lighting and plumbing; and

(f) Detailed estimates of cost of land, site development, construction, financing, professional services, equipment and furnishings.

(4) A construction document phase containing:

(a) Revised design development construction drawings following review by all applicable agencies signed by an architect registered in the Commonwealth of Kentucky and revised if necessary to include all changes required by the Department of Corrections; and

(b) Revised design development specifications of material and workmanship following review by all applicable agencies.

(5) A contract administration phase containing:

(a) Signed copies of all contracts for construction, financing and bonding;

(b) Signed copies of all construction permits;

(c) Documentation of review by all other applicable state agencies; and

(d) All change orders shall be submitted to the Department of Corrections for review and approval.

Section 5. Approval of Renovation, Construction Plans and Specifications. (1) The Department of Corrections shall review all submissions within thirty (30) days of receipt and issue a letter of approval, acceptance with required changes, or rejection with reasons. No construction shall be started until the construction document phase as required in Section 4(4) of this administrative regulation has been approved.

(2) Depending on the site of the proposed construction, renovation or addition, the Department of Corrections may combine two (2) or more phases as outlined in this section for review and approval.

(3) All changes to the plans shall require redraws unless specifically exempted by the Department of Corrections. Specifications must be rewritten to reflect changes.

Section 6. Waiver of Compliance. (1) The Department of Corrections may grant a waiver of the implementation of the physical plant standards for an existing center if the department determines:

(a) That strict compliance will cause unreasonable difficulties;

(b) That a waiver will not seriously affect the security, supervision of prisoners, programs, or the safe, healthful, or efficient operations of the center; and

(c) That compliance is to be achieved in a manner other than that which is specified, but in a manner which is sufficient to meet the intent of these standards.

(2) When a waiver from a standard is desired, the responsible local authority shall submit a written request to the Department of Corrections. The written request shall include the following information:

(a) Citation of the specific standard involved;

(b) Identification and description of the specific difficulties involved in meeting strict compliance;

(c) Description of alternative proposed; and

(d) Provision of sufficient documentation which will demonstrate that the waiver, if granted, will not jeopardize the security, supervision of residents, programs, or the safe, healthful, or efficient operation of the center.

(3) A waiver, if granted by the Department of Corrections, shall apply only to the petitioner for the specific situation cited and for the period of time specified and shall include any requirements imposed by the department as conditions upon the waiver. No waiver shall be granted for longer than twelve (12) months. Any waiver granted for a twelve (12) month period shall be reviewed at the end of the period for reapproval.

Section 7. Facility Design. (1) Each center shall have two (2) separate entrances, a resident entrance and a service entrance. The Department of Corrections may permit these entrances to be combined.

(a) Residents' entry. The purpose of this entrance shall be to provide secure and controlled access to the center for residents.

(b) Service entrance. The purpose of this entrance shall be to provide access to service vehicles and delivery trucks with minimum security risks. It should be located in close proximity to storage rooms and the kitchen area.

(2) All exits in the center shall be controlled.

(3) The center shall have all facilities and services required for or used by residents. Support areas in the secure detention center may be used by youth alternative center residents. Youth alternative residents shall be kept separate at all times from secure detention residents. It shall contain the following function areas:

(a) Control area. This area shall be located in close proximity to the resident entrance and shall be used to monitor the movement of residents in and out of the facility.

(b) Visitation. Adequate space shall be made available for contact visits between residents and families. Tables and chairs shall be provided. Bathroom facilities shall be accessible.

(c) Multipurpose room. The purpose of this area is to provide space for assembly of residents for specific program activities. Adequate furnishings shall be provided.

(d) Conference area. Space shall be available to provide for confidential conferences between residents and lawyers, counselors, clergy, etc. A table and chairs shall be provided.

(e) Resident living areas. Resident living areas shall provide a minimum of sixty five (65) square feet of space for activities per resident.

(f) Resident sleeping areas.

1. All sleeping rooms shall provide a minimum of fifty (50) square feet per resident. No more than eight (8) residents shall be placed in a single sleeping room.

2. Each resident has provided in the sleeping room, at a minimum: bed, mattress and pillow, supply of bed linen, chair, and closet/locker space for the storage of personal items.

3. Sleeping areas shall have lighting of at least twenty (20) foot-candles in reading and grooming area with a nightlight capable of providing five (5) foot-candles of light.

4. The facility shall have one (1) toilet for every eight (8) residents, one (1) wash basin for every eight (8) residents and one (1) shower stall for every eight (8) residents.

5. Phone facilities shall be available for resident use.

6. Provide temperature ranges within comfort zones (sixty-five (65) degree Fahrenheit to eighty-five (85) degree Fahrenheit).

7. Provide ventilation to meet air exchange as required in the State Health Code.

(g) Kitchen. The purpose of this area is to provide sufficient space and equipment for preparing meals for the maximum rated capacity of the center. Design features shall include compliance with standards for the State Food Service Code. If food is not prepared in the facility, a food distribution area shall be substituted.

(h) Laundry facilities. Laundry facilities shall be available or provided.

(i) Furnishings. All furnishings in the center which are accessible by residents shall be noncombustible and nontoxic as approved by the Department of Corrections.

JACK LEWIS, Commissioner
APPROVED BY AGENCY: February 14 1995
FILED WITH LRC: February 15, 1995 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for March 23, 1995, at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Jack Damron, Department of Corrections, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact Person: Jack Damron
(1) Type and number of entities affected: Counties which operate secure detention facilities (two).
(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: None
(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: 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) 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: 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: Was tiering applied: No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution

FISCAL NOTE ON LOCAL GOVERNMENT

(1) Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes
(2) State what unit, part or division of local government this administrative regulation will affect. County jailers and secure detention centers.
(3) State the aspect or service of local government to which this administrative regulation relates. This regulation relates to the local juvenile correctional system.
(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 (+/-): 0
Expenditures (+/-): 0
Other Explanation: At present there are only two (2) counties that have secure detention facilities. Counties with secure detention which construct youth alternative centers should realize savings in the future.

DEPARTMENT OF CORRECTIONS
Division of Local Facilities

501 KAR 12:060. Security; control.

RELATES TO: KRS 610.267
STATUTORY AUTHORITY: KRS 610.267
NECESSITY AND FUNCTION: KRS 610.267 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for youth alternative centers. This administrative regulation sets forth security procedures to be followed in youth alternative centers.

Section 1. Policy and Procedure. (1) Each jailer or administrator shall develop a written policy and procedure governing all security aspects of the center's operations.
(2) The Department of Corrections shall provide technical assistance to the jailer or administrator in his efforts to formulate such written policy and procedure.
(3) These policies and procedures shall include:
(a) Resident rules and administrative regulations;
(b) Staffing;
(c) Searches of resident and of living areas;
(d) Visitation;
(e) Key control;
(f) Resident head counts;
(g) Movement of residents;
(h) Emergency situations;
(i) Center schedule; and
(j) Administering medication.

Section 2. Resident Supervision. (1) Center staff shall provide continuous supervision. There shall be a minimum of two (2) staff on duty at all times in the facility, one (1) of whom is female when females are residing in the center and one (1) of whom is male when males are residing at the center.
(2) The center shall have a system to physically count residents that includes accountability for residents assigned to work and

educational release, furloughs and other approved absences.

Section 3. Security Procedures. (1) Each jailer or administrator shall establish a procedure for inspecting all facility areas accessible to residents for contraband and physical security at least weekly.

(a) Isolated security spot checks for contraband shall be conducted daily.

(b) Items considered as contraband or items permitted in the center shall be clearly defined in the center rules.

(c) There shall be a written procedure for reporting security irregularities and for confiscating contraband.

(2) No weapon, ammunition, chemical agent, related security equipment, which represents the potential of being used as a weapon shall be permitted in the center without authorization by the jailer or administrator.

(3) All safety equipment shall be inspected monthly to ensure they are maintained in proper working order.

(4) All tools, toxic, corrosive, and flammable substances, and other potentially dangerous supplies and equipment shall be stored in a locked area which is secure.

(5) Tools, supplies, and equipment which are hazardous shall be used by residents only under the direct supervision of center personnel.

(6) At no time shall a resident be assigned to a position of authority over any other resident.

(7) Residents and their belongings may be searched whenever entering the center.

(8) Written procedures shall be developed for transporting outside the center.

(9) All centers shall have key-control procedures.

Section 4. Daily Center Log; Special Reports. A daily center log shall be kept current and reflect all significant occurrences within the center. Special reports shall include:

(1) Use of force;
(2) Disciplinary actions;
(3) Medical or mental health treatment;
(4) Feeding schedule and menus;
(5) Extraordinary occurrences:
(a) Fires;
(b) Assaults;
(c) Suicide or attempted suicide;
(d) Escape or attempted escape;
(6) Resident vandalism:
(a) Destruction of center property.
(b) Flooding of plumbing fixtures.
(7) Staff roster for each shift;
(8) Visitors' log;
(9) Fire planning sessions.

JACK LEWIS, Commissioner

APPROVED BY AGENCY: February 14 1995

FILED WITH LRC: February 15, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for March 23, 1995, at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Jack Damron, Department of Corrections, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact Person: Jack Damron

(1) Type and number of entities affected: Counties which operate secure detention facilities (two).

(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: None

(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: 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) 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: 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: Was tiering applied: No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution

FISCAL NOTE ON LOCAL GOVERNMENT

(1) Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

(2) State what unit, part or division of local government this administrative regulation will affect. County jailers and secure detention centers.

(3) State the aspect or service of local government to which this administrative regulation relates. This regulation relates to the local juvenile correctional system.

(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 (+/-): 0
Expenditures (+/-): 0
Other Explanation: At present there are only two (2) counties that have secure detention facilities. Counties with secure detention which construct youth alternative centers should realize savings in the future.

DEPARTMENT OF CORRECTIONS
Division of Local Facilities

501 KAR 12:070. Safety; emergency procedures.

RELATES TO: KRS 610.267
STATUTORY AUTHORITY: KRS 610.267
NECESSITY AND FUNCTION: KRS 610.267 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for youth alternative centers. This administrative regulation sets forth safety and emergency procedures to be followed in youth alternative centers.

Section 1. Policy and Procedure. (1) Each center shall have a written policy and procedure which specify fire prevention regulations and practices to ensure the safety of residents, visitors, and staff. These shall include:
(a) Provision of fire emergency planning sessions for staff and residents at least quarterly;
(b) Written documentation of fire planning sessions;
(c) A fire safety inspection by the Department of Corrections at least once a year;
(d) Inspection and testing of fire protection equipment by qualified persons at least annually with documented visual inspections by staff monthly;
(e) Smoking restrictions and administrative regulations; and
(f) Written evacuation plan coordinated with local fire officials and reviewed annually.
(2) Each center shall have written policy and procedures for emergency situations including:
(a) Escapes;
(b) Taking of hostages;
(c) Riots;
(d) Food poisoning;
(e) Civil disturbances in the community;
(f) Natural disasters;
(g) Suicides; and
(h) Other deaths and disorder.

Section 2. Physical Plant. (1) The center shall comply with the NFPA Life Safety Code (1981 Edition) which is hereby incorporated by reference.
(2) Each center shall have exits which are distinctly and permanently marked, visible at all times, kept clear, and maintained in usable condition.
(3) Each center shall have equipment necessary to maintain essential lights.
(4) Each center shall have an approved fire alarm and smoke detection system.
(5) Each center may be required to install an approved sprinkler system and a smoke evacuation system.

JACK LEWIS, Commissioner
APPROVED BY AGENCY: February 14 1995
FILED WITH LRC: February 15, 1995 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for March 23, 1995, at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Jack Damron, Department of Corrections, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact Person: Jack Damron
(1) Type and number of entities affected: Counties which operate secure detention facilities (two).
(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: None
(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: 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) 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: 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: Was tiering applied: No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution

FISCAL NOTE ON LOCAL GOVERNMENT

(1) Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes
(2) State what unit, part or division of local government this

administrative regulation will affect. County jailers and secure detention centers.

(3) State the aspect or service of local government to which this administrative regulation relates. This regulation relates to the local juvenile correctional system.

(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 (+/-): 0

Expenditures (+/-): 0

Other Explanation: At present there are only two (2) counties that have secure detention facilities. Counties with secure detention which construct youth alternative centers should realize savings in the future.

DEPARTMENT OF CORRECTIONS
Division of Local Facilities

501 KAR 12:080. Sanitation; hygiene.

RELATES TO: KRS 610.267

STATUTORY AUTHORITY: KRS 610.267

NECESSITY AND FUNCTION: KRS 610.267 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for youth alternative centers. This administrative regulation sets forth procedures to provide proper sanitation and hygiene in youth alternative centers.

Section 1. Procedures. (1) The jailer or administrator shall provide for the control of vermin and pests.

(2) The jailer or administrator shall provide for both solid and liquid waste disposal.

(3) The jailer or administrator shall have a written preventative maintenance plan which includes:

(a) A cleaning schedule for various locations and items in the center;

(b) A schedule for inspections by the jailer or administrator;

(c) A schedule for trash and garbage removal; and

(d) A schedule for periodic inspection and maintenance of specific mechanical equipment.

(4) The center shall have fresh and purified air circulating within resident living and activity areas.

(5) The center shall furnish clean sanitized bedding to each resident, including:

(a) One (1) penal mattress;

(b) One (1) blanket, when conditions require;

(c) Two (2) sheets;

(d) One (1) penal pillow; and

(e) One (1) pillowcase.

(6) Resident bedding shall be cleaned on a regular basis according to the following schedule:

(a) Sheets, pillowcases, and mattress cover shall be cleaned at least once per week;

(b) Blankets shall be cleaned upon reissue or quarterly, whichever is sooner;

(c) Mattresses and pillows shall be cleaned quarterly.

(7) Each resident shall be issued a clean towel. Towels shall be laundered every fourth day.

(8) Provisions shall be made for laundering resident clothing at least every fourth day.

(9) All floors, toilets, sinks, and showers in the center shall be maintained in a clean condition.

(10) All residents shall be issued or permitted to obtain the following hygienic items:

(a) Soap;

(b) Toothbrush;

(c) Toothpaste;

(d) Toilet paper; and

(e) Female sanitary supplies (where applicable). Indigent residents shall be furnished these items by the center.

(11) Hair cutting services or sanitized hair cutting equipment shall be available to all residents.

(12) Shaving equipment shall be available to all residents.

JACK LEWIS, Commissioner

APPROVED BY AGENCY: February 14 1995

FILED WITH LRC: February 15, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for March 23, 1995, at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Jack Damron, Department of Corrections, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact Person: Jack Damron

(1) Type and number of entities affected: Counties which operate secure detention facilities (two).

(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: None

(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: 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) 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: 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: Was tiering applied: No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution

FISCAL NOTE ON LOCAL GOVERNMENT

(1) Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

(2) State what unit, part or division of local government this administrative regulation will affect. County jailers and secure detention centers.

(3) State the aspect or service of local government to which this administrative regulation relates. This regulation relates to the local juvenile correctional system.

(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 (+/-): 0

Expenditures (+/-): 0

Other Explanation: At present there are only two (2) counties that have secure detention facilities. Counties with secure detention which construct youth alternative centers should realize savings in the future.

DEPARTMENT OF CORRECTIONS
Division of Local Facilities

501 KAR 12:090. Medical services.

RELATES TO: KRS 610.267

STATUTORY AUTHORITY: KRS 610.267

NECESSITY AND FUNCTION: KRS 610.267 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for youth alternative centers. This administrative regulation sets forth procedures to provide proper medical services in youth alternative centers.

Section 1. Procedure Services. (1) The center's medical services shall be provided by contracting with a Kentucky licensed health care provider.

(2) The medical staff and mental health professionals shall not be restricted by the jailer or administrator in the performance of their duties except to adhere to the center's security requirements.

(3) All health care staff working in the center shall comply with state licensure and certificate requirements commensurate with health care personnel working elsewhere in the community. Copies of such licenses and certificates for health care staff employed by the center shall be maintained on file within the center.

(4) A daily medical log shall be maintained documenting specific medical treatment rendered in the center. This log shall be kept current to the preceding hour.

(5) Residents shall not perform any medical functions within the center.

(6) Residents shall be informed verbally and in writing at the time of admission the methods of gaining access to medical care within the center.

(7) All medical procedures shall be performed according to written and standing orders issued by the responsible medical authority.

(8) Medical and mental health screening information shall be obtained by staff upon admission to the center. The medical screening inquiry shall include:

(a) Current illnesses and health problems;

(b) Medications taken and special health requirements;

(c) Screening of other health problems designated by the medical authority;

(d) Behavioral observation, state of consciousness and mental status;

(e) Notation of body deformities, markings, bruises, lesions, jaundice, ease of movement, and other distinguishing characteristics;

(f) Condition of skin, including rashes and infestations;

(g) Disposition and referral of residents to qualified medical personnel on an emergency basis.

(9) Medical, dental and psychological care for residents shall be provided.

(10) At least one (1) center staff member per shift shall be trained in first aid procedures including CPR.

(11) Medical research shall not be permitted on any resident in the center.

(12) Access to the resident's medical file shall be controlled by the medical authority and the jailer or administrator. The physician-patient privilege shall apply to the medical record. The medical record is separate from custody and other administrative records of the center.

(13) In accordance with KRS 72.025, a postmortem examination shall be conducted on all residents who die while in the custody of the jailer or administrator.

(14) All center staff who administers medications to residents shall be trained in the proper procedures as outlined in the policy and procedures manual.

(15) The center shall have first aid kits available at all times.

(16) When a urine surveillance program is in effect there shall be written procedures for carrying out the program.

JACK LEWIS, Commissioner

APPROVED BY AGENCY: February 14 1995

FILED WITH LRC: February 15, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for March 23, 1995, at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Jack Damron, Department of Corrections, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact Person: Jack Damron

(1) Type and number of entities affected: Counties which operate secure detention facilities (two).

(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: None

(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: 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) 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: 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: Was tiering applied: No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution

FISCAL NOTE ON LOCAL GOVERNMENT

(1) Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

(2) State what unit, part or division of local government this administrative regulation will affect. County jailers and secure detention centers.

(3) State the aspect or service of local government to which this administrative regulation relates. This regulation relates to the local juvenile correctional system.

(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 (+/-): 0

Expenditures (+/-): 0

Other Explanation: At present there are only two (2) counties that have secure detention facilities. Counties with secure detention which construct youth alternative centers should realize savings in the future.

DEPARTMENT OF CORRECTIONS
Division of Local Facilities

501 KAR 12:100. Food services.

RELATES TO: KRS 610.267

STATUTORY AUTHORITY: KRS 610.267

NECESSITY AND FUNCTION: KRS 610.267 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for youth alternative centers. This administrative regulation sets forth procedures for the delivery of proper food services in youth alternative centers.

Section 1. Procedures. (1) The center shall comply with the Kentucky Food Service Establishment Act and State Food Service Code (KRS 219.019 through 219.081) and the Kentucky Occupational Safety and Health Standards for General Industry (803 KAR 2:020 and 29 CFR Part 1910).

(2) The jailer or administrator shall provide residents with a nutritionally adequate diet.

(3) The jailer or administrator shall provide for religious diets.

(4) The jailer or administrator shall provide for medical diets where prescribed by a medical authority.

(5) The center shall maintain accurate records of all meals served.

(6) Food shall not be used for disciplinary purposes.

(7) A nutritionist or dietician shall approve the nutritional value of the center menu on an annual basis.

(8) A staff member shall directly supervise all food prepared within the center.

(9) All food shall be served under the direct supervision of a staff member.

(10) The center shall have sufficient cold and dry food storage facilities if food is prepared in the center.

JACK LEWIS, Commissioner

APPROVED BY AGENCY: February 14 1995

FILED WITH LRC: February 15, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for March 23, 1995, at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Jack Damron, Department of Corrections, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact Person: Jack Damron

(1) Type and number of entities affected: Counties which operate secure detention facilities (two).

(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: None

(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: 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) 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: 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: Was tiering applied: No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution

FISCAL NOTE ON LOCAL GOVERNMENT

(1) Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

(2) State what unit, part or division of local government this administrative regulation will affect. County jailers and secure detention centers.

(3) State the aspect or service of local government to which this administrative regulation relates. This regulation relates to the local juvenile correctional system.

(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 (+/-): 0

Expenditures (+/-): 0

Other Explanation: At present there are only two (2) counties that have secure detention facilities. Counties with secure detention which construct youth alternative centers should realize savings in the future.

DEPARTMENT OF CORRECTIONS
Division of Local Facilities

501 KAR 12:110. Classification.

RELATES TO: KRS 610.267
STATUTORY AUTHORITY: KRS 610.267

NECESSITY AND FUNCTION: KRS 610.267 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for youth alternative centers. This administrative regulation sets forth the procedure for the classification of residents.

Section 1. Procedures. (1) Each center shall develop an appropriate resident classification system, which shall be included in the facility's written policy and procedure manual.

(2) The center shall establish guidelines for admission to the facility.

(3) The center shall establish a policy, in agreement with the court, to transfer residents to the secure detention facility whose behavior is not suitable for the youth alternative center.

(4) The resident classification system shall provide for the separation of male and female residents in sleeping areas.

(5) Program evaluation of each resident by a staff no less than once per month and, whenever there is a change in the residents status.

(6) The classification system shall prohibit discrimination or segregation based on race, color or national origin.

JACK LEWIS, Commissioner

APPROVED BY AGENCY: February 14 1995

FILED WITH LRC: February 15, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for March 23, 1995, at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Jack Damron, Department of Corrections, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact Person: Jack Damron

(1) Type and number of entities affected: Counties which operate secure detention facilities (two).

(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: None

(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: 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) 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: 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: Was tiering applied: No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution

FISCAL NOTE ON LOCAL GOVERNMENT

(1) Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

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(3) State the aspect or service of local government to which this administrative regulation relates. This regulation relates to the local juvenile correctional system.

(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 (+/-): 0

Expenditures (+/-): 0

Other Explanation: At present there are only two (2) counties that have secure detention facilities. Counties with secure detention which construct youth alternative centers should realize savings in the future.

DEPARTMENT OF CORRECTIONS
Division of Local Facilities

501 KAR 12:120. Admission; release.

RELATES TO: KRS 610.267

STATUTORY AUTHORITY: KRS 610.267

NECESSITY AND FUNCTION: KRS 610.267 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for youth alternative centers. This administrative regulation sets forth admission and release procedures.

Section 1. Policy and Procedure. Each center shall develop written admission, orientation, and release procedures to be included in the center's policy and procedure manual.

Section 2. Admission. (1) The center staff shall ensure that each resident is admitted under proper written legal authority.

(2) The admitting officer shall make certain that all required forms are complete and that information is current.

(3) The center staff shall conduct a search of residents and their possessions upon admission.

(a) Each resident shall be searched for contraband in such a manner as responsible staff reasonably determine is necessary to protect the safety of fellow residents, staff and institutional security. Such search shall be conducted in a private area and in a manner which protects the resident's dignity to such extent as possible in that particular center.

(b) When a strip search is conducted, it shall be done only on reasonable suspicion that is based upon the existence of objective information that could predict the likelihood of the presence of a weapon, drugs, or other items of contraband concealed on a particular resident. The criteria used to determine reasonable suspicion shall include but not be limited to the following:

1. A current offense involving felony violence, drug charges, or fugitive status.

2. A criminal history of offenses involving the use of a weapon or the possession of contraband.

3. Institutional behavior or history that indicates possession or manufacturing of contraband, the refusal to submit to a clothed pat-down search, or a clothed pat-down search reveals the possession of contraband.

4. A person in custody has contact with the public by a contact visit, court appearance, or after transported from an area of public exposure.

5. The court has ordered commitment to custody after arraignment, conviction, or sentencing.

(c) When a strip search of a resident is conducted it shall be performed by a staff person of the same sex as the resident.

(d) The probing of body cavities shall not be done except where there is reasonable suspicion to believe that the resident is carrying contraband there and such search shall only be conducted by a physician or registered nurse in a private location and under sanitary conditions.

(4) Each center shall develop written policies and procedures, specifying the personal property that residents may retain in their possession.

(a) Any cash or personal property which is taken from the resident upon admission shall be listed by complete description on a receipt form, and securely stored pending the resident's release. The receipt shall be signed by the receiving staff person and the resident.

(b) Personal property released to a third party must have the resident's signature of approval or court order, and the signature receipt of the third party.

Section 3. Orientation. (1) As soon after assignment as possible an oral or written orientation shall be made available to each resident. Special assistance shall be given to illiterate and non-English speaking residents.

(2) The orientation shall provide the resident with information regarding his confinement including, the following:

(a) Information pertaining to rising and retiring, meals, mail procedures, work assignments, telephone privileges, visitation, correspondence, commissary, medical care, and other matters related to the conditions of the resident's confinement;

(b) Rules of resident conduct;

(c) Disciplinary procedures;

(d) Information regarding programs (work, educational and vocational training, counseling, and other social services);

(e) Procedures for making requests or registering complaints with the center's staff, judiciary, and Department of Corrections personnel.

Section 4. Release. (1) Written legal authorization shall be required prior to the release or removal of any resident from confinement.

(2) When a resident is released or removed for any legal purposes to the custody of another, the identity or receiving authority

shall be verified.

(3) A written record shall be kept of the time, purpose, date, and authority for release or removal from confinement, and into whose custody the resident is released or removed.

(4) Prior to the release or removal of a resident, the receiving authority shall sign an authorized release form.

(5) Before the jailer or administrator releases a resident to an out-of-state jurisdiction, he shall consult with the appropriate prosecuting office in the county.

(6) Any property, not legally confiscated or retained, receipted from the resident upon admission shall be returned to the resident at the time of release.

(7) Each resident shall sign a receipt for property returned at the time of release.

(8) Any complaint regarding property returned must be submitted in writing with specific details within twenty-four (24) hours.

JACK LEWIS, Commissioner

APPROVED BY AGENCY: February 14 1995

FILED WITH LRC: February 15, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for March 23, 1995, at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Jack Damron, Department of Corrections, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact Person: Jack Damron

(1) Type and number of entities affected: Counties which operate secure detention facilities (two).

(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: None

(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: 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) 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: 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: Was tiering applied: No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution

FISCAL NOTE ON LOCAL GOVERNMENT

(1) Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

(2) State what unit, part or division of local government this administrative regulation will affect. County jailers and secure detention centers.

(3) State the aspect or service of local government to which this administrative regulation relates. This regulation relates to the local juvenile correctional system.

(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 (+/-): 0

Expenditures (+/-): 0

Other Explanation: At present there are only two (2) counties that have secure detention facilities. Counties with secure detention which construct youth alternative centers should realize savings in the future.

DEPARTMENT OF CORRECTIONS
Division of Local Facilities

501 KAR 12:130. Resident programs; services.

RELATES TO: KRS 610.267

STATUTORY AUTHORITY: KRS 610.267

NECESSITY AND FUNCTION: KRS 610.267 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for youth alternative centers. This administrative regulation sets forth procedures for resident programs and services.

Section 1. Programs. (1) Written policy and procedure shall provide that resident programs and services are available and include, educational services, social services, religious services, recreation and leisure time activities and library services.

(2) Policy and procedures shall establish guidelines for residents as to acceptable means of transportation to and from work, school and programs.

(3) There shall be written procedures for the verification and monitoring of the resident's work, school, or program status. A written schedule shall be maintained for program release to include: time of departure, destination, telephone number and address of program location and time of return. Periodic monitoring of a resident's

adherence to the approved schedule shall occur.

Section 2. Educational Programs. Educational opportunities shall be made available to all residents. Educational programs shall be designed to assist detained residents in keeping up with their studies.

Section 3. Religious Programs. Written policy and procedure shall ensure the constitutional rights of residents to voluntarily practice their own religious activities, subject only to those limitations necessary to maintain the order and security of the center.

Section 4. Recreation Programs. (1) Written policy and procedure shall provide all residents with the opportunity to participate in an average of one (1) hour of physical activity per day. There shall be outdoor exercise when weather permits.

(2) Leisure time and recreation programs shall be scheduled to permit residents to participate in such activities as board games, arts and crafts, radio and television to relieve idleness and boredom.

(3) Library services. Library services shall be available to all residents.

Section 5. Volunteers. The policy and procedure manual shall establish guidelines for the selection and use of volunteers in the facility.

JACK LEWIS, Commissioner

APPROVED BY AGENCY: February 14 1995

FILED WITH LRC: February 15, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for March 23, 1995, at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Jack Damron, Department of Corrections, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact Person: Jack Damron

(1) Type and number of entities affected: Counties which operate secure detention facilities (two).

(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: None

(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: 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) 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: 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: Was tiering applied: No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution

FISCAL NOTE ON LOCAL GOVERNMENT

(1) Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

(2) State what unit, part or division of local government this administrative regulation will affect. County jailers and secure detention centers.

(3) State the aspect or service of local government to which this administrative regulation relates. This regulation relates to the local juvenile correctional system.

(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 (+/-): 0

Expenditures (+/-): 0

Other Explanation: At present there are only two (2) counties that have secure detention facilities. Counties with secure detention which construct youth alternative centers should realize savings in the future.

DEPARTMENT OF CORRECTIONS
Division of Local Facilities

501 KAR 12:140. Resident rights.

RELATES TO: KRS 610.267

STATUTORY AUTHORITY: KRS 610.267

NECESSITY AND FUNCTION: KRS 610.267 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for youth alternative centers. This administrative regulation sets forth procedures to ensure resident rights.

Section 1. Policy and Procedure. (1) Each center shall have a written statement of resident rights which shall include:

(a) Access to courts;

(b) Access to attorney;

(c) Mail;
(d) Telephone;
(e) Grievances;
(f) Search and seizure;
(g) Disciplinary procedure;
(h) Racial segregation;
(i) Medical care;
(j) Counseling;
(k) Religion.

The statement of resident rights shall be posted in a conspicuous place in the living areas of the center and a copy shall be made available to the resident upon request.

(2) The jailer or administrator shall not prohibit a resident's right of access to the judicial process.

(3) The jailer or administrator shall ensure the right of residents to have confidential access to their attorney and their authorized representative.

(4) The jailer or administrator shall have a written policy which defines the center's visitation rules and administrative regulations, which shall include:

(a) A schedule identifying no fewer than two (2) visiting days each week, one (1) of which must be during the weekend;

(b) At least one (1) visit per week per resident shall be allowed except when a resident has been assessed a disciplinary penalty for an infraction of rules;

(c) Visits shall not be less than fifteen (15) minutes;

(d) Two (2) or more persons permitted to visit at the same time shall count as a single visit.

(5) Attorneys, clergy, and medical personnel shall be permitted to visit residents at reasonable hours other than during regularly scheduled visiting hours and shall not count as an allotted visit.

(6) Visitors shall register before admission.

Section 2. Mail. (1) The jailer or administrator shall have a written policy and procedure for receiving and sending mail that protects the resident's personal rights and provides for reasonable security practices consistent with the operation of the center.

(2) Residents shall be allowed to correspond with anyone so long as such correspondence does not violate any state or federal law except that caution shall be taken to protect the resident's rights in accordance with court decisions regarding correspondence.

(3) Incoming mail may be inspected for contraband items prior to delivery unless such mail is received from the courts, attorney of record or public officials, then it may be opened and inspected in the presence of the resident.

Section 3. Telephone. (1) Written policy and procedure shall permit each resident to complete at least one (1) telephone phone call each week. Any expense incurred for calls shall be borne by the resident or the party called.

(2) If telephone calls are monitored, the resident shall be notified.

(3) Telephone privileges may be suspended for a designated period of time if rules are violated.

Section 4. Religion. (1) Residents shall be granted the right to practice their religion within limits necessary to maintain institutional order and security.

(2) Residents shall be afforded an opportunity to participate in religious services and receive religious counseling within the center.

(3) Residents shall not be required to attend or participate in religious services or discussions.

Section 5. Access to Programs. The jailer or administrator shall ensure equal access to programs and services for all residents provided the security and order of the center are not jeopardized.

Section 6. Grievance Procedure. The jailer or administrator shall have a written resident grievance procedure which shall be available to all residents. These procedures shall include provisions for:

(1) Responses, within a reasonable time limit, to all grievance complaints;

(2) Equal access to all residents;

(3) Guarantees against reprisal;

(4) A minimum of one (1) level of appeal.

Section 7. Searches. Each search of a resident for contraband shall follow the procedures as established by 501 KAR 12:120.

Section 8. Disciplinary Rights. Each center shall have a written policy and procedure for maintaining discipline which is consistent with constitutional requirements for due process.

Section 9. Medical. Each resident shall be afforded access to necessary medical care.

JACK LEWIS, Commissioner

APPROVED BY AGENCY: February 14 1995

FILED WITH LRC: February 15, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for March 23, 1995, at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Jack Damron, Department of Corrections, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact Person: Jack Damron

(1) Type and number of entities affected: Counties which operate secure detention facilities (two).

(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: None

(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: 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) 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: 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: Was tiering applied: No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution

FISCAL NOTE ON LOCAL GOVERNMENT

(1) Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

(2) State what unit, part or division of local government this administrative regulation will affect. County jailers and secure detention centers.

(3) State the aspect or service of local government to which this administrative regulation relates. This regulation relates to the local juvenile correctional system.

(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 (+/-): 0

Expenditures (+/-): 0

Other Explanation: At present there are only two (2) counties that have secure detention facilities. Counties with secure detention which construct youth alternative centers should realize savings in the future.

DEPARTMENT OF CORRECTIONS
Division of Local Facilities

501 KAR 12:150. Hearings, procedures, disposition.

RELATES TO: KRS 610.267

STATUTORY AUTHORITY: KRS 441.075, 441.095

NECESSITY AND FUNCTION: The Commissioner of the Department of Corrections is authorized by KRS 610.267 to hear matters covered by the order of the department requesting youth alternative centers to comply with the minimum standards pursuant to KRS 441.075, 441.095 and to issue, modify or repeal the order at the conclusion of the hearing.

Section 1. Definitions. (1) "Commissioner" means the Commissioner of the Department of Corrections.

(2) "Department" means the Department of Corrections.

(3) "Standards" means the minimum standards for youth alternative centers.

(4) "Hearing officer" means a hearing officer appointed by the commissioner.

(5) "Proceeding" means any proceeding before the commissioner or before a hearing officer.

(6) "Day" means a calendar day.

(7) "Order" means the order of the commissioner requiring the petitioner(s) to comply with the minimum standards for youth alternative centers as specified.

(8) "Petitioner" means the jailer, administrator or county judge/executive who requests a hearing for review of the commissioner's order.

(9) "Youth alternative center" means a nonsecure facility under the jurisdiction of the county jailer or a correctional services division which is used only for the detention of juveniles.

Section 2. Assignment of Hearing; Filings. (1) Cases coming before the commissioner may be assigned to a hearing officer within the discretion of the commissioner for a hearing and a finding of facts, conclusions of law, and recommended order. Cases may be withdrawn by agreement, dismissed for cause, or otherwise disposed of before hearing in the discretion and judgement of the commissioner.

(2) A recommended order or adjudication by the hearing officer or the initial order of the commissioner, if dismissed or disposed of as provided in subsection (1) of this section, or any modification of repeal of the initial order, shall become the final order of the commissioner under the provisions of KRS 441.085-095, appealable to the Franklin Circuit Court, thirty (30) days from the date of issue.

(3) Prior to the assignment of a case to a hearing officer, the jailer, administrator, or county judge/executive shall, within seventy-two (72) hours of receipt of notification of order, request in writing a public hearing before the commissioner or his designee on the matters covered by said order to the Commissioner of the Department of Corrections, State Office Building, Fifth Floor, Frankfort, Kentucky 40601. Subsequent to the assignment of the case to a hearing officer and prior to the issuance of his decision, all papers shall be filed with the hearing officer at the address given in the notice of hearing.

(4) All evidence and witnesses of both parties and intervenors and all proof shall be presented at the time of hearing. No additional evidence shall be permitted thereafter except in unusual circumstances and within the discretion of the commissioner or the hearing officer.

(5) All hearings shall be held in Frankfort, Kentucky unless otherwise ordered by the commissioner.

(6) Unless otherwise ordered, all filing may be accomplished by first class mail.

(7) Filing is deemed effective at the time of mailing.

Section 3. Scope of Rules; Applicability of Kentucky Rules of Civil Procedure. (1) These rules shall govern all proceedings before the department and its hearing officers.

(2) In the absence of a specific provision, procedure shall be in accordance with the Kentucky Rules of Civil Procedure.

Section 4. Computation of Time. Where service of a pleading or documents is by mail pursuant to Section 2 of this administrative regulation, three (3) days shall be added to the time allowed by these rules for the filing of a responsive pleading.

Section 5. Notice and Time of Hearing. (1) Notice of hearings shall be given to all parties and intervenors within forty-five (45) days from the receipt of the request for hearing unless otherwise ordered by the commissioner or his designee. No hearing shall be held later than ninety (90) days from the date of request.

(2) The notice of hearing shall include:

(a) Statement of the time and place of the hearing.

(b) The name and address of the assigned hearing officer.

(c) Statement of the legal authority and jurisdiction under which the hearing is held.

Section 6. Continuance of Hearing. (1) Continuance of a hearing ordinarily shall not be allowed.

(2) Except in the case of an extreme emergency or in unusual

circumstances, no such request shall be considered unless received in writing at least three (3) days in advance of the time set for the hearing. The request for continuance shall include the reasons therefor.

(3) Continuance of hearing not in excess of fifteen (15) days may be granted in the discretion of the hearing officer. One (1) additional continuance not in excess of fifteen (15) days may be granted by the hearing officer in extreme emergency or under unusual circumstances. No additional continuance may be granted without approval of the commissioner.

Section 7. Failure to Appear. (1) Subject to the provisions of subsection (3) of this section, the failure of a party to appear at a hearing shall be deemed to be a waiver of all rights except the rights to be served with a copy of the decision of the hearing officer.

(2) Requests for a newly scheduled hearing shall be made in the absence of extraordinary circumstances within five (5) days after the scheduled hearing date.

(3) The commissioner or the hearing officer, upon a showing of good cause, may excuse such failure to appear. In such event, the hearing shall be rescheduled.

Section 8. Consolidation. Cases may be consolidated on the motion of any party, on the hearing officer's own motion, or on the commissioner's own motion, where there exist common parties, common questions of law or fact, or both, or in such other circumstances as justice and the administration of the act require.

Section 9. Severance. Upon its own motion, or upon motion of any party or intervenor, the commissioner or the hearing officer may, for good cause, order any proceeding severed with respect to some or all issues or parties.

Section 10. Intervention. (1) A petition for leave to intervene may be filed at any stage of a proceeding before commencement of the hearing, or in the event of a settlement or dismissal before issuance of a recommended order.

(2) The petition shall set forth the interest of the petitioner in the proceeding and show that participation of the petitioner shall assist in the determination of the issues in question and that the intervention shall not unnecessarily delay the proceeding.

(3) The commissioner or the hearing officer may grant a petition for intervention to such an extent and upon such terms as the commissioner or the hearing officer shall determine.

(4) The caption of all cases where intervention is allowed shall reflect such intervention by adding to the caption after the name of the respondent the name of the intervenor, followed by the designation "intervenor."

Section 11. Service. (1) At the time of filing pleadings or other documents a copy thereof shall be served by the filing party or intervenor on every other party or intervenor.

(2) Service upon a party or intervenor who has appeared through a representative shall be made only upon such representative.

(3) Unless otherwise ordered, service may be accomplished by postage prepaid first-class mail or by personal delivery. Service is deemed effected at the time of mailing (if by mail) or at the time of personal delivery (if by personal delivery).

(4) Proof of service shall be accomplished by a written statement of the same which sets forth the date and manner of service. Such statement shall be filed with the pleading or document.

(5) Where service is accomplished by posting, proof of such posting shall be filed not later than the first working day following the posting.

Section 12. Statement of Position. At any time prior to the commencement of the hearing before the hearing officer, any person entitled to appear as a party, or any person who has been granted leave to intervene, may file a statement of position with respect to any or all issues to be heard.

Section 13. Response to Motions. Any party or intervenor upon whom a motion is served shall have ten (10) days from service of the motion to file a response.

Section 14. Failure to File. Failure to file any pleading pursuant to these rules when due, may, in the discretion of the commissioner or the hearing officer, constitute a waiver of right to further participation in the proceedings.

Section 15. Withdrawal of Notice of Hearing. At any stage of a proceeding, a party may withdraw his notice of hearing, subject to the approval of the commissioner.

Section 16. Prehearing Conference. (1) At any time before a hearing, the commissioner or the hearing officer, on their own motion or on motion of a party, may direct the parties or their representatives to exchange information or to participate in a prehearing conference for the purpose of considering matters which shall tend to simplify the issues or expedite the proceedings.

(2) The commissioner or the hearing officer may issue a prehearing order which includes the agreements reached by the parties. Such order shall be served on all parties and shall be a part of the record.

Section 17. Requests for Admissions. (1) At any time after the filing of responsive pleadings, any party may request of any other party admissions of facts to be made under oath. Each admission requested shall be set forth separately. The matter shall be deemed admitted unless, within fifteen (15) days after service of the request, or within such shorter or longer time as the commissioner or the hearing officer may prescribe, the party to whom the request is directed serves upon the party requesting the admission of a specific written response.

(2) Copies of all requests and responses shall be served on all parties in accordance with the provisions of these rules and filed with the commissioner within the time allotted and shall be a part of the record.

Section 18. Discovery Depositions and Interrogatories. (1) Except by special order of the commissioner or the hearing officer, discovery depositions of parties, intervenors, or witnesses, and interrogatories directed to parties, intervenors, or witnesses shall not be allowed.

(2) In the event the commissioner or the hearing officer grants an application for the conduct of such discovery proceedings, the order granting the same shall set forth appropriate time limits governing the discovery.

Section 19. Failure to Comply with Orders for Discovery. If any party or intervenor fails to comply with an order of the commissioner or the hearing officer to permit discovery in accordance with the provisions of these rules, the commissioner or the hearing officer may issue appropriate orders.

Section 20. Reporter's Fees. Reporter's fees shall be equally shared by all parties. This shall include the reporter's per diem costs and the cost of the original transcript. All other copies shall be paid by the requesting party.

Section 21. Transcript of Testimony. Hearings shall be transcribed verbatim. A copy of the transcript of testimony taken at the hearing, duly certified by the reporter, shall be filed with the hearing officer before whom the matter was heard. The hearing officer shall promptly serve notice upon each of the parties and intervenors of such filing. Participants desiring copies of such transcripts may obtain the same

from the official reporter upon payment of fees fixed therefor.

Section 22. Duties and Powers of Hearing Officers. It shall be the duty of the hearing officer to conduct a fair and impartial hearing, to assure that the facts are fully elicited, to adjudicate all issues and avoid delay. The hearing officer shall have authority with respect to cases assigned to him, between the time he is designated and the time he issues his decision, subject to the rules and administrative regulations of the department; to:

(1) Administer oaths and affirmations;

(2) Rule upon offers of proof and receive relevant evidence;

(3) Regulate the course of the hearing and, if appropriate or necessary, exclude persons or counsel from the hearing for contemptuous conduct and strike all related testimony of witnesses refusing to answer any proper questions;

(4) Hold conferences for the settlement or simplification of the issues;

(5) Dispose of procedural requests or similar matters including motions referred to the hearing officer by the commissioner and motions to amend pleadings; also to dismiss complaints or portions thereof, and to order hearings reopened or, upon motion, consolidated prior to issuance of this decision;

(6) Examine witnesses and to introduce into the record documentary or other evidence;

(7) Request the parties at any time during the hearing to state their respective positions concerning any issue in the case or theory in support thereof;

(8) Adjourn the hearing as the needs of justice and good administration require; and

(9) Take any other action necessary under the foregoing and authorized by the published rules and administrative regulations of the department.

Section 23. Exhibits. (1) All exhibits offered in evidence shall be numbered and marked with a designation identifying the party or intervenor by whom the exhibit is offered.

(2) In the absence of objection by another party or intervenor, exhibits shall be admitted into evidence as a part of the record, unless excluded by the hearing officer pursuant to Section 27 of this administrative regulation.

(3) Unless the hearing officer finds it impractical, a copy of each such exhibit shall be given to the other parties and intervenors.

(4) All exhibits offered, but denied admission into evidence, shall be identified as in subsection (1) of this section and shall be placed in a separate file designed for rejected exhibits.

Section 24. Rules of Evidence. Hearings before the department and its hearing officers insofar as practicable shall be governed by the Kentucky Rules of Evidence.

Section 25. Burden of Proof. In all proceedings commenced by the filing of a notice of hearing, the burden of proof shall rest with the department.

Section 26. Objections. (1) Any objection with respect to the conduct of the hearing, including any objection to the introduction of evidence or a ruling of the hearing officer, may be stated orally or in writing, accompanied by a short statement of the grounds for the objection, and shall be included in the record. No such objection shall be deemed waived by further participation in the hearing.

(2) Whenever evidence is excluded from the record, the party offering such evidence may make an offer of proof, which shall be included in the record of the proceeding.

Section 27. Recommendations of Hearing Officer; Exceptions; Final Order. (1) The decision of the hearing officer shall include findings of fact, conclusions of law, and a recommended order to the commissioner disposing of all issues before him.

(2) Any party may file exceptions to the hearing officer's findings of fact, conclusions of law, and recommended order within ten (10) days of the date of said findings of fact, conclusions of law, and recommended order.

(3) The commissioner shall, within forty-five (45) days of the date of the hearing officer's findings of fact, conclusions of law, and recommended order, issue a final order modifying, repealing, or adopting the findings of fact, conclusions of law and recommended order of the hearing officer.

JACK LEWIS, Commissioner

APPROVED BY AGENCY: February 14 1995

FILED WITH LRC: February 15, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for March 23, 1995, at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Jack Damron, Department of Corrections, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact Person: Jack Damron

(1) Type and number of entities affected: Counties which operate secure detention facilities (two).

(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: None

(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: 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) 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: 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: Was tiering applied: No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution

FISCAL NOTE ON LOCAL GOVERNMENT

(1) Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

(2) State what unit, part or division of local government this administrative regulation will affect. County jailers and secure detention centers.

(3) State the aspect or service of local government to which this administrative regulation relates. This regulation relates to the local juvenile correctional system.

(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 (+/-): 0

Expenditures (+/-): 0

Other Explanation: At present there are only two (2) counties that have secure detention facilities. Counties with secure detention which construct youth alternative centers should realize savings in the future.

TRANSPORTATION CABINET
Department of Highways

603 KAR 5:191. Repeal of 603 KAR 5:190.

RELATES TO: KRS 189.231

STATUTORY AUTHORITY: KRS 189.231

NECESSITY AND FUNCTION: During the reconstruction of KY I-75/71 in Northern Kentucky, the Transportation Cabinet through administrative regulation 603 KAR 5:190 diverted certain truck traffic around the construction zone. The Federal Highway Administration allowed this truck diversion to continue only during the time period of the reconstruction of this portion of I-75/71. Now that the reconstruction project has ended, the Transportation Cabinet is repealing the truck diversion.

Section 1. 603 KAR 5:190, Vehicles prohibited on I-75 and 71, is hereby repealed.

J.M. YOWELL, P.E., State Highway Engineer
JERRY D. ANGLIN, Deputy Secretary and Commissioner
DON C. KELLY, P.E., Secretary

APPROVED BY AGENCY: January 17, 1995

FILED WITH LRC: February 7, 1995 at 2 p.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on March 27, 1995 at 7 p.m. local prevailing time in the Covington City Commission Chambers, 638 Madison Avenue, Covington, Kentucky 41011 (entrance to meeting room is on 7th Street). Any person who intends to attend this meeting must in writing by March 22, 1995 so notify this agency. If no notification of intent to attend the hearing is received by this date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given the opportunity to comment on the administrative regulation. A transcript of the public comment hearing will not be made unless a written request for a transcript is made and then only at the requestor's expense. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by March 22, 1995. This request does not have to be in writing. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. Written comments will be accepted until the close of business on March 27, 1995. Send written notification of intent to attend the public comment hearing or written comments on the administrative regulation to: Sandra G. Pullen, Staff Assistant, Transportation Cabinet, 1003 State Office Building, 501 High Street, Frankfort, Kentucky 40622, (502) 564-4890.

REGULATORY IMPACT ANALYSIS

Contact person: Sandra G. Pullen

(1) Type and number of entities affected: All large trucks travelling north on I-75/71 in Northern 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: None

(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: 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: The cost of the additional travel involved in the truck diversion for the affected motor carriers will be eliminated as soon as the administrative regulation is effective.

2. Second and subsequent years: Same a 1.

(3) Effects on the promulgating administrative body: Minor

(a) Direct and indirect costs or savings: The Transportation Cabinet is reviewing the need for a type of truck traffic control in the area. If it is determined that any is needed, the cost of the traffic control (signage, markings, etc.) will be an indirect cost attributable to the repeal of 603 KAR 5:190.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

(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: The only implementation cost will be the removal of signs which are in place. The source of the labor involved is the operations budget of the Covington Highway District Office (Road Fund).

(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: The hearing participants believe that there might be an increase in the number of accidents involving trucks even though the reconstruction is virtually complete (will be complete by the time this administrative regulation is promulgated). However, one of the primary reasons for the reconstruction was to improve highway safety. The truck diversion was put in place to maintain highway safety during this massive reconstruction project. If the reconstruction is effective, there will not be an increase in accidents and therefore no economic impact from the repeal of 603 KAR 5:190.

(b) Kentucky: There will no longer be an impact on interstate commerce caused by truck diversion. Therefore, in theory, the small

economic cost being incurred by the trucking companies which have been complying with the provisions of 603 KAR 5:190 will be eliminated.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The do-nothing alternative was rejected since the Federal Highway Administration had allowed this "interference" with interstate commerce to occur only for safety reasons during the reconstruction project. With the completion of the reconstruction project, there is no federally-acceptable reason for the truck diversion to continue. The cabinet continues to evaluate the need for traffic control of the trucks such as a lower speed limit for trucks or limitation to the two right lanes.

(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: 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:

(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 being repealed was tiered. Therefore, the effect of its repeal will be tiered, i.e., the effect will only be felt by those trucks on which the diversion was imposed.

TRANSPORTATION CABINET
Department of Highways
Division of Design

603 KAR 9:020. Automatic gates at railroad/highway crossings.

RELATES TO: KRS 189.561

STATUTORY AUTHORITY: KRS 189.561, 23 CFR Part 924

NECESSITY AND FUNCTION: KRS 189.561 requires the Transportation Cabinet to investigate any public railroad/highway at-grade crossing not equipped with automatic crossing gates, which has an average daily traffic volume of 4000 or more vehicles and at which two (2) or more accidents involving a train and other vehicle have occurred within a five (5) year period. Excluded are nonfatal accidents caused by mechanical failure of the motor vehicle, accidents in which the operator of the highway motor vehicle was in violation of KRS Chapter 189A, or other nonwarning signal related cause as set forth by the Transportation Cabinet in administrative regulation. This administrative regulation sets forth the list of nonwarning signal related accidents.

Section 1. Qualifying Accident. In evaluating the at-grade railroad/highway crossing accident reports, the Transportation Cabinet shall exclude the reports showing the following causes or circumstances associated with the highway vehicle/train collision which are not related to a warning device:

(1) The highway vehicle was not performing a railroad/highway crossing maneuver at the time of the collision;

(2) The driver of the highway vehicle made a willful decision to disregard the warning that a train was approaching and to place self at risk;

(3) The driver of the highway vehicle was warned of the approach of the train but was unable to stop the highway vehicle because of excessive speed or adverse highway conditions;

(4) The driver of the highway vehicle left the scene of the accident prior to the investigation;

(5) The driver of the highway vehicle was stopped on the railroad tracks prior to the approach of a train because of traffic congestion on the highway;

(6) The highway vehicle was struck by another vehicle and propelled into the crossing; or

(7) The driver of the highway vehicle did not hold an operator's license of the type necessary for the operation of that highway vehicle.

Section 2. Abandoned Rail Line. If the rail line has been proposed for abandonment, the Transportation Cabinet shall not consider placement of automatic crossing gates unless the abandonment proposal is rejected.

J. M. YOWELL, P.E., State Highway Engineer
JERRY D. ANGLIN, Deputy Secretary and Commissioner
DON C. KELLY, P.E., Secretary

APPROVED BY AGENCY: February 10, 1995

FILED WITH LRC: February 10, 1995 10 a.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on March 29, 1995 at 10 a.m. local prevailing time in the Transportation Cabinet, Corner of High, Clinton and Holmes Streets, 4th Floor Hearing Room, 501 High Street, Frankfort, Kentucky 40622. Any person who intends to attend this meeting must in writing by March 24, 1995 so notify this agency. If no notification of intent to attend the hearing is received by this date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given the opportunity to comment on the administrative regulation. A transcript of the public comment hearing will not be made unless a written request for a transcript is made and then only at the requestor's expense. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by March 24, 1995. This request does not have to be in writing. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. Written comments will be accepted until the close of business on March 29, 1995. Send written notification of intent to attend the public comment hearing or written comments on the administrative regulation to: Sandra G. Pullen, Staff Assistant, Transportation Cabinet, 1003 State Office Building, 501 High Street, Frankfort, Kentucky 40622, (502) 564-4890.

REGULATORY IMPACT ANALYSIS

Contact person: Sandra G. Pullen

(1) Type and number of entities affected: All persons traveling by highway through Kentucky when not on a controlled/limited access highway.

(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: None

(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: 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: None. This administrative regulation allows available rail safety funding to be utilized in placing gates at the most dangerous of rail crossings. However, the amount of funds available to the program does not change.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: The Transportation Cabinet will have to carefully examine the accident reports for each of the accidents occurring at an at-grade highway/rail crossing.

(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: Road 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: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: A change in KRS 189.561 passed by the 1994 General Assembly allows the Transportation Cabinet to establish a list of accident types not related to warning signals. After evaluation of the types of accidents which occurred in recent years, the ones listed in this administrative regulation seemed to most fit the criterion.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: By allowing the small amount of rail/highway safety funds to be used at the most dangerous at-grade crossings, rather than at a location which arbitrarily meets the criteria set forth in KRS 189.561.

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

(c) If detrimental effect would result, explain detrimental effect: Crossings in need of gates for safety reasons would not get the gates if all of the funds were used on locations which are safer, but at which nonwarning signal related accidents occurred.

(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:

(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? No. All rail crossing accidents must be examined with the same criteria.

EDUCATION, ARTS, AND HUMANITIES CABINET
Education Professional Standards Board

704 KAR 20:680. Professional code of ethics for Kentucky school certified personnel.

RELATES TO: KRS 161.028, 161.040, 161.120

STATUTORY AUTHORITY: KRS 161.028, 161.030

NECESSITY AND FUNCTION: KRS 161.028 requires that the Education Professional Standards Board develop a professional code of ethics. This administrative regulation establishes the code of ethics for Kentucky school certified personnel and establishes that violation of the code of ethics may be grounds for revocation or suspension of Kentucky certification for professional school personnel by the Education Professional Standards Board.

Section 1. Certified personnel in the Commonwealth:

(1) Shall strive toward excellence, recognize the importance of the pursuit of truth, nurture democratic citizenship, and safeguard the freedom to learn and to teach;

(2) Shall believe in the worth and dignity of each human being and in educational opportunities for all;

(3) Shall strive to uphold the responsibilities of the education profession, including the following obligations to students, to parents, and to the education profession:

(a) To students:

1. Shall provide students with professional education services in a nondiscriminatory manner and in consonance with accepted best practice known to the educator;

2. Shall respect the constitutional rights of all students;

3. Shall take reasonable measures to protect the health, safety, and emotional well-being of students;

4. Shall not use professional relationships or authority with students for personal advantage;

5. Shall keep in confidence information about students which has been obtained in the course of professional service, unless disclosure serves professional purposes or is required by law;

6. Shall not knowingly make false or malicious statements about students or colleagues;

7. Shall refrain from subjecting students to embarrassment or disparagement; and

8. Shall not engage in any sexually related behavior with a student with or without consent, but shall maintain a professional approach with students. Sexually related behavior shall include such behaviors as sexual jokes; sexual remarks; sexual kidding or teasing; sexual innuendo; pressure for dates or sexual favors; inappropriate physical touching, kissing, or grabbing; rape; threats of physical harm; and sexual assault.

(b) To parents:

1. Shall make reasonable effort to communicate to parents information which should be revealed in the interest of the student;

2. Shall endeavor to understand community cultures and diverse home environments of students;

3. Shall not knowingly distort or misrepresent facts concerning educational issues;

4. Shall distinguish between personal views and the views of the employing educational agency;

5. Shall not interfere in the exercise of political and citizenship rights and responsibilities of others;

6. Shall not use institutional privileges for private gain, for the promotion of political candidates, or for partisan political activities; and

7. Shall not accept gratuities, gifts, or favors that might impair or appear to impair professional judgment, and shall not offer any of these to obtain special advantage.

(c) To the education profession:

1. Shall exemplify behaviors which maintain the dignity and integrity of the profession;

2. Shall accord just and equitable treatment to all members of the profession in the exercise of their professional rights and responsibilities;

3. Shall keep in confidence information acquired about colleagues in the course of employment, unless disclosure serves professional purposes or is required by law;

4. Shall not use coercive means or give special treatment in order to influence professional decisions;

5. Shall apply for, accept, offer, or assign a position or responsibility only on the basis of professional preparation and legal qualifications; and

6. Shall not knowingly falsify or misrepresent records of facts relating to the educator's own qualifications or those of other professionals.

Section 2. Violation of this administrative regulation may result in cause to initiate proceedings for revocation or suspension of Kentucky certification as provided in KRS 161.120 and 704 KAR 20:585.

DANIEL GREENE, Chair

APPROVED BY AGENCY: January 31, 1995

FILED WITH LRC: February 6, 1995 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative

regulation will be held on March 28, 1995, at 10 a.m. in the 1st Floor Conference Room, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by March 23, 1995, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

Contact Person: Dr. Betty Lindsey, Office of Teacher Education and Certification, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, (502) 564-4606.

REGULATORY IMPACT ANALYSIS

Contact Person: Clara DeMoss

(1) Type and number of entities affected: All applicants for initial issuance and renewal of Kentucky certificates for professional school personnel; all persons who hold Kentucky certificates for professional school personnel.

(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: None

(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: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: None

1. First year following implementation:

2. Second and subsequent years:

(3) Effects on promulgating administrative body: The Division of Certification must examine each application for certificate issuance and renewal to ensure that the applicant has answered the question relating to the code of ethics in the affirmative. A copy of code of ethics will be included with each certificate issued and received.

(a) Direct and indirect costs or savings:

1. First year: Costs associated with disseminating the code of ethics and printing on application forms and brochure.

2. Continuing costs or savings: Same as above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The professional code of ethics will be printed on the applications for issuance and renewal of certificates. Applicants shall be required to certify that they have read and examined the code of ethics, understand its provisions, and agree to abide by its terms during the course of their career as a professional educator.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: State general fund.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: None. No comments received.

(a) Geographical area in which administrative regulation will be implemented:

(b) Kentucky:

(7) Assessment of alternative methods; reasons why alternatives were rejected: The standards need to be in regulation in order for the Education Professional Standards Board to enforce them. Kentucky educators are responsible to learners and society to uphold high ethical standards.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical areas in which implemented and on Kentucky: No direct impact on public health and environment.

(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: None

(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:

(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. All Kentucky school personnel are to be held to the same ethical standards.

LABOR CABINET
Department of Workers' Claims

803 KAR 25:075. Attorney fee discount.

RELATES TO: KRS Chapter 342

STATUTORY AUTHORITY: KRS 342.260

NECESSITY AND FUNCTION: KRS 342.260 requires the Commissioner of the Department of Workers' Claims to prepare administrative regulations as he considers necessary to carry on the work of the department and the work of the administrative law judges. KRS 342.320 requires the administrative law judges to approve the payment of the attorney's fee in any case involving benefits under KRS Chapter 342, and KRS 342.120 provides the method by which an employer or its insurance carrier and the special fund share liabilities for awards or injuries occurring after April 4, 1994. The function of this administrative regulation is to establish a mechanism for crediting the employer, the employer's insurance carrier, and the special fund for the payment of attorneys' fees for injuries occurring and disabilities arising after April 4, 1994, when the claimant elects to repay an attorney's fee through the reduction of weekly benefits.

Section 1. Employer's Calculation. For injuries occurring and disabilities arising on or after April 4, 1994, the employer or the insurance carrier making payment on behalf of the employer shall be entitled to credit for the lump sum value of any attorney's fee paid. The following formula shall be used:

(1) Employer weeks awarded - weeks paid = remaining weeks.

(2) R weeks = P weeks (present worth).

(3) EMP % Attorney fee + P weeks = Y rate.

(4) R weeks x Y rate = employer attorney fee and discount.

(5) EMP attorney fee and discount - EMP attorney fee = EMP discount.

(6) Weekly rate -Y rate = Employer reduced rate.

Section 2. Special Fund Credit. The Labor Cabinet, Department of Workplace Standards, Division of Special Fund shall calculate its lump sum credit for attorney's fees in cases involving injuries occurring and disabilities arising on or after April 4, 1994, as follows:

(1) Employer weeks awarded - weeks paid = remaining weeks.

(2) R weeks = P weeks (present worth).

(3) Total weeks awarded - weeks paid = total remaining weeks.

(4) TR weeks = PW weeks (present worth).

(5) PW weeks - P weeks = SF (special fund) weeks.

(6) SF % Attorney fee + SF weeks = SF rate reduction.

(7) SF rate reduction x SF weeks owed = SF attorney fee and discount.

(8) SF attorney fee and discount = SF attorney fee = SF discount.

Section 3. Procedure. The calculations set forth in Sections 1 and 2 of this administrative regulation shall be completed by the Division of the Special Fund and the results forwarded to the other payers, as well as to the plaintiff, when the plaintiff elects to repay an attorney's fee through the reduction of weekly benefits. Any disagreements as to the application of the formula shall be resolved by the administrative law judge upon motion by any party.

WALTER W. TURNER, Commissioner

APPROVED BY AGENCY: February 14, 1995

FILED WITH LRC: February 14, 1995 at 2 p.m.

PUBLIC HEARING: A public hearing will be held at the Department of Workers' Claims, 1270 Louisville Road, Frankfort, Kentucky 40601, 10 a.m., on March 21, 1995. Individuals interested in attending this hearing shall notify this agency in writing by March 16, 1995, 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: Anna May

(1) Type and number of entities affected: This proposed administrative regulation will affect employers and insurance carriers making workers' compensation payments on behalf of employers, as well as the special fund.

(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 conforms to changes made in KRS 342.320 by the 1994 Regular Session of the General Assembly, and is not expected to affect cost 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 public comments received, and no impact is anticipated 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: For workers' compensation injuries occurring and disabilities arising on or after April 4, 1994, this proposed administrative regulation will be used in place of 803 KAR 25:070. Otherwise, the compliance, reporting and paperwork requirements are essentially the same as under 803 KAR 25:070.

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 significant costs or savings.

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

3. Additional factors increasing or decreasing costs: None known.

(b) Reporting and paperwork requirements: None in excess of the requirements of 803 KAR 25:070.

(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 Fund 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: Because an amendment to KRS 342.320 removed a claimant's option of repaying an attorney fee from the "end" of a workers' compensation award, claimants may now have an attorney's fee paid through the reduction of weekly benefits, and there will not be an interval during which the claimant's benefits stop while the payment for the attorney's fee is recouped. This should have a positive impact on the communities in which claimants live.

(b) Kentucky: See response to (a) above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: It is believed that the calculations set out in the proposed administrative regulation are fair, reasonable, and appropriate under KRS 342.320 and 32.120.

(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 environment 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? Yes. Each calculation is specifically tailored to account for employer liability, special fund liability, and the amount of the attorney fee awarded.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:671. Conditions of Medicaid provider participation; enrollment, documentation of services, disclosure, claims processing, withholding overpayments, appeals process, and sanctions.

RELATES TO: KRS 194.515, 205.510 to 205.990, 42 CFR 431.107, Part 455, Part 1002, 42 USC 1320a-3, 1320a-3a, 1320a-5, 1320a-7, 1395cc, 1395vv, 1396b, 1396d, 1396m, 1396n

STATUTORY AUTHORITY: KRS 194.050, 205.520, 205.560, 205.6318, 42 USC 1396a

NECESSITY AND FUNCTION: The Cabinet for Human Resources shall administer the Medicaid Program. KRS 205.8451 through 205.990, 205.624 and 194.515 provide that the Cabinet for Human Resources and the Department for Medicaid Services shall be responsible for the control of Medicaid provider fraud and abuse. KRS 205.520 authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation sets forth the provisions relating to Medicaid provider participation.

Section 1. Definitions. (1) "Abuse" is defined by KRS 205.8451.

(2) "Administrative process" means meeting, review, investigation, hearing, appeal, deliberation or exchange of documents or information between the provider and the department.

(3) "Affiliate" means an individual agency or organization controlled by the provider or associated with the provider under common ownership or control.

(4) "Applicant" means a person or entity who submits an application to become a Medicaid provider.

(5) "Application" means completion and submission of a Medicaid provider agreement, and any required addendum specific to a provider type, which is the contract between the provider and the cabinet for the provision of Medicaid services.

(6) "Billing agent" means a contractor that prepares and submits claims on behalf of the provider.

(7) "Bribes and kickbacks" means soliciting or receiving any payment, or offering or making any payment whether in cash or goods or services, in return for:

(a) Referring a recipient to a provider for any medical care, services or supplies; or

(b) Purchasing, leasing, ordering or recommending any medical care, services or supplies, for which payment is claimed under the Medicaid Program.

(8) "Cabinet" means the Cabinet for Human Resources.

(9) "Claim" means any request for payment under the Medicaid Program, and relates to each individual billing submitted by a provider to the department which details services rendered to an individual recipient on a given date or dates of service. The claim may be either a line item of service or all services for one (1) recipient within a bill.

(10) "Conversion" means converting a Medicaid payment, or any part of a payment, to a use or benefit other than for the use and benefit intended by the Medicaid Program.

(11) "Convicted" shall have the same meaning as that shown in KRS 205.8475, regardless of whether an appeal from that judgment is pending.

(12) "Department" means the Department for Medicaid Services (including any contract agents).

(13) "Disclosing entity" means a Medicaid provider or the fiscal agent for the department.

(14) "Disclosure" means the provision of information in accordance with the requirements shown in 42 CFR 455, Subpart B.

(15) "Exclusion" means the termination of the participation of a provider or the denial of the enrollment of a provider; and no reimbursement shall be made to the provider under Medicaid for items or services furnished by the provider during any period of exclusion.

(16) "Factor" shall have the same meaning as shown in 42 CFR 447.10.

(17) "False claim" means a claim for:

(a) Unfurnished medical care, services, or supplies; or

(b) Medical care, services, or supplies provided:

1. In excess of accepted standards of practice for the medical service that was provided;

2. In an amount in excess of established amounts or limits which were communicated by prior written notice to providers; or

3. Where there is documentation that the provider has knowledge of third-party coverage of the recipient, but the provider knowingly chooses not to bill the third-party payor.

(18) "Fiscal agent" means a contractor that processes or pays provider claims on behalf of the department.

(19) "Full investigation" means the activities of the Medicaid Fraud and Abuse Control Unit of the Office of the Attorney General (MFACU) or any other law enforcement or investigative agency to resolve a complaint of Medicaid fraud or abuse (if the abuse involves substantial allegations or other indications of fraud).

(20) "Furnish" means to provide medical care, services, or supplies that are:

(a) Provided directly by the provider;

(b) Provided under the supervision of the provider: or

(c) Prescribed by the provider.

(21) "Managing employee" means the general manager, business manager, administrator, director, or other individual who exercises operational or managerial control over, or who conducts the day-to-day operation of, an institution, organization, or agency.

(22) "Medicaid Fraud and Abuse Control Unit" (MFACU) means the unit of staff in the Office of the Attorney General of Kentucky, certified under the provisions of 42 USC 1396b(q), which conducts a statewide program for the investigation and prosecution of violations of all state laws regarding fraud and abuse in connection with the provision of Medicaid services and the activities of Medicaid providers.

(23) "Preliminary investigation" means the activities of the Office of Inspector General (OIG), MFACU, or the department to determine whether a complaint of Medicaid fraud or abuse has sufficient basis to warrant a full investigation.

(24) "Provider" is defined by KRS 205.8451.

(25) "Recipient" is defined by KRS 205.8451.

(26) "Reliable evidence" means:

(a) Preliminary determinations based on a preponderance of evidence as verified by the department by audit or utilization review staff of unacceptable practices or significant overpayments;

(b) Information of an ongoing investigation of a provider based on a preponderance of evidence, as verified by the cabinet, involving fraud or criminal conduct pertaining to the Medicaid Program.

(c) Information based on a preponderance of evidence, as verified by the cabinet, from a state professional medical licensing or certifying agency of ongoing investigation of a Medicaid provider involving fraud, abuse, professional misconduct, unprofessional conduct, or utilization; or

(d) Information from department staff or other sources based on a preponderance of evidence, as verified by the cabinet, regarding unacceptable practices or program abuse.

(27) "Sanction" means any administrative action taken by the department which limits a person's or a provider's participation in the Medicaid Program or imposes a fiscal penalty against the provider including the imposition of civil penalties and interest and the withholding of payments. Sanctions which may be imposed are described in KRS 205.8467 and Section 9 of this administrative regulation.

(28) "Services" means medical care, services, or supplies provided to recipients under Medicaid.

(29) "Subcontractor" means an individual, agency, or organization to which a disclosing entity has:

(a) Contracted or delegated some of its management functions or responsibilities of providing medical care or services to its patients; or

(b) Has entered into a contract, agreement, purchase order or lease including real property, to obtain space, supplies, equipment or nonmedical services provided under Medicaid.

(30) "Supplier" means an individual, agency, or organization from which a provider purchases goods or services used in carrying out its responsibilities under Medicaid.

(31) "Terminated" means the provider's participation in the Medicaid Program has been ended, and that a contractual relationship no longer exists between the provider and the department for the provision of Medicaid covered services to Medicaid eligible recipients by that individual, entity, or organization.

(32) "Unacceptable practice" means conduct by a provider which constitutes "fraud" or "provider abuse", as defined in KRS 205.8451(2) or (8), or willful misrepresentation, and includes the following practices:

(a) Knowingly submitting, or causing the submission of false claims, or inducing, or seeking to induce, any person to submit false claims;

(b) Knowingly making, or causing to be made, or inducing, or seeking to induce, any false, fictitious or fraudulent statement or misrepresentation of material fact in claiming a Medicaid payment, or for use in determining the right to payment;

(c) Having knowledge of any event affecting the right to payment of any provider and concealing or failing to disclose the event with the intention that a payment be made when not authorized or in a greater amount than due;

(d) Conversion;

(e) Soliciting or accepting bribes and kickbacks;

(f) Failing to maintain or to make available, for purposes of audit or investigation, administrative and medical records necessary to fully disclose the medical necessity for the nature and extent of the medical care, services and supplies furnished, or to comply with other requirements as contained in Section 4 of this administrative regulation;

(g) Knowingly submitting a claim or accepting payment for medical care, services, or supplies furnished by a sanctioned provider;

(h) Seeking or accepting additional payments such as gifts, money, donations, or other consideration in addition to the amount paid or payable under the Medicaid Program for any covered medical care, services, or supplies for which a claim is made;

(i) Charging or agreeing to charge or collect any fee from a recipient for covered services which is in addition to amounts paid by the Medicaid Program except for any required copayments;

(j) Engaging in conspiracy, complicity, or criminal syndication;

(k) Furnishing medical care, services, or supplies that fail to meet professionally recognized standards, or which are found to be noncompliant with licensure standards promulgated under KRS Chapter 216B, for health care or which are beyond the scope of the provider's professional qualifications or licensure;

(l) Illegally discriminating in the furnishing of medical care, services, or supplies based on a recipient's race, color, national origin, religion, sex, age, disabling condition, or marital status;

(m) Having payments made to or through a factor, either directly or by power of attorney, as prohibited by 42 CFR 447.10;

(n) Offering or providing any premium or inducement to a recipient in return for the recipient's patronage of the provider or other provider to receive medical care, services or supplies under the Medicaid Program;

(o) Knowingly failing to meet disclosure requirements;

(p) Unbundling; and

(q) An act committed by a nonprovider on behalf of a provider which, if committed by a provider, would result in the termination of the provider's enrollment in the program.

(33) "Unbundling" means submitting multiple claims for constituent parts of services provided which results in enhanced reimbursement to a provider for a covered service where the claims do not conform with professionally recognized coding standards;

(34) "Withholding" means not paying a provider for claims which have been processed, pending the results of an investigation of a report of fraud or willful misrepresentation based upon receipt of reliable evidence.

Section 2. Enrollment Process for Provider Participation in Medicaid. (1) Scope.

(a) The department shall contract with only those providers or entities who can demonstrate that they are qualified as determined by the cabinet to participate as a provider.

(b) All providers or entities who wish to participate in the Medicaid Program shall be enrolled as participating providers prior to being eligible to receive reimbursement.

(2) New enrollments. Any provider or entity interested in participating as a Medicaid provider on or after the effective date of this administrative regulation shall be required to submit an application for enrollment in accordance with this section.

(3) Enrolled providers. All providers or entities enrolled as participating providers in Medicaid prior to the effective date of this administrative regulation shall continue to be participating providers on the effective date of this administrative regulation. Upon receiving notice from the department, existing providers shall be required to submit a new or revised application for enrollment to continue their Medicaid participation.

(a) Providers shall have thirty-five (35) days from the date of the notice to submit a completed and signed application to the department.

(b) The notice shall inform the provider that failure to return the completed and signed application within thirty-five (35) days shall result in termination of participation.

(c) Submission of the application within thirty-five (35) days shall permit the continuation of the existing provider participation which shall remain in effect until a determination with respect to the application for enrollment has been made and notice of approval or denial of enrollment sent to the provider.

(d) The department may revise enrollment requirements by regulatory revision made in accordance with the requirements of KRS Chapter 13A and re-enroll providers if necessary for effective management of the Medicaid Program.

(4) Application for enrollment as a participating provider shall be processed in the following manner:

(a) All applicants for participation shall complete a provider agreement, disclosure of ownership and control interest statement, certification with regard to lobbying activity (pursuant to 31 USC 1352), provide proof of a currently valid professional license, registration, or certificate which allows the applicant to provide the services for which the applicant contracts, and provide any additional clarifying information requested for processing of the application for participation.

(b) The department may require any additional clarifying information from the applicant with regard to qualifications for participation. If the applicant does not respond within the time period specified in the request, the application for participation may be denied unless an extension of time is requested and granted.

(c) The department may require that an on-site inspection be performed to ascertain compliance with applicable licensure standards as promulgated under KRS Chapter 216B, and certification standards, prior to an enrollment determination.

(d) The department shall complete its application review and determine whether or not to enroll the applicant within ninety (90) days after receipt of the completed application and any additional clarifying information requested by the department. The department may take additional time for the decision when necessary for resolution of issues or disputes.

(5) Approval of an application.

(a) Upon approval of an application, the provider shall be issued an identifying number to be used exclusively by the provider for billing and identification purposes.

(b) A provider's participation shall begin on the date specified in the notification of approval of program participation and continue for the period specified in the notification, unless the provider participation is otherwise terminated in accordance with this administrative regulation or other applicable state or federal laws.

(6) By enrolling, the provider, its officers, directors, agents and employees (and all subcontractors pursuant to written agreement made a part of the contract) agrees to:

(a) Maintain the documentation for claims as required by Section 4 of this administrative regulation;

(b) Furnish all information regarding the nature and extent of services and claims for payment submitted by, or on behalf of, the provider to representatives of the cabinet, the Kentucky Health Policy Board, the Attorney General, the Auditor of Public Accounts, the Secretary of the United States Department of Health and Human Services, and the Office of the United States Attorney upon request;

(c) Comply with the disclosure requirements of Section 3 of this administrative regulation;

(d) Comply with the applicable advance directives requirements of 42 USC 1396a(w) with regard to the right to accept or reject lifesaving medical procedures as described in KRS 311.621, et seq;

(e) Accept payment from Medicaid as payment in full for all care, services, and supplies billed under Medicaid, except with regard to copayments and recipient liability (if any);

(f) Submit claims for payment only for care, services, and supplies actually furnished to eligible recipients and medically necessary or otherwise authorized by law;

(g) Provide true, accurate, and complete information in relation to any claim for payment;

(h) Permit review or audit by representatives of the cabinet, the Kentucky Health Policy Board, the Attorney General, the Auditor of Public Accounts, the Secretary of the United States Department of Health and Human Services, and the Office of the United States Attorney or any other body with investigative authority over Medicaid, of all books or records or, in the discretion of the auditing agency, a sample thereof, relating to services furnished and payments received under Medicaid, including recipient histories, case files, and recipient specific data. Failure to allow access to records may result in the provider's liability for costs incurred by the cabinet associated with the review of records, including food, lodging and mileage.

(i) Not engage in any activity which would constitute unacceptable practice;

(j) Comply with all terms and provisions contained in the provider agreement; and

(k) Comply with all applicable federal and state statutes and regulations relating to their provider type and provision of services under the Medicaid Program.

(7) Denial of an application for participation.

(a) The following factors shall be reason for denial of application for participation:

1. Any false representation, omission, or failure to disclose of any material fact in making an application;

2. Any suspension, exclusion, or involuntary withdrawal from participation currently in effect in any governmental medical insurance program as a result of fraud or abuse of that program;

3. Any false representation or omission relating to the application for any license, permit, certificate, or registration related to a health care profession or business;

4. Any previous failure to comply with applicable standards in the operation of a health care business or enterprise after having received written notice of noncompliance from the department or a state or federal licensing, certifying, or auditing agency;

5. A current investigation, indictment or conviction for fraud and abuse or unacceptable practice in Medicaid of this or any other state, Medicare, or any other publicly funded health care program;

6. Failure to comply with any Medicaid policy as specified in Kentucky statutes or administrative regulations of the department;

7. Provider participation in the medical service area is sufficient so that care and services of that type of provider are available under the Medicaid Program to the extent that they are available to the general population in that geographic area; or

8. Failure to pay any outstanding debt owed to the department.

(b) If an application is denied, the applicant may resubmit only upon correction of the factors leading to its denial, and after the expiration of any period of exclusion imposed under Sections 9 and 10 of this administrative regulation.

(c) Notice of denial of enrollment. A written notice of the denial mailed to the applicant's last known address shall be given which contains:

1. The reason for the denial; and

2. The date the applicant may make a new submission for enrollment.

(d) The denial shall be effective upon the date of the written notice.

(8) A provider of medical services or supplies may enroll for a time limited period of thirty (30) days in an exceptional situation for emergency services provided to an eligible recipient upon request by the provider and approval by the department.

Section 3. Required Provider Disclosure. (1) Providers and the fiscal agent shall comply with the disclosure of information requirements contained in 42 CFR 455 Subpart B and KRS 205.8477.

(2) Time and manner of disclosure.

(a) The required provider information specified in 42 CFR 455, Subpart B shall be provided:

1. Upon application for enrollment;

2. Annually thereafter; and

3. Within thirty-five (35) days of the request by the department or the Secretary, United States Department of Health and Human Services.

(b) The disclosure requirement may coincide with the certification or recertification period except when the provider is certified other than on an annual basis.

(c) The provider shall file an amended, signed ownership and disclosure form with the department within fifteen (15) days if there is a change:

1. In ownership or control;

2. Of a managing employee or management company;

3. In a provider's federal tax identification number; or

4. Which could be considered to constitute a new entity.

(3) If the provider or fiscal agent fails to disclose required information within the time period specified, the provider shall be terminated from participation in the Medicaid Program on the day following the last day for submittal of the required information in accordance with Section 10(3) of this administrative regulation.

Section 4. Required Provider Documentation. (1) Each provider shall maintain documentation of:

(a) Care, services, or supplies provided to an eligible recipient;

(b) The recipient's medical record (or other provider file, as appropriate) which shall demonstrate that the care, services, or supplies billed for, were actually performed or delivered;

(c) The diagnostic condition necessitating the service performed or supplies provided; and

(d) Medical necessity as substantiated by appropriate documentation (need for procedure as indicated by appropriate medical order).

(2) A cost based provider shall maintain all fiscal and statistical records and reports which are used for the purpose of establishing rates of payment made in accordance with Medicaid policy, and all underlying books, records, documentation and reports which formed the basis for the fiscal and statistical records and reports.

(3) All documentation required by this section shall be maintained by the provider for a minimum of five (5) years from the latter of:

(a) The date of final payment for services;

(b) The date of final cost settlement for cost reports; or

(c) The date of final resolution of disputes (if any).

(4) If any litigation, claim, negotiation, audit, investigation, or other action involving the records has been started before the expiration of the five (5) year period, the records shall be retained until the latter of:

(a) The completion of the action and resolution of all issues which arise from it; or

(b) The end of the regular five (5) year period.

Section 5. Claims Processing. (1) Claim submittal.

(a) A provider shall submit a claim, using forms and procedures specified by the department, for covered services or supplies rendered to an eligible recipient within twelve (12) months of the provision of service.

(b) A claim may be submitted on:

1. A paper form;

2. An electronic billing process; or

3. Any form approved by the department.

(c) A provider shall submit additional clarifying documentation for claims processing when required by the department.

(d) By submitting a claim a provider shall be:

1. Liable for the accuracy of all claims submitted by the provider, on the provider's behalf or by employees of the provider; and

2. Responsible for reviewing the statement of payment or remittance statement to assure that paid claims shown are true and correct, and for informing the department of any discrepancy.

(e) If a provider submits a claim electronically, the provider's acceptance of payment shall be considered to be the provider's certification that a paid claim is true and correct; and

(f) Any submittal of a false claim, statement, or document shall be considered an unacceptable practice.

(2) Claim payment.

(a) Payment shall be made by the department if:

1. The information required to pay the claim is complete;

2. The claim is not under review for medical necessity;

3. The provider has submitted all reports and information required by the department; and

4. The department is not withholding the provider's payments in accordance with Section 8 of this administrative regulation.

(b) The department may audit paid claims to determine if any unacceptable practices have occurred which may result in sanctions.

Section 6. Methods for Recoupment of Overpayments. (1) Medicaid overpayments. If a determination is made by the department that a provider was overpaid, a demand letter shall be sent to the provider which shall set forth the amount of the overpayment, the period of time involved, and the basis for determining the overpayment exists.

(a) In response to the demand letter, the provider shall, within thirty (30) days from the date of the letter:

1. Pay the amount in full; or

2. Submit a written request for a payment plan.

(b) If payment amounts due a provider are recalculated within the Medicaid Management Information System due to rate revisions, the department shall apply the rate adjustment against the next payment cycle for the provider prior to notifying the provider of the amount of the overpayment.

(2) A payment plan may be approved by the department if a provider documents that payment in full would create an undue hardship. A declaration in writing to the department of undue hardship shall include the following:

(a) Copies of financial statements which indicate payment in full within thirty (30) days would create an undue hardship; and

(b) Copies of notarized letters from at least two (2) financial institutions indicating the provider's loan request was denied for the overpayment amount.

(3) Payment plans shall not extend beyond a six (6) month period except as provided for in subsection (4) of this section.

(4) The department may approve a payment plan in excess of six (6) months but not to exceed twenty-one (21) months if the monthly repayment exceeds twenty-five (25) percent of the provider's average monthly Medicaid payment. The average monthly Medicaid payment is based on the previous twelve (12) month's payments.

(5) All payment plans shall include provisions for payments of both principal and interest as provided in KRS Chapter 360.

(6) If a provider fails to make a payment as specified in the payment plan or takes no action toward repayment, the department shall recoup the amount due from future payments. If a provider has insufficient funds available for recoupment through the payment system in the first payment cycle following the due date, payments shall be withheld and the account referred to the cabinet's Office of the Counsel for collection.

(7) If a provider disputes the amount of overpayment due the department, the provider may request a resolution in accordance with Section 12 of this administrative regulation and an administrative hearing in accordance with Section 13 of this administrative regulation. Disputing the amount of overpayment shall not relieve the provider of his obligation to submit full payment, or to request a payment plan, within thirty (30) days of the demand letter.

(a) If the department determines that no adjustments are required as a result of the resolution process, the initial determination shall stand.

(b) If it is determined that the amount requested should be reduced, any refund plus applicable interest as provided for in KRS Chapter 360 due to the provider shall be refunded to the provider within thirty (30) days from the date of the final determination letter sent to the provider.

(c) If it is determined that the amount requested should be increased, the additional amount due shall be subject to subsection (1) of this section.

(8) Withholding Medicare payments to recover Medicaid overpayments.

(a) The cabinet may request that the Health Care Financing Administration (HCFA) withhold Medicare payments to a provider in order to recover Medicaid overpayments to the provider. The requests for withholding shall be accomplished in accordance with the terms and conditions specified in 42 USC 1395vv.

(b) Amounts withheld by HCFA and returned to the cabinet by HCFA (as provided in 42 USC 1395vv) which are ultimately determined by the cabinet to be in excess of overpayments shall be returned to the provider.

(9) Statutory recovery. The cabinet shall not issue payments otherwise due a provider if withholding is ordered by a state or federal government agency or by a court for recovery of money. The payments shall be withheld in accordance with the provisions of the order issued by the state or federal government agency or the court.

(10) Medicare overpayments. If ordered to do so by HCFA, the department shall recoup the federal share of Medicaid payments otherwise due Medicaid providers as a means to recover Medicare overpayments. The federal share of Medicaid payments is that portion of the payment funded with federal funds.

(11) Any contract for the sale or change of ownership of a provider participating in the Medicaid Program shall specify whether the buyer or seller is responsible for any amounts owed the department by the provider, regardless of whether the amounts have been identified at the time of the sale.

Section 7. Administrative Process for Detection of Unacceptable Practice. (1) A preliminary investigation of alleged unacceptable practice shall be conducted by the department or its agent if:

(a) A complaint is received by the department or other cabinet staff or upon referral from the Office of Attorney General to the cabinet; or

(b) Potentially unacceptable practices are identified by the department or its contractors.

(2) If the findings of a preliminary investigation indicate that an incident of fraud or abuse involving substantial allegations or other indication of fraud may have occurred under the Medicaid Program, a referral for a full investigation shall be made to the MFACU or the Office of the United States Attorney, if appropriate.

(3) In order to facilitate a full investigation, the department shall, at the request of the MFACU or the Office of the United States Attorney, provide access to, and free copies of, any records, data, or information kept by the department, its contractors, or providers if authorized as specified in Section 4 of this administrative regulation.

(4) A full investigation shall continue until:

(a) Appropriate legal action is initiated;

(b) The investigation is discontinued because of insufficient evidence to support the allegation of unacceptable practice; or

(c) The case is returned to the department for administrative action.

(5) At any time during a preliminary or full investigation, the department may make an administrative determination that a provider has committed an act of unacceptable practice based on receipt of reliable evidence. The Commissioner of the Department for Medicaid Services shall issue a written notice of a determination of unacceptable practice to the provider upon which an exclusion or sanctions are

intended to be imposed, as specified in Section 9 of this administrative regulation. The notice shall be mailed to the provider's designated payment or correspondence address or last known address and shall clearly state:

(a) The determination made;

(b) The basis and specific reasons for the determination;

(c) The effect of any action to be taken;

(d) The amount of any overpayment or penalty, if any;

(e) The effective date of the action; and

(f) The hearing rights of the provider as outlined in Section 13 of this administrative regulation.

(6) At any time during a preliminary or full investigation, the cabinet may refer the case to the United States Attorney's Office for all action deemed appropriate.

Section 8. Withholding of Payments During Investigation of Fraud or Willful Misrepresentation. (1) The department may withhold Medicaid payments as provided for in 42 CFR 455.23 upon receipt of reliable evidence that the circumstances giving rise to the need for a withholding of payments involve fraud or willful misrepresentation under the Medicaid Program.

(2) The department may withhold payments without first notifying the provider of its intention to withhold payments.

(3) The department shall mail written notice to the provider at the provider's last known address of its withholding of program payments within five (5) days of the date upon which withholding began.

(a) The notice shall set forth the general allegations of the nature of the withholding action, but shall not disclose any specific information concerning its ongoing investigation.

(b) The notice shall advise the provider:

1. That payments are being withheld in accordance with this administrative regulation;

2. The statutory and regulatory basis for withholding and the facts upon which the action is taken;

3. The date upon which withholding began;

4. That withholding shall be for a temporary period;

5. Of the circumstances under which withholding shall be discontinued;

6. Of the type of Medicaid claim, as appropriate, to which withholding shall apply;

7. Of the provider's right to submit written evidence for consideration by the agency; and

8. Of the provider's hearing rights in accordance with Section 13 of this administrative regulation.

(4) Any withholding of payment action under this section shall be temporary and shall not continue after:

(a) The investigation has been discontinued due to insufficient evidence of fraud or willful misrepresentation by the provider;

(b) Legal proceedings related to the provider's alleged unacceptable practice are completed and all related issues have been resolved; or

(c) The matter is resolved between the department and the provider through an administrative determination of unacceptable practice, as specified in Section 7 of this administrative regulation.

(5) Upon completion of the process described in subsection (4)(a) and (b) of this section all monies due on verified claims shall be promptly disbursed to the provider.

Section 9. Sanctions. (1) The cabinet shall comply with the requirements of 42 CFR 1002.

(2) The cabinet shall impose sanctions as provided in KRS 205.8467, as provided in this section and in Sections 8 and 10 of this administrative regulation when legal proceedings against a provider have established that the provider has engaged in fraud or abuse or when an administrative determination as provided in Section 7 of this administrative regulation establishes that the provider has engaged in an unacceptable practice.

(3) The department may hold a provider responsible for the conduct of its affiliates in the administrative determination of unacceptable practice. However, conduct may only be imputed to another if the conduct was accomplished within the course of the duties of the provider to be sanctioned; and

(a) The provider knew or reasonably should have known of the conduct; or

(b) The conduct was effected with the knowledge and consent of the provider.

(4) If the department sanctions a provider, it may also sanction any affiliate of the provider. However, the determination to sanction the affiliate shall be made during the process leading to the administrative determination of unacceptable practice, on a case-by-case basis, after full review and consideration of all relevant facts and circumstances leading to the sanction of the primary provider. The affiliate shall have the same notification and due process rights as any sanctioned provider.

(5) The sanction process may include the termination of the provider from the Medicaid Program; if a termination is made the termination notice shall specify a period of exclusion. In determining the sanction, or the duration of exclusion, the department shall consider as appropriate:

(a) The number and nature of the unacceptable practice incidents;

(b) The nature and extent of any adverse impact the violations had on recipients;

(c) The amount of damages to the program;

(d) Other facts related to the nature and seriousness of the unacceptable practice; and

(e) The previous record of violations by the provider under Medicare, Medicaid and any program administered by the cabinet.

(6) The sanction process shall include liability for civil payments, restitution of overpayments and agency costs as specified in KRS 205.8467.

(7) The cabinet shall use a lien, as specified in KRS 205.8471 to assure payment of restitution and monetary penalties imposed under the administrative determination of fraud.

(8) A provider excluded from the Medicare Program shall be excluded from the Medicaid Program for the same period of time.

(9) The provider shall be notified in writing by the department of any sanctions that are imposed.

Section 10. Provider Participation Termination. (1) Except as provided in subsection (6) of this section, a provider's participation may be terminated by either the provider or the department upon thirty (30) days written notice to the other without cause or as otherwise specified in the provider agreement.

(2) Except as provided in subsection (6) of this section, a provider's participation may be terminated and a period of exclusion imposed if an administrative determination is made, as set forth in Section 7 of this administrative regulation, that the provider engaged in an unacceptable practice.

(3) A provider shall provide up-to-date information in accordance with Section 3 of this administrative regulation. Except as provided for in subsection (6) of this section, failure to maintain up-to-date information, or to submit the information within thirty-five (35) days of a request by the department (except as provided for in Section 2 of this administrative regulation) shall result in termination of the provider's participation.

(4) Except as provided in subsection (6) of this section, a provider's participation shall be terminated immediately if it is found that the information provided at the time of application was incorrect, inaccurate or incomplete and where provision of correct, accurate and complete information would have resulted in the denial of the application based upon one (1) or more of the factors set forth in Section 2 of this administrative regulation.

(5) Except as provided in subsection (6) of this section, a provider's participation shall be terminated if the provider fails or

refuses to pay or enter into an agreement to pay the amount of any penalty imposed, including interest, in accordance with Section 9 of this administrative regulation and KRS 205.8467 within sixty (60) days from the date of the department's notice or the date of a hearing decision (if any).

(6) Before the participation of a nursing facility, as defined in 42 USC 1396r(a), or an intermediate care facility for the mentally retarded, as defined in 42 USC 1396d(d), is terminated, it shall have the right to receive a hearing in accordance with Section 13 of this administrative regulation and 42 CFR 431.151 through 431.154.

(7) Except as provided in subsection (6) of this section, a provider's participation in Medicaid shall be terminated if the provider fails to submit a completed and signed application within thirty-five (35) days from the date of the notice to provide the application.

(8) Except as provided in subsection (6) of this section, a provider's participation in Medicaid shall be terminated and a period of exclusion imposed upon a Medicare or Medicaid related conviction through the judicial process.

(9) A provider's participation in Medicaid shall be terminated in accordance with 42 CFR 1003.105 on the date of termination or suspension from Medicare.

(10) Except as provided in subsection (6) of this section, a provider's participation in Medicaid shall be terminated as of the date of any termination, revocation, or suspension of any registration, certification or license to practice a medical profession, or as required to provide medical care, services or supplies under Medicaid.

(11) Except as provided in subsection (6) of this section, a provider's participation:

(a) Shall be terminated and a new application required if the ownership or controlling interest of the provider has substantially changed, since acceptance of its enrollment application, due to one (1) or both of the following actions:

1. The addition or elimination of one (1) or more partners in a provider organized as a partnership; or

2. The sale of the business or assets directly related to the provision of health care under the Medicaid Program if such sale will result in a change of ownership or control of any provider;

(b) May be terminated and a new application required if ownership or controlling interest of the provider has substantially changed since the acceptance of its enrollment application due to the sale or exchange of capital stock in a provider organized as a corporation; and

(c) A notice advising of the termination and of the requirements to make a new application for enrollment shall be sent to the provider thirty (30) days prior to its termination from the program.

(12) Notice of termination.

(a) A notice of termination shall be in writing, mailed to the last known address, and contain the following information:

1. The reason for the termination, if any;

2. The effective date of the termination;

3. The date the provider may submit an application for re-enrollment, if appropriate; and

4. The provider's hearing rights in accordance with Sections 12 and 13 of this administrative regulation.

(b) If notice has been provided in accordance with Section 7(5) of this administrative regulation, no additional notice of termination shall be required.

(13) The department may extend participation or waive termination for any provider of covered medical service if necessary to assure that adequate medical services will be available in the area served by the provider.

(14) The department may terminate a provider immediately if necessary to protect the health or well-being of Medicaid recipients.

Section 11. Provider Reinstatement or Re-enrollment Following Termination. (1) A provider whose participation has been terminated under the provisions of this administrative regulation may request reinstatement in accordance with the provisions set forth in the written notice from the department and shall be subject to the enrollment requirements in Section 2 of this administrative regulation. An application for enrollment under this section shall be identified by the provider as a reinstatement application.

(2) The department may only grant reinstatement from an exclusion based on a program violation if the provider can demonstrate and assure the department that the violation which led to the sanction is corrected and shall not be repeated.

(3) If the department approves the request for reinstatement, after imposition of a sanction in accordance with Section 9 of this administrative regulation, the department shall provide written notice to the provider and to all others who were informed of the sanction, specifying the date on which program participation may resume.

(4) A provider terminated from the Medicaid Program and excluded for a specified period of time shall be eligible for re-enrollment upon the expiration of the period of exclusion. In addition, providers excluded on the basis of a conviction for a program related offense shall not be eligible for re-enrollment until the conviction is final and unappealable.

Section 12. Resolution of Provider Disputes Prior to Hearing. (1) If a provider disagrees with Medicaid determinations with regard to claims payment, sanctions, participation or other matters covered in this administrative regulation the provider may request in writing within thirty (30) days of the date of notice a resolution meeting; provided, however, any disagreements relating to cost based rates including such items as the rate itself, cost reporting, recoupments, withholding, and any other matter relating to the provider's payments and rates, shall be resolved in accordance with Section 14 of this administrative regulation. A request for a resolution meeting shall not extend the thirty (30) day time period for filing a request for an administrative hearing in accordance with Section 13 of this administrative regulation.

(2) The request from the provider shall clearly identify the disputed issue, the specified basis for believing the department's decision is erroneous, provide any documentation (or a summary supporting the provider's position), and identify the provider's representative(s) expected to attend the resolution meeting.

(3) The agency shall, within five (5) days of receipt of the request, send a written response to the provider identifying the time and place of the meeting which shall be held within thirty (30) days of receipt of the request and identifying the agency's representative(s) expected to attend the meeting.

(4) The resolution meeting shall be conducted in an informal manner as directed by the department's representative with the provider afforded the opportunity to present any evidence or testimony to support his case.

(5) A provider may, within thirty (30) days of the date of the notice, submit any information which the provider wishes considered in relation to the agency determination without requesting a resolution meeting.

(6) The department may rescind, modify or take no action with regard to the disputed issue but shall provide written notice to the provider of the agency's decision within thirty (30) days from the date of the resolution meeting, or from the date the information to be considered was presented to the department if no resolution meeting was requested. The notice of the department shall include the determination and the facts upon which it is based with reference to applicable statutes and administrative regulations.

(7) Information submitted for the purpose of informally resolving a provider dispute shall not be considered a request for an administrative hearing.

Section 13. Administrative Hearing Process. (1) The administrative hearing shall be conducted by an impartial hearing officer knowledgeable of Medicaid policy appointed by the secretary of the

cabinet.

(2) This process shall be used in the following situations except as specified in Section 14 of this administrative regulation:

(a) If the provider's participation is terminated as specified in Section 10(2), (3), (4), (5), (6), (7), (8), (10), (11) and (14) of this administrative regulation or if a provider alleges discrimination on the basis of age, race, sex, country of national origin, ethnic group, or disability; or

(b) If the agency imposes a fiscal sanction; or

(c) If the agency requires the repayment of an overpayment or restitution; or

(d) If the provider's payments are being withheld in accordance with Section 8 of this administrative regulation.

(3) A written request for a hearing shall be received by the department within thirty (30) days of the date of the department's notice of adverse determination. This request shall be sent to the Commissioner, Department for Medicaid Services, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621. The department shall forward to the hearing officer an administrative record which shall include the notice of action taken, the statutory or regulatory basis for the action taken, the department's decision following the resolution process, and any documentary evidence provided by the appellant to the department.

(4) The hearing officer shall schedule the hearing within thirty (30) days of the request from the provider with the hearing to be held not later than thirty (30) days thereafter. Either party may request a prehearing exchange of information and documents or a prehearing conference. At least fifteen (15) calendar days prior to the date of the hearing, written notice shall be sent by the hearing officer to the parties and their representatives. The notice shall inform them of:

(a) The date, time and place of the hearing (with the hearing to be held in Frankfort, Kentucky) and the parties' right to request a postponement;

(b) The manner and means by which a postponement may be requested and granted;

(c) The issues which are to be the subject of the hearing;

(d) The manner in which the hearing will be conducted;

(e) The right of each party to be represented or to represent himself, to testify, to produce witnesses, to present documentary evidence and to examine opposing witnesses; and

(f) The date of the prehearing exchange between the provider and department, if requested.

(5) A prehearing conference may be held at least seven (7) days in advance of the hearing date at which time each party shall disclose the evidence that the party intends to introduce at the hearing, including documentary evidence and identification of witnesses.

(6) A request for a hearing shall be considered to be abandoned if the provider does not appear at the hearing on the scheduled date and the hearing has not been rescheduled. A hearing request shall be withdrawn only under the following circumstances:

(a) The hearing officer receives a written statement from the provider stating that the request is withdrawn; or

(b) The provider makes a statement on the record at the hearing withdrawing the request.

(7) Documentary evidence which may be used at the hearing shall be made available in accordance with the following:

(a) If copies of the documentary evidence which the provider plans to use at the hearing have not been provided to the department, an opportunity to examine the documents shall be afforded the department upon request; and

(b) If copies of the documentary evidence which the department plans to use at the hearing have not been provided to the provider, or the provider's representative, an opportunity to examine the documents shall be afforded the provider upon his request. Information relating to the selection of the provider for audit, investigation notes or other material which may reveal auditor investigation techniques, material prepared for submission to a law enforcement or prosecutorial agency, information concerning law enforcement investigations, or judicial proceedings or confidential sources or confidential information shall not be revealed.

(8) The hearing officer shall preside over the hearing and have all the powers conferred by law to require attendance of witnesses and the production of books and records, and to administer oaths and to take testimony.

(9) The provider or representative, counsel or other representative of the department, an interpreter if the appellant is deaf or hearing impaired and an interpreter has been requested, witnesses for both parties, providers who may be called as witnesses by the hearing officer and other providers or members of the public as the hearing officer in his discretion may admit, shall be entitled to be present at the hearing. Staff of the department shall be entitled to observe or to assist the official representative of the department.

(10) The issues and documentation considered at the hearing shall be limited to issues directly relating to the adverse determination.

(a) Formal rules of evidence shall not apply.

(b) Irrelevant and unduly repetitious testimony and cross-examination shall be excluded.

(c) The cabinet shall show the facts, circumstances, administrative regulations, or statutes on which the determination was based, and the provider has the burden of showing that the determination of the department was incorrect.

(d) If the determination is based upon an alleged failure of the provider to comply with applicable generally accepted business, accounting, professional or medical practices or standards of health care, the department shall establish the existence of the practice or standard.

(e) The department shall be responsible for notifying the hearing officer of the record of previous relevant violations by the provider under Medicare, Medicaid, and any program administered by the Cabinet for Human Resources which the department wishes the hearing officer to consider in his deliberations.

(11) Witnesses shall testify under oath or affirmation and shall be subject to cross-examination.

(12) The hearing proceedings shall be recorded but not transcribed unless requested by either party. The cost of a court reporter, if utilized, and the transcription shall be the responsibility of the party making the request. If a third party requests a copy of the original transcript, the party requesting the copy shall be responsible for the cost of the copy.

(13) The hearing officer shall consider the facts as presented at the hearing (including supplementary material, if requested) and prepare a decision based on the record consistent with Medicaid policy as expressed in statutes and administrative regulations.

(a) The hearing officer shall prepare a hearing report to be issued within sixty (60) days of the conclusion of the hearing or the closing of the record, and sent to each of the parties.

(b) The hearing report shall include findings of fact, conclusions of law, determination of issues, and the hearing officer's decision and reasons for the determination.

(c) The hearing officer's decision shall be submitted to the secretary of the cabinet. Either party shall have ten (10) days within which to file exceptions to the hearing officer's decision, with the secretary. The secretary shall make the final decision of the agency pursuant to KRS 211.090(2), supported by findings of fact and conclusions of law.

(d) In the correspondence transmitting the decision, clear reference shall be made to the availability of judicial review.

(14) The hearing officer may grant an extension of any time frames specified in this section, except the requirement that the request for a hearing be filed in a timely manner, if determined necessary for the efficient administration of the hearing process or to prevent an obvious miscarriage of justice with regard to the provider.

transcript, the party requesting the copy shall be responsible for the cost of the copy.

(13) The hearing officer shall consider the facts as presented at the hearing (including supplementary material, if requested) and prepare a decision based on the record consistent with Medicaid policy as expressed in statutes and administrative regulations.

(a) The hearing officer shall prepare a hearing report to be issued within sixty (60) days of the conclusion of the hearing or the closing of the record, and sent to each of the parties.

(b) The hearing report shall include findings of fact, conclusions of law, determination of issues, and the hearing officer's decision and reasons for the determination.

(c) The hearing officer's decision shall be submitted to the secretary of the cabinet. Either party shall have ten (10) days within which to file exceptions to the hearing officer's decision, with the secretary. The secretary shall make the final decision of the agency pursuant to KRS 211.090(2), supported by findings of fact and conclusions of law.

(d) In the correspondence transmitting the decision, clear reference shall be made to the availability of judicial review.

(14) The hearing officer may grant an extension of any time frames specified in this section, except the requirement that the request for a hearing be filed in a timely manner, if determined necessary for the efficient administration of the hearing process or to prevent an obvious miscarriage of justice with regard to the provider.

Section 14. Administrative Hearing Process for Use in Appeals Relating to Cost Based Rates. Participating providers reimbursed using a cost based system shall have the right to appeal all issues relating to their rates, cost reporting, recoupments, withholding, and any other matters, except termination, relating to the provider's payments and rates utilizing the process described in this section.

(1) Type of review. This section provides for a program review by the Director, Division of Reimbursement Operations, Department for Medicaid Services, or the director's designee, and an administrative hearing (following the program review) by an administrative hearing officer.

(2) Program review requirements and processes.

(a) Upon receipt of the department's determination with regard to rates, cost reports, withholding, recoupment, or other issues relating to payment rates the provider shall have thirty (30) days, from date of notice by the department, to request a program review of the determination. The department's determination on cost reports shall include the basis for the determination. The request for program review shall be received by the department within the thirty (30) day period.

(b) The request for review shall be in writing and identify the following:

1. The specific aspects of the determination with which the provider is dissatisfied; and

2. The specific reason the provider believes the determination is incorrect.

(c) The request shall be accompanied by any documentary evidence (or an appropriate summary) which the provider considers necessary to support its position.

(d) The department shall schedule the program review to be held within thirty (30) days after receipt of the request from the provider.

(e) If an audited cost report (including cost reports that have been desk reviewed) or rate of reimbursement is not appealed in a timely manner the provider's appeal rights shall terminate for that cost report or reimbursement rate and the cost report or reimbursement rate shall not be subject to reopening unless the department determines that there was suspected fraud or misrepresentation by the provider or that an error has been made by the department which should be corrected.

(f) A request for program review of a reimbursement rate, desk review, or audited cost report which does not specify the exact item(s) being appealed shall not be accepted.

(g) The program review shall be conducted in the following manner.

1. The program review shall be conducted by the director or his designee. The proceedings shall be recorded and a transcription made. If transcribed by the department, a copy shall be made available to the provider upon payment of the usual fee for copied material; if transcribed for the department by a court reporter, the provider may obtain a copy from the court reporter upon payment of the court reporter's usual fee for a copy.

2. During the hearing the provider shall provide any testimony or documentation which he desires in support of the provider's contention that the department's decision should be amended or nullified. Cabinet staff within the merit system who are knowledgeable of the issue shall explain the department's position and present any evidence the staff feels supports the department's position.

3. Merit system staff participating in the program review (or as designated by the director or his designee if necessary) shall prepare and submit to the director or his designee a written opinion and recommendation with findings of fact, and supporting documentation, with regard to the director's or his designee's decision. The director or his designee shall make a decision with regard to the issue within thirty (30) days of the hearing either adopting the recommendation of staff, or, if the director's or his designee's decision is different from the recommendation(s) of merit system staff, the director or his designee shall document his decision and provide, for the record, justification for that decision.

(h) The director or his designee may extend any of the time frames that are specified in subsection (2) of this section, if determined necessary for the efficient administration of the program review process or to prevent an obvious miscarriage of justice with regard to the provider.

(3) Administrative hearing requirements and processes.

(a) Upon receipt of the program review decision of the director or his designee, the provider may appeal the decision (and underlying program issue) by mailing or delivering a request for appeal to the Office of the Commissioner, Department for Medicaid Services, Cabinet for Human Resources, CHR Building, 275 East Main Street, Frankfort, Kentucky, 40621 within thirty (30) days of the decision. The request for a hearing shall be received by the commissioner within the thirty (30) day period; if a request for a hearing is not received within the thirty (30) day period the decision of the director shall be final.

(b) The request shall be in writing and identify the following:

1. The specific aspects of the director's decision with which the provider is dissatisfied;

2. The specific reason the provider believes the decision is incorrect; and

3. Be accompanied by the documentary evidence previously before introduced to the director or his designee (or an appropriate summary) which the provider considers necessary to support its position.

(c) The secretary shall appoint a hearing officer who is knowledgeable of Medicaid administrative regulations and policies. The hearing officer shall schedule a hearing on the record within thirty (30) days of receipt by the cabinet of the provider's request for a hearing with the hearing to be held not later than thirty (30) days thereafter. At least fifteen (15) calendar days prior to the date of the hearing, written notice shall be sent by the hearing officer to the parties and their representatives. The notice shall inform them of the date, time, and place of the hearing and of the issues which are to be the subject of the hearing.

(d) The hearing officer shall restrict the scope of the hearing to the same issues considered and determined during the program review.

(e) The following provisions shall govern the conduct of the hearing.

2. The hearing report shall include findings of fact, conclusions of law, determination of issues, and the hearing officer's decision and reasons for the determination.

3. The hearing officer's decision shall be submitted to the secretary of the cabinet. Either party shall have ten (10) days within which to file exceptions to the hearing officer's decision, with the secretary. The secretary shall make the final decision of the agency pursuant to KRS 211.090(2) supported by findings of fact and conclusions of law.

4. In the correspondence transmitting the decision, clear reference shall be made to the availability of judicial review.

(g) The hearing officer may grant an extension of any time frames specified in subsection (3) of this section, except the requirement that the request for a hearing be filed in a timely manner, if determined necessary for the efficient administration of the hearing process or to prevent an obvious miscarriage of justice with regard to the provider.

MASTEN CHILDERS, II, Commissioner and Secretary

APPROVED BY AGENCY: February 14, 1995

FILED WITH AGENCY: February 15, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 21, 1995 at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by March 16, 1995 five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: W. K. Moore, Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, (502) 564-7900.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Masten Childers II, Commissioner

(1) Type and number of entities affected: All medical providers certified to participate in the Medicaid Program.

(2) Direct and indirect costs or savings on the: Providers revenues will be reduced by the amount of agency savings from significantly decreasing fraud and abuse of the Medicaid Program.

(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: None

(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: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: No additional documentation or reporting requirements.

1. First year following implementation:

2. Second and subsequent years:

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: $15,000,000 to $25,000,000 (savings)

2. Continuing costs or savings: Same

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Notification and reporting requirements to comply with HB 127 and SB 37.

(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: Federal and state matching 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: Statewide implementation (see item 6(b)).

(b) Kentucky: The only impact on the provider community from this administrative regulation will be the reduction of provider revenues that would have resulted from fraud, abuse, or other unacceptable practices related to the Medicaid Program.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Provides for the Medicaid agency's state regulatory authority to exclude or suspend providers from the Medicaid Program if the providers pose a threat to Medicaid recipients' health.

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

(c) If detrimental effect would result, explain detrimental effect: If the administrative regulation is not implemented the Medicaid agency may be found out of compliance with federal Medicaid requirements and lose federal matching funds. Failure to receive federal matching funds would result in a reduction of medical services to Medicaid recipients with resultant harm to the recipients' health and well being.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed administrative regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments: This administrative regulation implements statutory requirements of HB 127 and SB 37 to insure the Medicaid Program is effectively managed by reducing fraud and abuse in the Medicaid Program. The administrative regulation is also promulgated to comply with federal requirements relating to administration if the Medicaid Program.

(11) TIERING: Is tiering applied? 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 or arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FEDERAL MANDATE ANALYSIS COMPARISON

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

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

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

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation does not set stricter requirements.

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

standard or responsibilities are imposed.

KENTUCKY HEALTH POLICY BOARD

909 KAR 1:070. Data reporting by health care providers.

RELATES TO: KRS 216.2905, 216.2920 to 216.2947
STATUTORY AUTHORITY: KRS 216.2905, 216.2925
NECESSITY AND FUNCTION: KRS 216.2905 and 216.2925 mandate the Kentucky Health Policy Board to promulgate administrative regulations requiring specified health care providers to provide the board with data on cost, quality and outcomes of health care services provided in the Commonwealth. This administrative regulation sets forth the data elements, forms, and timetables the board requires to carry out this mandate.

Section 1. Definitions. (1) "Board" means the Kentucky Health Policy Board.

(2) "Hospitalization" means the inpatient medical episode identified by a patient's admission date, length of stay and discharge date, and further identified by a provider-assigned patient control number unique to that inpatient episode. Excluded from this definition are inpatient services a hospital may provide in swing, dual licensed, nursing facility, skilled, intermediate or personal care beds, hospice, and major ambulatory procedures notwithstanding that these may occur in hospitals.

(3) "Major ambulatory procedure" means the provision to an ambulatory patient of any ambulatory surgery, any cardiac catheterization, or any patient service using lithotripsy, magnetic resonance imaging or megavoltage radiation by linear accelerator or cobalt 60. Major ambulatory procedures may be related or unrelated to hospitalizations, may involve the use of either fixed or mobile medical equipment, and may occur in a physician office, a clinic, a hospital emergency, ambulatory or outpatient department by any name, or any other noninpatient situation or location where a major ambulatory procedure is provided.

(4) "Major ambulatory surgery" means the following specific surgeries:

Dilation and curettage	Myringotomy with or without ventilation tubes
Hernia repair	Colonoscopy
Gastroscopy	Cystoscopy with or without retrograde urography
Bronchoscopy	Tubal ligation
Vasectomy	Cataract surgery
Laser surgery (eye)	Arthroscopy
Angioplasty	Septoplasty
Hemorrhoid surgery	Lymph node biopsy
Colposcopy with or without conization	Breast biopsy
Laparoscopic cholecystectomy	Carpal tunnel release
Arteriogram with or without angioplasty	Tonsillectomy

(5) "UB-92" means the uniform billing form identified by the federal Health Care Financing Administration as HCFA Form 1450, as recommended by the National Uniform Billing Committee and adopted by the Kentucky Uniform Billing Committee for use by hospitals and other providers in billing for hospitalizations and ambulatory encounters, as incorporated by reference in Section 9 of this administrative regulation.

(6) "HCFA-1500" means the uniform billing form identified by the federal Health Care Financing Administration as HCFA Form 1500, approved by the American Medical Association Council on Medical Service and commonly used to bill for ambulatory patient encounters, as incorporated by reference in Section 9 of this administrative regulation.

(7) "Coding and transmission specifications" means the technical directives the board issues concerning technical and technological matters subject to frequent change, including codes and data for uniform provider entry into particular character positions and fields of the UB-92 and HCFA-1500 and uniform provider formatting of fields and character positions for purposes of electronic data transmissions.

(8) "Record" means the documentation of a hospitalization or major ambulatory procedure in the format of a UB-92 or HCFA-1500 regardless whether constituted as a paper form or on a computer-readable electronic medium.

(9) "Agent" means any entity with which the board may contract pursuant to carrying out its statutory mandates and may designate to act on behalf of the board to collect, edit or analyze data from providers.

(10) "Provider" means a hospital, ambulatory facility, physician office, clinic or other entity of any nature providing hospitalizations or major ambulatory procedures as defined in this administrative regulation.

Section 2. Data Collection. (1) Hospitalization records. Beginning January 1, 1995, hospitals shall document on a UB-92 record each hospitalization they provide, and shall from every record copy and provide to the board or its agent not less than the data specified in Section 7 of this administrative regulation.

(2) Major ambulatory procedure and mammography records.

(a) Beginning January 1, 1995, ambulatory facilities and hospitals providing major ambulatory procedures or mammograms shall document on a UB-92 or HCFA-1500 record, as designated by the board, every major ambulatory procedure and mammogram they provide, and shall from every record copy and provide to the board or its agent not less than the data specified in Section 7 of this administrative regulation.

(b) Beginning July 1, 1995, physician offices, clinics and other entities of any nature providing major ambulatory procedures or mammograms shall document on a UB-92 or HCFA-1500 record, as designated by the board, the major ambulatory procedures and mammograms they provide, except that reporting of surgeries shall be limited to major ambulatory surgeries as defined in this administrative regulation, and shall from every record copy and provide to the board or its agent not less than the data specified in Section 7 of this administrative regulation.

(3) Data collection on all patients. Providers shall submit all required data on every patient as provided in this administrative regulation, regardless whether a bill is to be generated or the services are to remain unbilled.

Section 3. Data Finalization and Submission. (1) Submission of final data. Data shall be deemed final for purposes of submission to the board or its agent as soon as a record is sufficiently final that the provider could submit it to a payor for billing purposes, regardless whether the record has actually been submitted to a payor.

(a) Finalized data shall not be withheld from submission to the board on grounds that it remains subject to adjudication by a payor.

(b) Data on hospitalizations shall not be submitted to the board or its agent before a patient is discharged or before the record is sufficiently final that it could be used for billing.

(2) Submission responsibility.

(a) When a patient is served by a mobile health service, specialized medical technology service, or other situations where one provider provides services under contract or other arrangement with another provider, responsibility for providing the specified data to the board or its agent shall reside with the entity that bills for the service or otherwise would do so in the event a service is unbilled.

(b) All charges for physician services occurring within a hospital shall be reported to the board. Responsibility for reporting the

physician charge data shall rest with the hospital only when the physician is an employee of the hospital. Any physician charge(s) contained within a record generated by a hospital shall be clearly identified in a separate field within the record so that the board may ensure comparability when aggregating them with other hospital records that do not contain any physician charges.

(3) Transmission of records.

(a) Data submitted to the board or its agent shall be uniformly completed and formatted according to coding and transmission specifications issued by the board.

(b) Hospitals shall submit data on computer-readable electronic media, and all other providers with capability to submit records on computer-readable electronic media shall do so.

(c) All providers shall provide back-up security against accidental erasure or loss of the data until incomplete or inaccurate records identified by the board, if any, have been corrected and resubmitted.

(d) Any data submitted by mail shall be by registered mail.

(e) Any provider who submits records in the form of paper copies shall either deliver the copies to the board or its agent, or send them in secure packaging by mail postmarked no later than the due date.

(f) Personal identification fields including the patient's name, Social Security number, street address and four (4) digit ZIP code suffix if any (but not city or five (5) digit ZIP code) shall be rendered unreadable on paper copies before the copies are submitted to the board, and shall not be included with electronically submitted data.

(4) Verification and audit trail for electronic data submissions.

(a) Each provider shall maintain a date log of all data submissions and the number of records contained in each submission, and shall make the log available for inspection upon request by the board.

(b) The board or its agent shall periodically, by electronic message or mail, verify to each provider the receipt of the provider's data transmissions and the number of records in each transmission.

(c) A provider shall immediately notify the board of any discrepancy between the provider's date log and a verification notice.

Section 4. Data Submission Timetable. (1) Quarterly submissions. Providers shall submit data at least once for each calendar quarter. A quarterly submission shall contain data, from all records of patients admitted on or after January 1, 1995, which during that quarter became final as specified in subsection 3(1) of this administrative regulation, and shall be submitted to the board not later than thirty (30) days after the last day of the quarter.

(a) If the 30th day falls on a weekend or holiday the submission due date shall become the next following working day.

(b) Calendar quarters shall be January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31.

(c) The latest date for the first required data submission under this administrative regulation shall be April 30, 1995 for the quarter ending March 31, 1995.

(2) Submissions more frequent than quarterly. Providers may submit data at any time after records become final as specified in Section 3(1) of this administrative regulation, and at any frequency each provider deems convenient for accumulating and submitting batch data.

Section 5. Data Corrections. (1) Editing. All data received by the board or its agent will upon receipt be edited to ensure completeness and validity of the data for further processing. Computer editing routines will identify for correction every record in which the submitted contents of required fields are not consistent with the board's coding and transmission specifications.

(2) Time permitted for corrections. The board shall allow providers thirty (30) days in which to submit corrected copies of initially submitted data the board or its agent identifies as incomplete or invalid as a result of edits.

(a) The thirty (30) days shall begin on the date of the board's notice informing the provider that corrections are required.

(b) Providers shall submit corrected data by either electronic transmission or postmarked mailing within the thirty (30) days.

(c) Corrected data submitted to the board or its agent shall be uniformly completed and formatted according to the board's coding and transmission specifications.

(d) During the start-up months between January 1, 1995 and September 30, 1995, the board may in its discretion grant a provider an extension of time to submit corrections, provided that the provider has informed the board of significant problems in performing the corrections and has formally requested an extension of time beyond the thirty (30) day limit.

(3) Percentage error rate.

(a) When editing data upon its initial submission, the board or its agent shall identify and return to the provider for correction every record in which any one (1) or more required data elements fails to pass the edit, and shall count the total number of required data elements returned to be corrected as 100 percent of the data elements for that submission subject to correction by the provider.

(b) When editing data that a provider has resubmitted following corrections, the board or its agent shall check for a remaining error rate no greater than two (2) percent of the data elements originally returned to the provider for correction.

(c) The board may return for further correction(s) any submission of allegedly corrected data in which the provider fails to achieve a corrected error rate of ninety-eight (98) percent or greater of the data elements originally returned to the provider to be corrected.

(4) Postsubmission data changes. A provider shall initiate, as a correction, a resubmission of data previously submitted to the board if at any time up to six (6) months after the original submission date the provider issues a rebilling in which the rebilled record contains one (1) or more changes from the originally submitted data as follows:

(a) Any change which constitutes an aggregate change of the originally submitted total charge by at least three (3) percent or $500, whichever is greater, if a hospitalization; or ten (10) percent or $100, whichever is greater, if an ambulatory encounter; or

(b) Any change of or addition to primary or secondary diagnoses or procedures.

Section 6. Working Contacts. (1) Beginning January 20, 1995 and annually thereafter by January 1, each provider who is required by this administrative regulation to submit data shall report by letter to the board the names and telephone numbers of a designated working contact person and a back-up person to facilitate technical staff follow-up in dealing with daily working details by employees of the board or its agent. A provider's designated contact and back-up may not be the chief executive officer unless no other person(s) employed by the provider has the requisite technical expertise.

(2) If the chief executive officer, designated contact person or back-up person changes during the year the name of the replacing person shall be reported immediately to the board.

Section 7. Required Data Elements. (1) UB-92 data. Providers shall ensure that each copy of UB-92 data submitted to the board contains at least the following data elements as provided for on the UB-92 form. Asterisks identify elements that shall not be blank and shall contain data or a code as specified in the board's coding and transmission specifications.

Field #	Data Element Label
2	* Ethnicity
3	* Provider Assigned Patient Control Number
4	* Type of Bill (inpatient, outpatient or other)
5	* Federal Tax Number or Employer Identification Number (EIN)
6	* Statement Covers Period
11	Patient Birth Weight (state-reserved field)

13	* Patient City and Zip Code
14	* Patient Birthdate
15	* Patient Sex
16	Patient Marital Status
17	* Admission/Start of Care Date
18	Admission Hour
19	* Type of Admission
20	* Source of Admission
21	Discharge Hour
22	* Patient Status (at end of service or discharge)
23	* Provider Assigned Medical Record Number
32-35	* Occurrence Codes & Dates
36	Occurrence Span Codes & Dates
39-41	* Value Codes and Amounts
42	* Revenue Codes/Groups
46	* Units of Service
47	* Total Charges by Revenue Code Category
50	* Payor Identification
56	KenPAC Authorization (Provider) Number
67	* Principal Diagnosis Code
68-75	* Secondary and Other Diagnosis Codes
76	* Admitting Diagnosis Code
78a	Unusual Occurrence: Readmission
78b	Unusual Occurrence: Nosocomial Infection
79	* Procedure Coding Method Used
80	* Principal Procedure Code & Date
81	* Secondary and Other Procedure Codes & Date
82	* Attending Physician Unique Physician Identification Number (UPIN) or alternate number
83	* Other Physician UPIN or alternate number

(2) HCFA-1500 data. Providers shall ensure that each copy of HCFA-1500 data submitted to the board contains at least the following data elements as provided for on the HCFA-1500 form. Asterisks identify elements that shall not be blank and shall contain data or a code as specified in the board's coding and transmission specifications.

Field #	Data Element Label
1	* Payor Identification
3	* Patient Birthdate and Patient Sex
5	* Patient City and Zip Code
8	Patient Marital Status
10a	Patient Condition Related to Employment
10b	Patient Condition Related to Auto Accident
10c	Patient Condition Related to Other Accident
14	* Date of Current Illness, Injury, or Pregnancy
15	First Date of Previous Same/Similar Illness
17a	* Referring/Ordering Physician UPIN or alternate number
18	Hospitalization Dates Related to Current Services
19	* Ethnicity
20	Outside Lab Use & Charges
21	* Diagnosis or Nature of Illness or Injury
24a	* Date(s) of Each Procedure/Service/Supply
24b	* Place of Service Code
24d	* CPT/HCPCS Code for Each Procedure/Service/Supply
24e	Diagnosis Code
24f	* Dollar Charges for Each Procedure/Service/Supply
24g	* Number of Days or Units
25	* Provider's (Physician/Supplier) Federal Tax Identification Number (EIN)
26	* Provider (Physician/Supplier)-assigned Patient Account Number
28	* Total Charges for Services

Section 8. Noncompliance and Penalties. (1) Failure to comply. As provided in KRS 216.2923(4), the board may impose civil fines on a provider who fails to provide required data or information after the board has provided written notice to the provider that the provider is in violation of a requirement specified in Sections 2 through 7 of this administrative regulation and has specified a due date by which the provider is to cease the violation(s).

(2) Multiple fines. In determining the number of fines that may be levied, the board may count each violation of the requirements in Sections 2 through 7 as constituting a separate violation, may count each day in violation of a single requirement as constituting a separate violation, and may stipulate that multiple fines continue to accrue until the provider ceases the violation(s).

(3) A provider who complies with all data correction requirements in Section 5 of this administrative regulation shall not be held in violation or noncompliance with regard to uncorrected data elements.

Section 9. Incorporations by Reference. (1) As defined in Section 1 of this administrative regulation, Form UB-92 and Form HCFA-1500 are incorporated by reference.

(2) These forms may be inspected or copied at the Kentucky Health Policy Board, 909 Leawood Drive, Frankfort, Kentucky, 40601, from 8 a.m. to 4:30 p.m., Monday through Friday except holidays.

JACK B. HALL, Chairman

APPROVED BY AGENCY: February 14, 1995

FILED WITH LRC: February 14, 1995 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 27, 1995, at 1 p.m. at the Health Services Building Auditorium. Individuals interested in being heard at this hearing shall notify this agency in writing by March 22, 1995, 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 an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jack B. Hall, Chairman, Kentucky Health Policy Board, 909 Leawood Drive, Frankfort, Kentucky 40601, (502) 564-4312.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack B. Hall

(1) Type and number of entities affected: This administrative regulation affects approximately 130 hospitals, 122 facilities providing major ambulatory procedures, and a limited number of physicians providing major ambulatory procedures in their offices.

(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: Indeterminable direct reduction in overall cost of living is expected to accrue to consumers statewide in consequence of their new ability to compare charges, quality and outcomes among health care providers using reports the board will publish based on data collected under this administrative regulation. Employment is not germane to this administrative regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: The data required by this administrative regulation will be derived from the patient bills that providers already generate in order to be paid for their services. Since health care providers have not previously been required to submit patient-level data to the state, minor reformatting of some of their billing data in order to transmit a copy to the board may possibly

result in one-time setup cost to add this board transmission to their existing data transmissions to payors, and minor ongoing cost thereafter to add the board's data transmissions to their regular billing transmissions.

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

1. First year following implementation: Compliance with reporting requirements consists of submitting specified data on a schedule and in conformance with other requirements specified in the administrative regulation. The administrative regulation invites providers to minimize paperwork or eliminate it altogether by transmitting data electronically instead of on paper forms. One-time setup cost, if any, will occur in the first year only.

2. Second and subsequent years: Minor cost of routine data transmissions. Competition among providers is likely to increase as consumers grow more effective at using the board's reports on charges, quality and outcomes to comparison shop among providers.

(3) Effects on the promulgating administrative body: It will be necessary for the board to maintain a data processing system for managing the data received from providers.

(a) Direct and indirect costs or savings:

1. First year: Cost of staff and computer time.

2. Continued costs or savings: Same

3. Additional factors increasing or decreasing costs: Quantity of data received and nature and quantity of reports produced will affect staff cost.

(b) Reporting and paperwork requirements: House Bill 250, which requires promulgation of this administrative regulation, also specifies particular reports that the board must generate using the collected data. The administrative regulation has no reporting or paperwork requirements beyond those specifically directed to the function of collecting data.

(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: The budget of the Commonwealth as established in House Bill 2 enacted by the 1994 General Assembly.

(6) Economic impact, including effects of economic activities arising from administrative regulation on:

(a) Geographical area in which administrative regulation will be implemented: Publication of comparative charges, quality and outcomes across health care providers is likely to enhance economic competition among providers to the benefit of health care consumers.

(b) Kentucky: The administrative regulation is statewide in scope.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Health care reform statute KRS 216.2925 directs the board to promulgate this administrative regulation.

(8) Assessment of expected benefits: Comparison shopping for health services by consumers and enhanced economic competition among health care providers as noted above is expected to result in gradual containment of health care prices and consequently in improving affordability of and access to health care for persons at all income levels.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The public health status of Kentuckians statewide can be expected to improve as a function of the extent to which health data collection and reporting achieve their expected benefits. Environmental health is not affected by this administrative regulation.

(b) State whether a detrimental effect on environment and public health would result if not implemented: The health care reform bill which mandates this administrative regulation embodies the premise that nonavailability of comparative health data for consumers is inherently detrimental to their informed selection of health care services and that public health status is inherently less optimal than can result when consumers are better informed buyers of health care services.

(c) If detrimental effect would result, explain detrimental effect: Detrimental effect is systemic and pervasive as explained in (b) above.

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping or duplicative: None; this administrative regulation initiates a new area of endeavor by state government.

(a) Necessity of proposed administrative regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering is not applied because this administrative regulation applies equally to all affected entities statewide.

KENTUCKY HEALTH POLICY BOARD

909 KAR 1:200. Twenty-four (24) hour pilot insurance program.

RELATES TO: KRS Chapter 216

STATUTORY AUTHORITY: KRS 216.2960

NECESSITY AND FUNCTION: KRS Chapters 216 and 342 require the promulgation of administrative regulations relating to the twenty-four (24) hour pilot insurance program to cover general health care for purposes of general health insurance and workers' compensation. This administrative regulation applies to all employers, insurers, and health care providers that apply to combine group health insurance with workers' compensations under a twenty-four (24) hour pilot program.

Section 1. Definitions. (1) "Twenty-four (24) hour pilot insurance program" means a combination of group health coverage plus the medical portion of worker's coverage, as required by KRS 342.020.

(2) "Commissioner" means the Commissioner of Workers' Claims, or the commissioner's designee.

(3) "Compensable injury or disease" means a condition or disease for which the employer is liable for medical benefits under KRS 342.020.

(4) "Coordinated plan" means a pilot plan in which medical services for compensable conditions are covered by a workers' compensation plan and medical services for noncompensable conditions are covered by a group health plan and the rendition of medical services is coordinated by a single plan administrator.

(5) "Group health plan" means an insurance policy and/or contractual agreement under which medical services for nonwork related conditions are extended to the employees of an employer or employers' association.

(6) "Health care service contractor" means a health maintenance organization (HMO), a managed health care organization (HCO), preferred provider organization (PPO), independent practice association (IPA), and other medical provider networks.

(7) "Integrated plan" means a pilot plan in which medical services for both compensable and noncompensable conditions are managed and/or covered by a single health care service contractor or insurance company.

(8) "Kentucky Health Policy Board" means a quorum of the board or a member of the board designated to represent the board.

(9) "Pilot plan" means an approved plan providing twenty-four (24) hour coverage.

(10) "Pilot insurance program administrator" means the entity which provides the day-to-day administration of the pilot insurance program.

(11) "Pilot insurance program" means an approved program of providing twenty-four (24) hour coverage.

(12) "Single insurance policy" means a twenty-four (24) hour pilot insurance program which provides insurance for compensable and noncompensable conditions.

Section 2. Prohibitions. No person or entity shall:

(1) Market an insurance product, policy or plan of rendition of health care services as providing twenty-four (24) hour coverage for compensable and noncompensable conditions absent first qualifying as a twenty-four (24) hour pilot insurance program under this administrative regulation.

(2) There shall be no transfer of liabilities or expenses between or among particular lines of insurance whose medical or health components have been combined into twenty-four (24) hour coverage for health care.

Section 3. Pilot Insurance Programs in General. (1) A pilot insurance program shall deliver twenty-four (24) hour coverage through a coordinated plan, integrated plan, or a single policy plan. Each program shall be designed and operated to eliminate, or minimize, differences in the delivery and administration of medical services for compensable and noncompensable conditions.

(2) A pilot insurance program may provide twenty-four (24) hour coverage to employees of one (1) or more employers. The program may cover all or a portion of the subject workforce of a participating employer. If only a portion of the workforce is covered by a pilot insurance program, medical coverage for the remainder shall be governed by KRS 342.020 and any group health care plan which may otherwise be in effect.

Section 4. Application Process. The administrator of a pilot plan shall apply for authorization to operate the program by submitting an application in quadruplicate to the Kentucky Health Policy Board on a prescribed form. The administrator shall provide the following information:

(1) The name, address, and telephone numbers of the pilot insurance program administrator and a description of its role in funding, insuring, and operating the pilot insurance program;

(2) The name, address, and telephone numbers of each sponsor of the pilot insurance program and a description of their roles in funding, insuring, and operating the pilot insurance program. Sponsors shall include the employer or employers' association, workers' compensation insurance carrier, health care service contractor for pilot insurance program and general health care insurance, if any.

(3) A full description of how the pilot insurance program will operate, including participating and nonparticipating employees, participating and nonparticipating worksites, plan benefits, coverage limitations, premiums, provider networks, managed care provisions and administrative procedures of the program;

(4) A listing of participating providers by service category;

(5) A draft of all materials describing the pilot insurance program that are intended for distribution to employees and their families;

(6) A description of how the pilot insurance program is expected to benefit each of the following: employees, employers, medical providers and insurers;

(7) A description of the financial and organizational resources supporting the pilot insurance program;

(8) A description of the methodology and identification of the personnel that the program administrator will utilize to produce an analysis comparing the pilot insurance program results with predicted results under traditional workers' compensation insurance, with and without managed care in the following areas:

(a) Number of employees treated by the program.

(b) Number of work-related injuries or diseases by ICD-9 code treated under the plan and during the year preceding the adoption of the plan.

(c) Breakdown by ICD-9 codes of injuries and diseases treated.

(d) Total medical costs for a noncompensable condition during the plan and in the year preceding adoption of the plan.

(e) Average medical cost per injured employee by type of injury.

(f) Average medical cost per diseased employee by type of disease.

(g) Breakdown of medical cost elements as to type of physician utilized, hospital costs, drug costs, and other costs during the year preceding adoption of the plan and for one (1) year afterwards.

(h) Number of days by type of injury and disease for which an employee has been released from work during the year preceding adoption of the plan and for one (1) year afterwards.

(i) In lieu of the above, a methodology to compare each employer's preplan expenditure for both compensable and noncompensable medical to those expenditures made after adoption of the plan.

(9) If the health services contractor has not been approved to operate a managed care plan pursuant to 803 KAR 25:110, a variance shall be requested and the program administrator shall provide a description of the means by which the following will be achieved for compensable conditions:

(a) Reasonable provider choice;

(b) Quality care;

(c) Availability of emergency care;

(d) Strong case management; and

(e) Utilization review.

(10) The program administrator shall list the terms and conditions of network coverage and a listing of all participating providers by service category and shall fully disclose the same in the pilot insurance program application and to all program members.

Section 5. Authorization of Pilot Plans. (1) The commissioner and the Kentucky Health Policy Board with consultation of the Commissioner of Insurance shall authorize pilot insurance programs. Applications will be evaluated in order of their receipt. Within thirty (30) days of receiving a complete application, the Kentucky Health Policy Board shall provide a written notice of findings upon review to the program administrators. That notice shall:

(a) Specify approval or rejection of the application and the grounds for that decision; or

(b) Specify additional information needed to clarify the application and a deadline for submitting that information. If additional information is not provided by the deadline, the application shall be rejected. Within thirty (30) days of receiving timely additional information, the commissioner and the Kentucky Health Policy Board shall provide a written notice of findings, as described in paragraph (a) of this subsection.

(2) In evaluating and authorizing pilot insurance programs, the following criteria shall be considered:

(a) The extent to which the pilot insurance program achieves a diversity of participants, plan designs and geographic regions;

(b) The potential of the program to mutually benefit workers, employers, medical providers and insurers;

(c) The adequacy of the financial and organizational resources of the program administrator and sponsors;

(d) The ability of the program administrator to meet the evaluation requirements described in KRS 342.352 and 216.2960; and

(e) The availability of agency resources to monitor the pilot insurance program.

Section 6. Revocation of Pilot Plan Authority. (1) The Kentucky Health Policy Board and commissioner may revoke the authority of a pilot insurance program at any time if, one (1) or more of the following, or similar, conditions exist:

(a) The pilot insurance program or any program administrator does not comply with the provisions of this regulation or other applicable provisions of statute;

(b) A participating insurer, self-insured employer, or group self-

insured becomes subject to suspension or revocation of its certificate of authority;

(c) The pilot insurance program is deficient in its management or claims adjustment practices, or the health services contractor fails to observe standards of provider choice, quality care, utilization review or grievance resolution;

(d) A breach of the pilot insurance program agreement occurs or there has been a misrepresentation of a material fact in the pilot insurance program application on any subsequent report required of the pilot insurance program administrator or health services contractor;

(e) The successful operation of the pilot insurance program is jeopardized by a weakness in the financial or operational status of the program administrator, program sponsor, or health care services contractor.

(2) The Kentucky Health Policy Board and commissioner shall provide written notice of an intent to revoke to the administrator setting forth the basis of the revocation and granting the program administrator fifteen (15) days from the date of the notice to make a written response.

(3) After reviewing the response, the Kentucky Health Policy Board and commissioner shall issue an order directing the administrator to remedy specific defects; may revoke the certificate of authority or in the discretion of the commissioner and Kentucky Health Policy Board, set a time and place for hearing.

Section 7. Dispute Resolution. (1) Each twenty-four (24) hour pilot insurance program 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 or appended materials.

(2) The grievance procedure shall meet the following requirements:

(a) A grievance is made when a written complaint or written request is delivered by the employee or provider to the twenty-four (24) hour pilot insurance program administrator, or, health care services contractor setting forth the nature of the complaint and remedial action requested.

(b) The employee or provider shall file a grievance within thirty (30) days of the occurrence of the event giving rise to the dispute.

(c) The twenty-four (24) hour pilot insurance program administrator, or, health care service contractor shall render a written decision upon grievance within thirty (30) days of the filing of the grievance.

(d) Twenty-four (24) hour pilot insurance programs 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) The twenty-four (24) hour pilot insurance program shall maintain a record for a minimum of two (2) years of each formal grievance to include the following:

(a) A description of the grievance, the employee's or provider's name and address, names and addresses of the health care providers relevant to the grievance, and the health care contractor's name and address; and

(b) A description of the administrator's findings, conclusions, and disposition of the grievance.

(c) Number of grievances filed and summary of action taken.

(4) Any employee or provider dissatisfied with the administrator's or health care service contractor's resolution of a grievance relating to a purportedly compensable condition, may apply for review by a workers' claims administrative law judge by filing a request for resolution within thirty (30) days of the date of the administrator's final decision. Upon review by a workers' claims administrative law judge, the movant shall be required to prove that the administrator's final decision is unreasonable or otherwise fails to conform with KRS Chapters 342 or 216.

Section 8. Provider Networks. A pilot insurance program may deliver medical services through a limited network of participating health care providers as follows:

(1) Noncompensable injuries. Coverage may be restricted in accordance with the provisions of the group health care portion of the program; and

(2) Compensable injuries. Coverage may be restricted in accordance with the provisions of a managed care plan previously approved by the commissioner pursuant to 803 KAR 25:110 or pursuant to a variance approved in the application for a twenty-four (24) hour pilot insurance program.

Section 9. Pilot Plan Coverage. (1) Medical services.

(a) Coverage of compensable injuries must comply with all provisions of KRS Chapter 342. It is the responsibility of the program administrator to ensure that all required medical services are provided for every compensable injury;

(b) Coverage of noncompensable injuries must comply with the terms of the group health plan portion of the pilot plan; and

(c) Nothing in these rules shall be construed to establish concurrent or double coverage of the same injury or illness under paragraphs (a) and (b) of this subsection.

(2) Coordination of medical coverage. Coverage of medical services that are included in the group health portion of a pilot plan, but are excluded from coverage under KRS Chapter 342, shall not be denied to pilot plan members solely because the plan member claims a compensable injury.

(3) Copayments and deductibles.

(a) Coverage of compensable injuries shall not require any copayment or deductible to be paid by subject workers. Coverage of noncompensable injuries may require copayments or deductibles to be paid by plan members;

(b) If any copayment or deductible is paid by a subject worker for medical services that are later determined to be compensable, the amounts paid shall be refunded within thirty (30) days of the determination.

(4) Effective date of coverage. Coverage under a pilot insurance program shall begin on the effective date specified in the pilot insurance program agreement. Workers' compensation coverage shall not be interrupted because of the initiation of a pilot insurance program. Coverage under a pilot insurance program shall not be delayed for any injured worker on account of an existing compensable injury. Ongoing medical services for an existing compensable condition shall comply with the provisions of KRS Chapter 342.

(5) Payment of premiums.

(a) Premiums for the group health plan portion of a pilot plan may be shared by the employer and the covered members in accordance with the terms of that portion of the plan. Premiums for the workers' compensation portion must be fully paid by the employer, as required under KRS Chapter 342.

(b) In integrated and single policy plans, a delineation of the premiums attributable to the two (2) portions of coverage must be maintained by the program administrator.

Section 10. Claims Administration. Nothing in the operation of a pilot insurance program shall hinder workers from submitting claims or encourage workers to seek group health plan coverage for compensable injuries in lieu of workers' compensation coverage.

Section 11. Examination of Records. The Kentucky Health Policy Board and commissioner, may make or cause to be made examina-

tions of the books and records of the administrator of a pilot plan to ensure compliance with these rules and the pilot plan agreement.

Section 12. Statistical Reporting. (1) The workers' compensation portion of a pilot plan. The administrator and sponsors of a pilot plan shall provide the reporting required under KRS Chapter 342 for the workers' compensation portion of a pilot plan.

(2) The group health portion of a pilot plan. The administrators of a pilot plan shall report the experience of the group health portion of the plan in accordance with the regulations of the Health Policy Board.

JACK B. HALL, Chairman

APPROVED BY AGENCY: February 15, 1995

FILED WITH LRC: February 15, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held March 27, 1995 at 1 p.m. at the Health Services Building Auditorium. Individuals interested in being heard at this hearing shall notify this agency in writing by March 22, 1995, 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 give an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jack B. Hall, Chairman, Kentucky Health Policy Board, 909 Leawood Drive, Frankfort, Kentucky 40601, (502) 564-4312.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack B. Hall

(1) Type and number of entities affected: This regulation affects any employer or insurer that chooses to participating in the twenty-four (24) hour pilot program providing health care coverage to employees by combining general health with the health component of workers' compensation.

(2) Direct and indirect costs or savings to those affected:

(a) The twenty-four (24) hour pilot program will allow cost savings in the administration and the delivery of quality medical care by combining the two health components.

(b) Cost to the employer and employee will decrease with lower administration cost.

(3) Effects on the promulgating administrative body: It will be necessary for the board to monitor the twenty-four (24) hour pilot program.

(1) First year: Cost of staff of the board to implement the program.

(2) Continued cost or savings: Same, as the program must be monitored.

(3) Additional factors increasing or decreasing cost: None known.

(b) Reporting and paperwork requirements: Processing of applications for twenty-four (24) hour pilot programs and generating a report of its progress.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenues to be used for implementation and enforcement of administrative regulation: The budget of the Commonwealth as established in House Bill 250 enacted by the 1994 General Assembly.

(6) Economic impact, including effects of economic activities arising from administrative regulation on:

(a) Geographical area in which administrative regulation will be implemented: Unknown

(b) Kentucky: The regulation makes coverage available statewide.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Health Care Reform KRS 216.2960 directs the board to promulgate this regulation.

(8) Assessment of expected benefits: More efficient and better quality care delivered to employees who participate in the program. Cost savings for employers by getting workers back to work in a timely manner and lower premium costs.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: None known.

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping or duplicative: KRS 342.352

(a) Necessity of proposed regulation if in conflict. Not applicable. House Bill 250 requires promulgation of this regulation.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: The board worked with the Commissioner of Workers' Claims to develop mutually acceptable regulations.

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering is not applied because this regulation applies equally to all affected entities statewide.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of the February 1, 1995

The February meeting of the Administrative Regulation Review Subcommittee was held on Wednesday, February 1, 1995, at 10 a.m. in Room 149 of the Capitol Annex. Representative Jim Bruce, Acting Chair, called the meeting to order, and the secretary called the roll. The minutes of the January 9, 1995 meeting were approved.

Present were:

Members: Representative Jesse Crenshaw, Chairman; Senators John David Preston, Nick Kafoglis; Representatives Woody Allen, Jim Bruce and Tommy Lee.

LRC Staff: Greg Karambellas, O. Joseph Hood, Tom Troth, Patrice Carroll, Susan Wunderlich, Peggy Jones, Donna Valencia, Don Hines.

Guests: Patrick Robby, Auditor's Office; Mack Bushart, George Russell, Board of Elections; Ventra Mapp, Finance and Administration Cabinet; Lowell W. Clark, Daniel F. Egbers, Department of Personnel; T. Wesley Faulkner, Board of Medical Licensure; John Grant, Bill Pettus, Board of Embalmers and Funeral Directors; Nathan Goldman, Board of Nursing; Ron Pritchert, Department of Fish and Wildlife Resources; Don L. Notter, Edward S. Ford, Donna G. Dutton, Department of Agriculture; Millie Ellis, Lynda Sherrard, George Risk, Carl Millanti, John Hornback, Jim Villines, Roy McQueary, Dave Rosenbaum, Natural Resources and Environmental Protection Cabinet; Jack Damron, Mary Pritt, Brenda Priestley, Department of Corrections; Sally Hamilton, Donna Moore, D. Brent Irvin, KET; Anne Keating, Susan Goins, Mark W. Byles, Department of Education; Donna H. Terry, Walter W. Turner, Valerie Salven, Department of Workers' Claims; Mike Fulkerson, Kentucky Racing Commission; Judy Walden, Department of Housing, Buildings and Construction; Greg Lawther, Anita Travis, Karen Doyle, Cabinet for Human Resources; Mike Hammons, Sherry M. Cooper, Kentucky Health Policy Board; Vernon Messer, Don Cooke, Messer Clay Co.; Ted Bradshaw, IIAK/KOA; John F. Nichols, Jr., AIK/Chemical Industry Council; Carl Sumner, State Farm Insurance; Rusty Cress, Breeding, McIntyre & Cunningham; Carl Bradley, Pro-Tek Environmental Mgt.; Don Walker, Kentucky Crushed Stone Assoc.; Walton H. Clevenger, Refractory Clay Advisor; Susan Shuffett, Belleview Sand & Gravel, Inc.

The Subcommittee determined that the following administrative regulations, as amended by the promulgating agency and the Subcommittee, complied with statutory requirements:

State Board of Elections: Forms and Procedures

31 KAR 4:090 (& E). Mock elections for school children. This administrative regulation was amended as follows: (1) statutory citations were inserted in the RELATES TO and STATUTORY AUTHORITY sections; and (2) a new Section 3 was added to provide that election results shall not be released prior to the regular election precinct results.

Auditor of Public Accounts: Audits

45 KAR 1:080. Standards for Title VI reporting. This administrative regulation was amended to: (1) include in the body of the administrative regulation the uniform format implementation plan that state agencies receiving Federal funds are required to file each year with the office of Auditor of Public Accounts; and (2) incorporate by reference the form, "Commonwealth of Kentucky, Auditor of Public Accounts, Title VI of the Federal Civil Rights Act, Implementation Initial Plan and Plan Update Form" (1995), that agencies are required to use when filing "Initial Plans" and "Annual Plan Updates".

Department of Personnel: Classified

101 KAR 2:036. Compensation plan and pay incentive systems. This administrative regulation was amended to: (1) comply with the format and drafting requirements of KRS 13A.222; (2) correct citation of statutes; and (3) clarify, in Section 3(6)(c), that: (a) participation in the pilot program established by KRS 18A.400 would not result in a salary freeze for that employee; and (b) salary adjustments for promotion or demotion would be made according to the provisions of KRS Chapter 18A and applicable administrative regulations.

Unclassified

101 KAR 3:045. Compensation plan and compensation incentive systems. This administrative regulation was amended to: (1) comply with the format and drafting requirements of KRS 13A.222; (2) correct citation of statutes; and (3) establish an annual increment, in lieu of the merit increment provided for in deleted Section 4.

Board of Medical Licensure

201 KAR 9:005. Ethical conduct. In response to questions by Senator Kafoglis and Representative Bruce, agency personnel stated that: (1) under the Medical Practice Act, KRS Chapter 311, one of the grounds for disciplinary action is unethical conduct which is defined by the code of ethics; (2) KRS 311.595(9) authorized the board to take disciplinary action for unethical conduct, even if the specific conduct was not made illegal by statute; (3)the code of ethics provides physicians with notice of the specific types of charges that can be made against them; (4) sanctions range from private reprimand, suspension, fine, and license revocation, depending upon the seriousness of the violation; and (5) KRS 311.593 provides that a physician may appeal a board determination to the Jefferson Circuit.

This administrative regulation was amended to: (1) comply with the drafting and format requirements of KRS 13A.222; (2) correct citation of statutes; and, (3) incorporate by reference the codes of ethics of the American Medical Association and the American Osteopathic Association.

Board of Embalmers and Funeral Directors

201 KAR 15:060. Annual license renewal, late renewal, and reinstatement. This administrative regulation was amended to clarify that the Board may require an examination for reinstatement and renewal of a license which has been expired for three years or more.

Subcommittee staff advised that: (1) the Board failed to incorporate by reference in this administrative regulation, the "Application for Renewal", and in 201 KAR 15:030, the "Application for Examination", in violation of KRS 13A.110 and KRS 13A.100; and (2) the Board has given assurances that these applications are being updated and will be incorporated by reference in these administrative regulations as soon as possible.

Senator Preston questioned: (1) whether the Board should be allowed discretion in electing which embalmers shall be required to complete an examination before reinstatement; (2) why criteria for the determination of which embalmers shall be required to be examined before reinstatement were not included in the administrative regulation.

Bill Petus responded that: (1) an examination will only be required after a license has expired three years; and (2) the Board: (a) requires examination on a case-by-case basis, considering a host of factors which would determine continued level of competency; and (b) does not believe the criteria should be set out in the administrative regulation.

Department of Fish and Wildlife: Game

Ron Pritchard appeared before the Subcommittee, representing the Department. All four of the following administrative regulations were amended to correctly cite "59 CFR 20" in the "RELATES TO" section.

301 KAR 2:221 (& E). Waterfowl seasons and limits.

301 KAR 2:222 (& E). Waterfowl hunting requirements.

301 KAR 2:223 (& E). Waterfowl reporting requirements.

301 KAR 2:224 (& E). Waterfowl hunting zones. This administrative regulation was further amended in Section 2(1) and (2) to delete the word "means" and insert in lieu thereof the word "is" to avoid these subsections being definitions.

Economic Development Cabinet: Department of Agriculture: Livestock Sanitation

302 KAR 20:180. Restrictions equine viral arteritis. This administrative regulation was amended to: (1) correct the title of "Chief Livestock Sanitary Official; and (2) clarify that a horse is infected with the equine arteritis virus when the test demonstrates a "reaction in serum neutralization with a titer of greater than 1 to 4".

Natural Resources and Environmental Protection Cabinet: Department for Surface Mining Reclamation and Enforcement: Surface Effects of Noncoal Mining

Mr. Don Walker, President, Kentucky Crushed Stone Association, Mr. Carl Bradley, ProTec Environmental Management

Mr. Vernon Messer, Mr. Don Cook, and Mr. Walton Clevenger, refractory clay adviser, Messer Clay Company, stated that they: (1) were opposed to these administrative regulations; and (2) clay, no less than coal or florspar, should have been governed by administrative regulations relating only to clay mining, rather than being included with other non-coal mining operations in one set of administrative regulations.

In response to a question by Representative Lee, Mr. Messer stated that: (1) an existing administrative regulation limited to clay is being repealed and replaced by these administrative regulations which cover and apply to all noncoal mining; (2) this violates KRS 13A.221, which provides that:(a) the general subject matter of administrative regulations shall be divided into topics, with a separate administrative regulation for each topic; and (b) all material relating to a subject matter shall be incorporated in the specific administrative regulation governing the topic to which it relates, and shall not be incorporated by reference in one administrative regulation; clay operations differ from other non-coal operations such as limestone, and should be regulated by an administrative regulation governing and addressing the problems or operations related to it; and (3) while he was in agreement with some of the amendments, he was opposed to the package of administrative regulations, would limit his discussion to matters that illustrate the problems caused by the package, and showed why the existing separate administrative regulations governing clay mining should have been retained and amended.

Mr. Messer and Mr. Cook stated that: (1) currently, many waivers applicable to other mining operations, are not applicable to clay operations; (2) these administrative regulations would introduce new restrictions, prohibitions, or requirements that waivers be obtained, that would affect existing rights; (3) an example of new restrictions or prohibition is 405 KAR 5:045 that would: (a) prohibit mineral operations within the boundaries of areas such as the national park system, wildlife refuge and trail systems, state natural recreation and state wildlife management areas; (b) result in the inability to exploit clay reserves secured under deed at the turn of century, and limit a company's preexisting rights.

Senate Preston stated that the 300 foot restriction against mining might constitute an unlawful taking of private property under recent Supreme Court decisions relating to restrictions on the use of certain types of private property. Commissioner Rosenbaum stated that: the exclusions established in these administrative regulations: (1) relate to the protection of the environment, public property, and protected environment that should not be disturbed; (2) require a waiver from an occupant of public agency , for such activities as: (a) blasting within 300 feet of an occupied dwelling; (b) nonblasting extraction of minerals in an area closer than 100 feet of an occupied dwelling; or (c) mining within 100 feet of a cemetery or right-of-way of a public road; and (3) whether these exclusions or waiver requirements would constitute an unconstitutional taking of private property would be a matter for the courts to decide

In response to Senator Preston's request for the Cabinet's position on the argument that clay and limestone are regulated under the same set of regulations, even though they actually are different operations with different problems that cannot be regulated as if they were the same, Commissioner Rosenbaum stated that: (1) non coal mining administrative regulations had not been updated since 1975; (2) currently, separate administrative regulations in KAR Chapter 5 govern the various non coal minerals; (3) separate regulations for coal and non coal minerals are required because the Cabinet believed that the General Assembly did not intend statutory amendments specific to coal to govern non-coal minerals; (4) while breaking surface to extract matter, whether clay, or limestone, or other solid matter, may have different environmental impacts depending upon the setting, the potential impacts on the public and environment do not differ because of the mineral;(5) area clay mining in western Kentucky differs environmentally from the contour mines in eastern Kentucky, but not on the basis of the mineral.

Mr. Cook stated that, while many of the amendments are acceptable, the overall effect of these regulations is to: (1) impose unnecessary requirements and undue hardship on clay mining; (2) ignore more practical and less onerous methods of solving problems raised by clay mining that have been utilized for years to the satisfaction of agencies, the public ,and industry; (3) other non-coal minerals, such as coal shale, are governed by separate regulations, while clay and other non-coal minerals are governed by one set of regulations, even though they raise different problems; and (4) ignore the uniqueness of each type of mineral, the methods for and problems related to them. He added that the regulations primarily address the problems faced by the Cabinet, but do not consider the actual nature of each type of non-coal mineral extraction or acknowledge that one set of requirements does not apply to all types of non-coal mineral extraction.

Mr. Clevenger stated that: (1) he had 42 years' experience in the refractory clay mining business; (2) he had presented information relating to the business on performance standards for clay mines, and information from the geological survey library in Lexington; and (3) while the expertise of industry members had previously been utilized on the development of regulations in the past, these regulations were developed without such utilization.

Mr. Bradley stated that: (1) in the past Kentucky's failure to comply with court decisions had resulted in simultaneous regulation by various agencies; (2) as much as possible, standard regulations and requirement were necessary, because government agencies did not have the number of employees that would be required to resolve every issue raised by every type of mineral extraction in the field; (3) he was sympathetic, as were most members of the public, to pre-existing rights, and also supported the protection of the environment other public interests; (4) the issue of existing rights and restrictions of existing rights for the protection of the environment and other public rights will be determined by the courts; and (5) although the Cabinet complied with the Subcommittee's request to meet with clay mining operators to resolve the issues raised by these regulations, it may not ever be possible to resolve every issue to the satisfaction of all parties, and it is necessary to implement the best possible regulations to protect the public interest and the interest of those who live near mining operations.

Mr. Walker stated that: (1) the Kentucky Crushed Stone Association represented 90 companies, about 95% of Kentucky crushed limestone operation; (2) operations compatible with neighborhoods in which they are conducted, providing jobs, paying local taxes and severance taxes, producing stone for building infrastructure, donating time and money to community projects, 300-400 tons crushed stone per new subdivision home, reputation as environmental stewards

essential to limestone operators; (3) over the last 2 years, Association members have worked with the Cabinet in the development of these regulations; (4) the Association's environmental committee has reviewed and approved these administrative regulations as allowing, without being unduly stringent, economic growth while protecting the environment; (5) while the regulations impose additional requirements on the industry, the requirements are not unreasonable, and insure protection of those who live near mineral operations, water quality, and other aspects of the environment; (6) the Association recommended approval of the regulations.

Commissioner Rosenbaum stated that the Cabinet had: (1) spent about 2 years working with the various industries to develop these regulations; and (2) attempted to comply with the requirement of the General Assembly that administrative regulations contain all matters statutorily required, and that statutory and regulatory requirements not be implemented or issued by policy that was not contained in administrative regulations.

Chairman Crenshaw stated that he had received calls from other members of clay mining operations in western Kentucky and asked whether the Cabinet had; (1) discussed these regulations with other clay mining operators, and (2) received objections to them. Commissioner Rosenbaum responded that the Cabinet: (1) had met with western Kentucky operators; and (2) believed that those members of the industry who appeared before the Subcommittee, today, were the only industry members opposed to the regulations.

In response to a question by Representative Bruce, Commissioner Rosenbaum stated that: (1) after the October, 1995 Subcommittee meeting, the Cabinet had met in November and December in Grayson, and this month in Frankfort, with the operators who appeared before the Subcommittee; (2) some of the changes made in response to their objections resulted in Cabinet withdrawal of the regulation requiring licensure, because a permit is required and enforcement procedures relating to permits have been established; and (3) other changes: (a) allow continued mining operation in certain protected areas based on an existing permit that authorizes mining within the distances prohibited by regulation; and (b) substantially reduced the stringency of regulations to protect threatened and endangered species, and critical environmental resources.

In response to a question by Representative Bruce, Commissioner Rosenbaum stated that two issues remained unresolved: (1) whether clay mining should be governed by a separate administrative regulation; and (2) whether the requirement for obtaining waivers from landowners when blasting will occur within 300 feet of a house, or when minerals will be extracted, without blasting, within 100 feet of a house, cemetery or other exclusion zone.

In response to Representative Allen statement that separate regulations would not preclude protection of the public, Commissioner Rosenbaum stated that separate regulations could be promulgated, but that they would be largely identical. Representative Allen stated that separate regulations: (1) would not necessarily be identical, since they deal with different types of minerals that involve different procedures, methods, by products and effects on the environment; and (2) those appearing before the Subcommittee had not objected to regulation, but to application of identical requirements on different operations that entailed different procedures and problems. Commissioner Rosenbaum replied that while breaking the surface to obtain limestone would not cause an acid mine drainage problem, some clay mining, depending upon the strata being mined, might cause an acid mine drainage problem. a mineral Representative Allen stated that: (1) this showed that regulations should address the specific mineral operations and the specific problems they raised, rather than apply one standard to a variety of mineral operations that did not cause the same problems or require the same restrictions; and (2) clay mining operators, were put under more onerous standards than other mining operations.

Senator Kafoglis stated that he:(1) could understand and appreciate the restrictions on blasting and extraction as they related to homes; (2) was concerned about the issue of pre-existing rights, and whether limestone and other minerals gave rise to this issue. Representatives of the crushed stone industry stated that it was not a concern. In response to questions by Senator Kafoglis relating to the pre-existing rights issue: (1) Commissioner Rosenbaum stated that the pre-existing rights issue was not limited to clay mining operations, and that the owners of limestone and other minerals could be faced with the same issue; (2) Mr. Messer stated the pre-existing issue affected the extensive reserves of different types of clay related to the clay refractory industry, such as flint clay, soft clay, semi-hard clay, ball clay, because these regulations would prohibit extraction or utilization of these reserves. In response to questions by Senator Kafoglis, Mr. Messer stated that: (1) he did not blast within 300 feet or extract within 100 feet; and (2) objected to the regulations because he could be prevented from mining near property if a building were constructed on the property line of adjacent property.

Senator Preston stated that: (1) concerns have been raised over compliance with: (a) KRS 13A.221, requiring the division of the subject matter of administrative regulation into topics; and (b) KRS 13A.210, requiring the tiering of administrative regulations to preclude the unnecessary application of regulatory requirements to those who do not contribute significantly to the problem the administrative regulation was designed to address; (2) while he suspected that there may need to be separate regulations for clay mining, it was not possible for the Subcommittee to obtain the detailed technical information required to determine whether these statutes were violated; and (3) even with a Subcommittee finding of deficiency, the Cabinet could enforce these regulations until the next session of the General Assembly. Senator Preston moved that LRC be requested to refer the issues raised by these administrative regulations to the appropriate legislative subcommittee to review them, with particular emphasis on clay mining, and to make recommendations at the next session of the General Assembly relating to amendment of statutes relating the issue of regulation of clay mining separate from other minerals.

Representative Lee supported the request to request LRC to refer the issues to a legislative subcommittee for study, and stated that: this would : (1) permit: (a) a detailed analysis of the regulations; (b) a determination of whether clay mining operations should be regulated separately, and amendments to existing statutes necessary; (2) prevent an expiration of uncontested sections of these regulations that would occur with a finding of deficiency and would require the General Assembly unnecessarily to reenact legislation relating to all non-coal mining. Subcommittee staff confirmed Representative Bruce's statement that a referral to LRC would be in addition to, and not in place of, a review of these administrative regulations by a second legislative subcommittee before they became effective.

Chairman Crenshaw pointed out that the proposed amendments to these administrative regulations should first be adopted, and Senator Preston agreed to withdraw his motion.. Upon approval of the amendments to these administrative regulations, and the administrative regulations as amended, Senator Preston: (1) assured Representative Allen that the LRC referral request would insure that clay mining operators would be given an opportunity to appear before the General Assembly for a detailed review of the question whether clay mining should be regulated separately; and (2) renewed his motion to request an LRC referral, which was approved by the Subcommittee.

405 KAR 5:001. Definitions for 405 KAR Chapter 5. This administrative regulation was amended to: (1) expand the definition of clay; and (2) delete the definitions for: (a) "fragile lands"; (b) "historic lands"; (c) "hydrologic balance of surface waters"; (d) "license"; and (e) "threatened and endangered species".

405 KAR 5:015. General provisions. This administrative regulation was amended as follows: (1) Section 4(1) was amended to delete the: (a) requirement for a license; and (b) the cross reference to administrative regulations relating to the licensure requirement; and (2) a new

subsection (6) was added to provide that, unless a waiver is obtained from the owner, mineral operations shall be conducted in a manner that will minimize harm to utility and transportation facilities.

405 KAR 5:021. Permit and license fees. This administrative regulation was amended to: (1) correct the title and the Necessity And Function paragraph of the administrative regulation to reflect that licenses were no longer required; (2) reduce the permit fee from $50 to $25; and (3) to delete Section 2, which established license fees, in its entirety because the requirement for licenses had been deleted.

405 KAR 5:030. Permit requirements. This administrative regulation was amended as follows: (1) Section 2(7) was deleted in its entirety, because the requirement for licensure has been deleted; (2) Section 5(2) was amended to: (a) require proof of notification and required approvals, rather than a statement from governmental agencies that the public and affected landowner will be protected; and (b) exempt from its requirements, a proposed mineral operation where mine access roads or haul roads join the right-of-way; (3) Section 5(3) was amended to delete the requirement for a commitment from the landowner for maintenance, and to substitute a written acknowledgement from the landowner that the holder of the mineral permit will not have a continuing responsibility for maintenance after release of the permit; (4) Section 5(8) was amended to delete the requirement for letters of agreement between the applicant and an affected utility, and to substitute the approval required by 405 KAR 5:015, Section 4(6); (5) Section 8(1),(3), and (4) were amended to insert "proposed" before "underground workings" to make it clear that the subsections referred to proposed rather existing "underground workings"; (6) Sections 10, 13(2), and 24(3)(c) were amended to delete the requirement for information relating to plans for mitigation of harm to Historic Places or known archaeological sites, removal of sediment, and proof of compliance with applicable administrative regulations and statutes; (7) Section 27(4) was amended to delete the requirement that an applicant affirmatively demonstrate that the mineral operation will not adversely affect fragile lands, and endangered or threatened species listed pursuant to federal law; (8) Section 29(5) was amended to clarify that the requirements apply to activities of the applicant in violation of environmental law or administrative regulation; (9) Section 30 was amended as follows: (a)language preceding subsection (1) of Section 30(1) was amended to correct the format; and (b) Subsection (1) was amended to establish the deadline for filing a request for an informal conference on a permit application, and for the holding of the conference; (10) Section 31 was amended as follows: (1) Subsection (1): to require, within 180 days of the effective date of this administrative regulation, all existing mineral operations to obtain a permit, rather than limit the permit requirement to those that prior to the effective date of this administrative regulation were not permitted or regulated; and (2) create Subsection (3), to grandfather lesser distance limitations that had been approved prior to the effective date of the administrative regulation, and to exempt such from the distance limitations of Section 26(6).

405 KAR 5:035. Signs and markers. This administrative regulation was amended, in Section 1, Subsections (1) and (3), to require signs to be made of durable material, rather than wood or metal.

405 KAR 5:040. Access roads and haul roads. This administrative regulation was amended as follows: (1) Section 1(3) was amended to make it clear that the specifications which the design or roads shall meet are the specifications established by this administrative regulation; and (2) Section 2(9), relating to specifications for access and haul roads, permitting Cabinet modifications required by topography or watershed, was deleted.

405 KAR 5:045. Protection of cultural and environmental resources. This administrative regulation was amended as follows: (1) The Title and the Necessity And Function paragraph were amended to delete the reference to the protection of cultural, historical and archaeological sites, and "other" environmental features; (2) Section 1, prohibiting mineral operations that result in an adverse effect on sites listed on the National Register of Historic places or historic land, and requiring protection of significant, known, archaeological sites, was deleted; (3) Section 2(6). permitting the Cabinet to prohibit mineral operations that would adversely affect land determined by the Cabinet as fragile, was deleted.

405 KAR 5:050. Protection of the hydrologic balance. This administrative regulation was amended to: (1) delete, in the Title, and Section 1(1),(4), language relating to the protection and maintenance of the hydrologic balance of surface waters, and to insert in lieu thereof surface water or surface water quantity and quality; (2) Section 1(6)(a) was created to provide that disturbed area shall not include areas in which diversion ditches, sedimentation pond, or roads are installed pursuant to 405 KAR Chapter 5, and the upstream area is not other disturbed by the permittee; and (3) Section 4, a statement of, and cross reference to, the permit and approval requirements of other administrative bodies, was deleted in its entirety.

405 KAR 5:055. Permanent and temporary impoundments. This administrative regulation was amended as follows: (1) create a new Subsection (8) of Section 1 to provide that modification of existing temporary impoundments shall not be required unless, after inspection, the Cabinet determines that it is required to protect public health or safety, or the environment; (2) paragraph (d) of Section 2(1), a cross reference to the water impoundment narrative description requirement of 405 KAR 5:030, was deleted; and (3) Section 2(1)(e) was amended to require an affidavit from the landowner acknowledging that the permittee will not have a continuing maintenance responsibility after release of the permit, rather than and affidavit from the landowner that commits to maintenance.

405 KAR 5:060. Handling of materials. This administrative regulation was amended as follows: (1) Section 4(2)(b)1. was amended to require removal and segregation for redistribution of 6 inches of soil, rather than 6 inches of topsoil; (2) Section 4(2)(c), requiring the removal, segregation, and redistribution of subsoil in addition to the topsoil, was deleted; and (3) paragraph (d) was added to Section 5(7) to provide that, upon Cabinet determination that there will be no adverse impacts to excess spoil fill, public health and safety, an the environment, approval of diversions located on fill material due to topography and configuration of the fill may be permitted.

405 KAR 5:070. Revegetation. This administrative regulation was amended as follows: (1) Section 3(3)(a) was amended to reduce the number of trees or shrubs per acre required for reforestation; (2) Section 3(3)(f), prohibiting the intermixing of certain species of trees, was deleted; and, (3) the language in Section 3(4) was deleted in its entirety, and language providing that the Cabinet, upon adequate justification by the permittee, may approve a seeding mixture other than the mixtures required in Appendix A.

405 KAR 5:085. Enforcement. This administrative regulation was amended as follows: (1) Section 3(1) was amended to delete the general reference to other applicable statutes or administrative regulations, and to insert "requirement" as another item for which a violation of may result in citation of noncompliance; and, (2) Section 3(4) was amended to add additional subparagraphs that permit extensions for remedial action beyond the 90 day period established by Section 3, if the permittee meets the requirements established by the new paragraphs, such as extension required for reasons not due to permittee's lack of diligence, judicial order, labor strike, etc.

General Provisions

405 KAR 7:095. Assessment of civil penalties. This administrative regulation was amended as follows:: (1) on pages 15 and 16 of the "Procedures for Assessment of Civil Penalties" handbook, the assessment of an additional penalty for an "imminent danger cessation order" and "cessation order for failure to abate" was deleted; (2) on page 1 of the handbook, the additional penalty for a noncorrectable violation was deleted; (3) the penalty points assessed for disturbance of topsoil on page 24 of the handbook was reduced; and (4) the January 6, 1995 edition of the handbook was incorporated

by reference. Subcommittee staff pointed out that these amendments were made to comply with KRS 13A.120(1) and KRS 350.465 which require Cabinet administrative regulations be no more stringent than the federal minimum requirements for regulating surface mining.

Performance Standards for Surface Mining Activities

405 KAR 16:200. Revegetation. This administrative regulation was amended to: (1) alter the required stocking densities for woody plants on reclaimed land; (2) permit the Cabinet to use plants recommended by the Kentucky Department of Fish and Wildlife if requested by applicants; and (3) update and amend the incorporated handbook to provide scientific names of plants used for reclamation.

Performance Standards for Underground Mining Activities

405 KAR 18:200. Revegetation. This administrative regulation was amended to: (1) alter the required stocking densities for woody plants on reclaimed land; (2) permit the Cabinet to use plants recommended by the Kentucky Department of Fish and Wildlife if requested by applicants; and (3) update and amend the incorporated handbook to provide scientific names of plants used for reclamation.

Department of Corrections: Office of the Secretary

501 KAR 6:020 & E. Corrections policies and procedures. Jack Damron, representing the Department, appeared before the Subcommittee. This administrative regulation was amended to correct a reference citation and to comply with KRS Chapter 13A language requirements.

501 KAR 6:070 & E. Kentucky Correctional Institution for Women. This administrative regulation was amended to clarify telephone usage provisions and to make a grammatical correction.

501 KAR 6:120. Blackburn Correctional Complex. This administrative regulation was amended to add a reference citation.

Kentucky Authority for Educational Television

700 KAR 2:010& E. Gubernatorial forums or debates. Sally Hamilton, Donna Moore, and Brent Irvin appeared before the Subcommittee representing the Authority. Section 5(5) was amended by changing a reference from "Section 1(1)" to "Section 4(1)". Section 5(6)(a) was amended to provide that "upon written request, one VHS video tape copy of the KET televised candidate forums or debates shall be provided free of charge to each media organization across the Commonwealth for simulcast or rebroadcast. All other requests shall be submitted and processed under the provisions of KRS 61.870 through 61.884." This amendment added the written request provision, clarified that it would be free of charge, and added that all other requests would be handled according to the open records law.

Kentucky Racing Commission: Thoroughbred Racing

810 KAR 1:032. Breeders' award program. Questions had been raised concerning: (1) the disbursement of awards from the Breeders' Award Fund "as soon as...practicable after the end of each calendar year..." in Section 3(1); and (2) the absence of standards in Section 5 for the determination of contested awards. The Subcommittee accepted agency personnel explanation that: (1) because of the timing of events involved in the Breeders' Award Program, the only practicable time for distribution was after the end of the calendar year; and (2) since each situation would involve different facts: (a) it was not possible to provide for all of them in the administrative regulation; and (b) the Commission was bound by the usual constitutional requirements for an administrative hearing.

Section 5(1)(b) of this administrative regulation was amended to comply with the drafting requirements of KRS 13A.222(4).

The Subcommittee determined that the following administrative regulations complied with statutory requirements:

Board of Embalmers and Funeral Directors

201 KAR 15:050. Apprenticeship requirements. Senator Kafoglis asked: (1) whether apprentice embalmers are paid a salary; (2) why the Board prohibits an apprentice, during the apprenticeship program, from engaging in employment that is not related to the apprenticeship; and (3) for an explanation of the Board's rationale for such a harsh rule that would prohibit gainful employment to individuals, who: (a) have worked their way through embalmers school; and (b) cannot get a job as an apprentice, because they had been told they cannot hold a job other than the apprentice job.

Bill Petus, Assistance Attorney General and legal counsel for the Board replied that: (1) KRS 316.040 requires that: (a) an apprentice "will be paid a monthly salary"; (b) the apprentice applicant must file a certificate of registration which includes, "...a sworn statement by the person under whom he is registered that the applicant will do actual service, devoting all his working hours to the service,..."; and (2) this statutory provision is interpreted by the board to mean: (a) the apprentice shall devote all his working hours, (full-time), to the apprenticeship employment; and (b) is precluded from holding or engaging in other employment while completing the apprenticeship requirements.

Senator Kafoglis stated that the language found in KRS 316.040, relating to embalmer apprentices, and KRS 316.090, concerning funeral director apprentices, "devoting all their working hours to the service" [apprenticeship]" could also be interpreted to mean that an individual would: (1) would devote all of his "working hours as an apprentice to the particular 'supervising embalmer'"; and (2) not be precluded from other employment that was unrelated to the apprenticeship.

Representative Bruce asked that Senator Kafoglis' interpretation be communicated to the Board as it appeared that the Board's interpretation results in unfair and harsh requirement.

Senator Preston: (1) agreed that this requirement appeared to be unduly burdensome for potential applicants who must maintain a particular salary while completing apprenticeship requirements; and (2) moved to refer the issue to the Legislative Research Commission for referral to a legislative subcommittee of this issue and recommendations relating to the amendment of applicable statutes to remove this statutory burden on apprentices.

Bill Petus agreed that: (1) KRS 316.040 could be subject to more than one interpretation; (2) he would communicate the Subcommittee's position to the Board requesting reconsideration of this harsh policy; and (3) upon Senator Kafoglis's request, he would report the Board's position on this issue to the Subcommittee.

201 KAR 15:080. Complaints of violations.

Board of Nursing

201 KAR 20:085. Licensure periods.

Natural Resources and Environmental Protection Cabinet: Department for Environmental Protection: Air Quality - General Administrative Procedures

401 KAR 50:072. Acid rain permit.

Air Quality - Hazardous Pollutants

401 KAR 57:015. National emission standard for beryllium.

401 KAR 57:021. National emission standard for mercury.

401 KAR 57:025. National emission standard for beryllium rocket motor firing.

401 KAR 57:030. National emission standard for vinyl chloride.

401 KAR 57:035. National emission standard for equipment leaks (fugitive emission sources).

401 KAR 57:045. National emission standard for inorganic arsenic emissions for glass manufacturing plant.

401 KAR 57:050. National emission standard for inorganic arsenic emissions from primary copper smelters.

401 KAR 57:055. National emission standard for inorganic arsenic emissions from arsenic trioxide and metallic arsenic production facilities.

401 KAR 57:130. National emission standard for benzene emissions from coke by-product recovery plants.

401 KAR 57:270. National emission standard for benzene

emissions from benzene storage vessels.

401 KAR 57:300. National emission standard for benzene emissions from benzene transfer operations.

Air Quality - General Standards of Performance

401 KAR 63:070. Compliance for early reductions of hazardous air pollutants.

Department for Surface Mining and Reclamation and Enforcement: Surface Effects of Noncoal Mining (See discussion of 405 KAR 5's in amendment section above.)

405 KAR 5:038. Blasting.

405 KAR 5:065. Premining and postmining land use.

405 KAR 5:075. Contemporaneous reclamation.

405 KAR 5:080. Reclamation bond.

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.

Department of Education: Office of District Support Services: School Administration and Finance

702 KAR 3:020. Bond issue approval.

Facilities Management

702 KAR 4:160. Capital construction process.

702 KAR 4:170. Facility programming and construction criteria; repeal of 702 KAR 4:060, 702 KAR 4:060, 702 KAR 4:080.

Labor Cabinet: Department of Workers' Claims

803 KAR 25:160. Charges by medical providers for testimony and reports in workers' compensation claims. Commissioner Walter Turner, Chief Administrative Law Judge Donna Terry, and Valerie Salven, Counsel, appeared before the Subcommittee representing the Department. Senator Preston asked if basically what the Department is doing is limiting the fees doctors can charge for deposition and filling out 107s. Commissioner Turner answered that that was one-half of it and the other half is regulating charges for photo copies. Senator Preston asked if this was part of their mandate to which Mr. Turner replied that these are mandated. Senator Preston asked if this administrative regulation will reduce the overall cost. Mr. Turner said it would. Senator Preston then asked if the Department had considered redoing the administrative regulation to encourage the use of the 107 rather than depositions. Mr. Turner responded that they had, and pointed out that the proposed administrative regulation provides that the 107 and 108 reports shall be filed for a provider charge not exceeding $200. He added that they were in the process of revising those forms to make them more meaningful. He stated that their preference would be to have more reports and less depositions.

Senator Kafoglis questioned the $450 per hour fee allowed for depositions, stating that that seemed pretty high to him. He asked how much these people were charging. Mr Turner said some were charging up to $900 per hour and some up to $750 for a one-half hour deposition. He added that the charges were "All across the board". Senator Kafoglis asked if there were some basis for these charges ($450 per hour). Mr Turner said "Yes", and added that the providers wanted a great deal more than $450 per hour.

Donna Terry stated that they had a broad based advisory committee and that they also had done a wide survey of current charges, and this is at the low end of charges. She stated that this a balance between a desire to get the charges in as low as possible, but not so low that doctors would be unwilling to practice in the workers' compensation medical area. Senator Kafoglis stated that the Workers' Compensation statute requires managed care in evaluating injuries, and asked if in that situation of a managed care contract, if there would be charges for depositions in addition to the managed care fee. Mr. Turner said that with managed care there would be fewer litigated cases, but there would be some claims, and those claims would involve the taking of depositions.

Senator Kafoglis asked who pays the cancellation fee when there is a cancellation. It was stated that the party who requests the cancellation pays the cancellation fee to the doctor unless a minimum forty-eight hour notice is given. Senator Kafoglis then asked if there were a fee to anyone if the doctor canceled. Ms. Terry said that had been a topic of hot conversation, but the law only addressed regulating the cost of medical testimony in these claims.

Department of Housing, Buildings and Construction: Hazardous Materials

815 KAR 30:010. LP gas license; financial responsibility required.

Cabinet for Human Resources: Department for Health Services: Controlled Substances

902 KAR 45:110. Permits and fees for retail food establishments, food manufacturing plants, food storage warehouses, salvage processors and distributors, vending machine companies, and seasonal restricted food concessions. Representative Allen stated that he was concerned that this administrative regulation: (1) established a permit fee of $25.00; and (2) would raise a total of $12,500 to be distributed and apportioned among local health departments.

Anita Travis, Cabinet for Human Resources representative, replied that: (1) the proposed amendment does establishes an annual permit fee of $25.00 for seasonal restricted food concessions; (2) this permit category allows: (a) permittees to apply for this eight (8) month permit when the food service intends to operate beyond a temporary period of time; and (b) a fee savings to those who formerly had to reapply each time for the "temporary" food service permit costing $20.00 which expired after fourteen (14) days.

Kentucky Health Policy Board: Administration

909 KAR 1:010 (& E). Kentucky Health Policy Board meeting minutes, and transactions.

909 KAR 1:020E. State health plan process.

909 KAR 1:070E. Data reporting by health care providers.

The following administrative regulations were deferred to the next Subcommittee meeting, unless otherwise noted, upon agreement by the Subcommittee and the promulgating agency:

Department of Personnel: State Employee Benefit Fund

101 KAR 4:010E. Health and other benefits.

Revenue Cabinet: Income Tax, General Administration

103 KAR 15:090. Computing the amortization deduction for intangible assets.

Cabinet for Human Resources: Department for Medicaid Services

907 KAR 1:671E. Conditions of medical provider participation; enrollment, documentation of services, disclosure, claims processing, withholding overpayments, appeals process, and sanctions.

Department for Mental Health And Mental Retardation Services: Mental Health

908 KAR 2:090E. Decriminalization of mental illness.

The following administrative regulations were withdrawn by the promulgating agency:

Natural Resources and Environmental Protection Cabinet: Department for Surface Mining Reclamation and Enforcement: Surface Effects of Noncoal Mining

405 KAR 5:025. License requirements.

Kentucky Health Policy Board: Administration

909 KAR 1:020E. State health plan process. Subcommittee staff explained that this administrative regulation was being withdrawn by the Board, because: (1) Section 1 established a public hearing that was contrary to the provisions of KRS 13A.015 and 13A.017, establishing the requirements for a Notice of Intent and a Notice of

Intent hearing; and (2) Section 2 repeated or summarized statutes in violation of KRS 13A.120(2)(e),(f).

Other Business

Election of Chairman

Upon nomination by Representative Lee, the Subcommittee elected Representative Crenshaw as Chairman of the Subcommittee. Chairman Crenshaw thanked the members of the Subcommittee for their support and election of him as Chairman.

The Subcommittee adjourned at 12:30 p.m. until March 6, 1995 at 10 a.m. in Room 149 of the State Capitol.

OTHER COMMITTEE REPORTS

COMPILER'S NOTE: In accordance with KRS 13A.290(9), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

INTERIM JOINT COMMITTEE ON TRANSPORTATION
Meeting of January 24, 1995

The following administrative regulations were considered by the Interim Joint Committee on Transportation, Tuesday, January 24, 1995, having been referred to the Committee by the Legislative Research Commission pursuant to KRS 13A.290(6):

502 KAR 10:035 & E - Commercial driver's license skills testing was approved by the Committee.

INTERIM JOINT COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES
Meeting of January 25, 1995

The following administrative regulations were available for consideration by the Interim Joint Committee on Agriculture and Natural Resources during its meeting of Wednesday, January 25, 1995, having been referred to the Committee on January 10, 1995, pursuant to KRS 13A.290(6):

301 KAR 1:201302 KAR 20:110
301 KAR 2:221E302 KAR 20:120
301 KAR 2:222E302 KAR 20:130
301 KAR 2:223E302 KAR 20:140
301 KAR 2:224E302 KAR 79:010

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the Wednesday, January 25, 1995, meeting, which are hereby incorporated by reference.

INTERIM JOINT COMMITTEE ON EDUCATION
Meeting of February 2, 1995

The following administrative regulations were available for consideration by the Interim Joint Committee on Education during its meeting of February 2, 1995, having been referred to the Committee on January 11, 1995, pursuant to KRS 13A.290(6): 702 KAR 3:275

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2): None

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320: None

The following administrative regulations were deferred pursuant to KRS 13A.300: None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the February 2, 1995 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

INTERIM JOINT COMMITTEE ON STATE GOVERNMENT
Meeting of February 8, 1995

The following administrative regulations were available for consideration by the Interim Joint Committee on State Government during its meeting of February 8, 1995, having been referred to the Committee on February 3, 1995, pursuant to KRS 13A.290(6):

31 KAR 4:090(&E)
45 KAR 1:080
101 KAR 2:036
101 KAR 3:045
700 KAR 2:010&E

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2): None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320: None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:: None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the February 8, 1995 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

The following administrative regulations were available for consideration by the Interim Joint Committee on State Government during its meeting of February 8, 1995, having been referred to the Committee on January 11, 1995, pursuant to KRS 13A.290(6):

20 KAR 1:080
40 KAR 1:030
105 KAR 1:120
105 KAR 1:140
105 KAR 1:150
105 KAR 1:180
105 KAR 1:190
105 KAR 1:200
105 KAR 1:210
105 KAR 1:215
105 KAR 1:230
105 KAR 1:240
105 KAR 1:260
105 KAR 1:270
105 KAR 1:280

The following administrative regulations were found to be

deficient pursuant to KRS 13A.290(7) and 13A.030(2): None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320: 20 KAR 1:080. The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum. (The amendment is as follows: Delete Section 2(8).)

The following administrative regulations were deferred pursuant to KRS 13A.300: None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the February 8, 1995 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

INTERIM JOINT COMMITTEE ON LABOR AND INDUSTRY
Meeting of February 9, 1995

The following administrative regulations were available for consideration by the Interim Joint Committee on Labor and Industry during its meeting of February 9, 1995, having been referred to the committee on January 9, 1995, pursuant to KRS 13A.290(6):

803 KAR 25:089 & E
803 KAR 25:091 & E
803 KAR 25:110 & E
803 KAR 25:120

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2): None.

The following administrative regulations were approved as amended at the at the Committee meeting pursuant to KRS 13A.320: 803 KAR 25:091. The second sentence of Section 3(1) of this administrative regulation was amended to read as follows: "The base cost-to-charge ratio is determined by dividing the net expenses for allocation as reflected on Worksheet A, Column 7, Line 95, **plus the costs of hospital-based physicians and nonphysician anesthetists reflected on lines 12, 13, and 35 of Worksheet A-8,** by the total patient revenues as reflected on **[~~Line 25 of~~]** Worksheet G-2 of the HCFA-2552."

The following additional administrative regulations were reviewed by the committee at its meeting on February 9, 1995: 803 KAR 25:089 & E, 803 KAR 25:110 & E, and 803 KAR 25:120. The committee expressed no objections to the above-referenced administrative regulations.

The following administrative regulations were deferred pursuant to KRS 13A.300: None.

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates I2

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 I14

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 I28

The Subject Index is a general index of regulations published in VOLUME 21 of the Administrative Register, and is mainly broken down by agency.

LOCATOR INDEX - EFFECTIVE DATES

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12 KAR 1:170E	3171	5-13-94
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12 KAR 1:175E	3173	5-13-94
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12 KAR 6:010E	3174	5-13-94
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12 KAR 6:015E	3174	5-13-94
Replaced	3336	8-24-94
12 KAR 6:020E	3175	5-13-94
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12 KAR 6:025E	3175	5-13-94
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401 KAR 42:070E	2530	2-15-94
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907 KAR 1:023E	3185	4-29-94
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301 KAR 1:085		
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