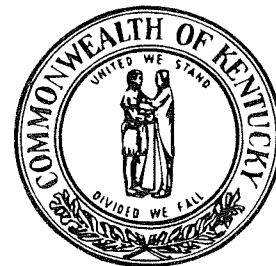


ADMINISTRATIVE REGISTER OF KENTUCKY



LEGISLATIVE RESEARCH COMMISSION
FRANKFORT, KENTUCKY

VOLUME 23, NUMBER 2
THURSDAY, AUGUST 1, 1996

Administrative Regulation Review Subcommittee, August Agenda	235
Regulation Review Procedure	238
Reprint: (None)	
Notices of Intent:	
Higher Education Assistance Authority	239
Finance and Administration Cabinet	239
Board of Hairdressers and Cosmetologists	240
Board of Nursing	245
Department of Fish and Wildlife Resources	246
Department of Agriculture	247
Economic Development Cabinet	248
NREPC - Water	248
NREPC - Air Quality	251
Petroleum Storage Tank Environmental Assurance Fund Office	252
Justice Cabinet - Medical Examiners Services	258
Department of Corrections	258
Transportation Cabinet	261
Board of Education	262
Education Professional Standards Board	263
Workforce Development Cabinet	268
Board of Tax Appeals	269
Labor Cabinet - OSHA	270
Labor Cabinet - Workers' Claims	288
Department of Alcoholic Beverage Control	288
Department of Mines and Minerals	289
Department of Insurance	291
Department of Financial Institutions	294
State Racing Commission	298
Department of Housing, Buildings and Construction	299
Cabinets for Health Services, and Families and Children	302
Emergencies:	
State Treasurer's Office	320
Finance and Administration Cabinet	320
Board of Hairdressers and Cosmetologists	321
Department of Agriculture	325
Economic Development Cabinet	327
Petroleum Storage Tank Environmental Assurance Fund Office	328
Transportation Cabinet	366
Education Professional Standards Board	367
Workforce Development Cabinet	371
Labor Cabinet - Workers' Claims	372
Department of Alcoholic Beverage Control	373
Department of Insurance	375
Cabinets for Health Services, and Families and Children	383
Kentucky Health Policy Board	423
As Amended:	
Board of Dentistry	424
Board of Embalmers and Funeral Directors	428
Department of Fish and Wildlife Resources	430
Department of Corrections	431
Public Service Commission	433
Department of Housing, Buildings and Construction	436
Amended After Hearing:	
Transportation Cabinet	441
Cabinet for Health Services	449

(TABLE OF CONTENTS continued on next page)

TABLE OF CONTENTS (continued)

Proposed Amendments Received Through Noon, July 15, 1996:

Revenue Cabinet	461
Finance and Administration Cabinet	462
Board of Accountancy	464
Department of Fish and Wildlife Resources	468
NREPC - Waste Management	475

PART 2 OF THE AUGUST 1, 1996 ADMINISTRATIVE REGISTER

NREPC - Waste Management (continued)	603
--	-----

PART 3 OF THE AUGUST 1, 1996 ADMINISTRATIVE REGISTER

NRECP - Waste Management (continued)	977
Justice Cabinet - Charitable Gaming	1000
Department of Corrections	1005
Transportation Cabinet	1010
Education Professional Standards Board	1017
Department of Mines and Minerals	1019
State Racing Commission	1021
Cabinet for Health Services	1045
Proposed Administrative Regulations Received Through Noon, July 15, 1996:	
Council on Higher Education	1049
NREPC - Waste Management	1052
Justice Cabinet - Charitable Gaming	1279
Justice Cabinet - Concealed Deadly Weapons	1283
Education Professional Standards Board	1292
Department of Mines and Minerals	1293
Cabinets for Health Services, and Families and Children	1295
July Minutes of the Administrative Regulation Review Subcommittee	1312
Other Committee Reports	None

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates	B2
KRS Index	B11
Subject Index	B19

MEETING NOTICE

The Administrative Regulation Review Subcommittee is scheduled to meet on August 5, 1996. See **tentative agenda** beginning on page 235 of this Administrative Register.

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

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ADMINISTRATIVE REGISTER - 235

**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA - August 5, 1996, 10 a.m.
Room 149, Capitol Annex**

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

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY

KHEAA Grant Program

11 KAR 5:130. Student application.

Teacher Scholarship Loan Program

11 KAR 8:030. Teacher scholarships.

Educational Savings Plan Trust

11 KAR 12:050. Substitution of a beneficiary.

11 KAR 12:070. Benefits payable from the Kentucky educational savings plan trust program fund.

COUNCIL ON HIGHER EDUCATION

Public Educational Institutions

13 KAR 2:060. Degree program approval; equal opportunity goals.

STATE BOARD OF ELECTIONS

Forms and Procedures

31 KAR 4:040E. Absentee ballots cast in county clerk's office.

Voting

31 KAR 5:010E. Absentee voting.

DEPARTMENT OF LAW

Attorney General

40 KAR 1:040. Parties who may request an opinion. (Repeals 40 KAR 1:010; 40 KAR 1:020)

40 KAR 1:050. Subjects on which opinions may be issued.

40 KAR 1:060. Subjects on which an opinion shall not be issued.

40 KAR 1:070. Procedures for requesting and issuing on opinion.

PERSONNEL

Department of Personnel; Classified

101 KAR 2:100E. Leave administrative regulations.

Department of Personnel; Unclassified

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

COMMISSION ON HUMAN RIGHTS

Human Rights

104 KAR 1:020. Administrative proceeding.

FINANCE AND ADMINISTRATION CABINET

Purchasing

200 KAR 5:302E. Delegation of authority. (Repeals 200 KAR 5:301) (Deferred from July) (Agency Requests Deferral to September)

Personnel Pilot Programs

200 KAR 22:130 & E. Comprehensive Employment Manual of the Cabinet for Health Services, Department for Health Services, Division of Disability Determinations for use in the Pilot Personnel Program.

GENERAL GOVERNMENT CABINET

Board of Accountancy

201 KAR 1:040 & E. Procedures for conducting examination.

201 KAR 1:045E. Examination subjects, grading and reexamination. (Agency Requests Deferral to August)

201 KAR 1:130E. Examination application procedure. (Agency Requests Deferral to August)

Kentucky Board of Dentistry

201 KAR 8:015. Registration of dental laboratories and technicians with board. (Deferred from July)

201 KAR 8:430 (&E). Unprofessional conduct.

Board of Examiners and Registration of Landscape Architects

201 KAR 10:050 & E. Fees.

Board of Physical Therapy

201 KAR 22:031. Therapist's licensing procedure.

201 KAR 22:106. Assistant's certification procedure.

201 KAR 22:135. Fees.

Kentucky Board of Registration for Professional Conduct

201 KAR 31:060. Code of professional conduct.

ADMINISTRATIVE REGISTER - 236

Kentucky Board of Certification of Marriage and Family Therapists
201 KAR 32:060. Continuing education requirements.

TOURISM DEVELOPMENT CABINET **Department of Fish and Wildlife Resources**

Game
301 KAR 2:176. Deer control tags. (Repeals 301 KAR 2:211)

DEPARTMENT OF AGRICULTURE

Tobacco Sales
302 KAR 78:020E. Use, sale and distribution of tobacco products.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET **Department for Environmental Protection**

Air Quality - General Administrative Procedures
401 KAR 50:035E. Permits.

JUSTICE CABINET

Charitable Gaming
500 KAR 11:001E. Definitions. (Deferred from July)
500 KAR 11:110E. Keno. (Deferred from July)
Department of Corrections

Office of the Secretary
501 KAR 6:020. Corrections policies and procedures.

TRANSPORTATION CABINET **Department of Vehicle Regulation**

Division of Motor Carriers
601 KAR 1:200. Administration of taxes imposed in KRS 138.655 through 138.7291. (Repeals 601 KAR 1:160; 601 KAR 9:074)
(Amended After Hearing)

Driver Improvement
601 KAR 13:090 & E. Medical Review Board; basis for examination, evaluation, tests.
601 KAR 13:100 & E. Medical standards for operators of motor vehicles.
Department of Highways

Right-of-way
603 KAR 4:040. TODS signs; placement on public roads other than interstates or parkways.

Traffic
603 KAR 5:066. Weight mass limits for trucks.

EDUCATION, ARTS AND HUMANITIES CABINET **Kentucky Board of Education** **Department of Education**

Office of Chief State School Officer
701 KAR 5:020E. Kentucky High School Athletic Association; procedures for appeal of decisions to the Kentucky Board of Education.
701 KAR 5:051E. Summary hearing procedures. (Repeals 701 KAR 5:050)
701 KAR 5:055E. Removal hearing procedures.
701 KAR 5:086E. Hearing process for school-based decision making complaints. (Repeals 701 KAR 5:085)
701 KAR 5:090E. Teacher disciplinary hearings.

Office of District Support Services

General Administration
702 KAR 1:080E. Transfer of annexed property; hearing.

School Administration and Finance
702 KAR 3:130. Internal accounting.
702 KAR 3:285E. School district Medicaid providers. (Deferred from July)

School Terms, Attendance and Operation
702 KAR 7:065E. Designation of agent to manage high school interscholastic athletics.
Bureau of Learning Results Services

Assistance and Intervention Services
703 KAR 3:205E. Management Improvement Program.
Office of Learning Programs Development

Office of Instruction
704 KAR 3:390. Extended school services.
Office of Special Instructional Services

Exceptional and Handicapped Programs
707 KAR 1:180E. Due process procedures.

ADMINISTRATIVE REGISTER - 237

WORKFORCE DEVELOPMENT CABINET Department for Employment Services

Unemployment Insurance

787 KAR 1:210 (&E). Employer contribution rates.

LABOR CABINET

Kentucky Occupational Safety and Health Review Commission

803 KAR 50:010 (&E). Hearings; procedure, disposition.

PUBLIC PROTECTION AND REGULATION CABINET Department of Insurance

Liability Self-insurance Groups

806 KAR 46:030. Reasonable time for violation correction.

Department of Housing, Buildings and Construction

Heating, Ventilation, and Air Conditioning Licensing Requirements

815 KAR 8:010. Master heating, ventilation and air conditioning (HVAC) contractor licensing requirements. (Deferred from July)

815 KAR 8:020. Journeyman heating, ventilation, and air conditioning (HVAC) mechanic licensing requirements. (Deferred from July)

CABINET FOR HEALTH SERVICES Department for Health Services

Local Health Departments

902 KAR 8:090. Promotion, transfer, and demotion of local health department employees. (Deferred from July)

Health Services and Facilities

902 KAR 20:018. Operation and services; renal dialysis facilities.

Radiation Operators Certification

902 KAR 105:070E. Violations and enforcement.

Water Fluoridation

902 KAR 115:020E. Enforcement of water fluoridation program.

CABINET FOR FAMILIES AND CHILDREN Department for Social Insurance

Food Stamp Program

904 KAR 3:042E. Food Stamp Employment and Training Program. (Deferred from June)

Department for Social Services

Child Welfare

905 KAR 1:360E. Private child care levels of care.

CABINET FOR HEALTH SERVICES Department for Medicaid Services

Medicaid Services

907 KAR 1:013E. Payments for hospital inpatient services. (Deferred from July)

907 KAR 1:022E. Nursing facility and intermediate care facility for the mentally retarded services. (Repeals 907 KAR 1:545)

907 KAR 1:025E. Payments for nursing facility and intermediate care facility for the mentally retarded services.

907 KAR 1:034E. Early and periodic screening, diagnosis, and treatment services. (Deferred from July)

907 KAR 1:035E. Payments for early and periodic screening, diagnosis, and treatment services. (Deferred from July)

907 KAR 1:060 & E. Medical transportation. (Not Amended After Hearing)

907 KAR 1:061 & E. Payments for Medical transportation. (Not Amended After Hearing)

907 KAR 1:140E. Alternative intermediate services for individuals with mental retardation or developmental disabilities. (Deferred from June)

907 KAR 1:450. Nurse aide training criteria and registry. (Deferred from July)

907 KAR 1:715E. School-based health services. (Deferred from July)

Payment and Services

907 KAR 3:005E. Physicians' services. (Deferred from June)

907 KAR 3:010E. Reimbursement for physicians' services. (Deferred from June)

Department for Mental Health and Mental Retardation Services

Substance Abuse

908 KAR 1:340 & E. Narcotic treatment programs. (Amended After Hearing)

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.

The administrative body shall file, within 180 days of the Notice of Intent scheduled hearing date, the ordinary administrative regulation.

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) working days before the scheduled hearing. If no written notice is received at least five (5) working 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 follows:

(a) If the administrative regulation has not been found deficient, on adjournment on the day the appropriate jurisdictional committee meets or thirty (30) days after being referred by LRC, whichever occurs first.

(b) If the administrative regulation has been found deficient, on adjournment on the day the appropriate jurisdictional committee meets or thirty (30) days after being referred by LRC, whichever occurs first; and on receipt of the governor's determination that the administrative regulation should become effective.

NOTICES OF INTENT TO PROMULGATE ADMINISTRATIVE REGULATIONS

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY

June 25, 1996

Kentucky Higher Education Assistance Authority (KHEAA)

(1) The subject matter of the proposed administrative regulation is **11 KAR 13:010**, the Kentucky National Guard Tuition Award Program.

(2) Kentucky Higher Education Assistance 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 is scheduled for August 30, 1996 at 10 a.m. in the conference room at 1050 U.S. 127 South, 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 10 days prior to August 30, 1996, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing or submit written comments should mail their written request or comments to the following address: KHEAA, attn: Paul P. Borden, 1050 U.S. 127 South, Frankfort, Kentucky 40601.

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

1. "I will 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 KHEAA at the address stated above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation is 1996 Ky. Acts ch. 220.

(b) The administrative regulation that KHEAA intends to promulgate will not amend an existing administrative regulation. It will establish the criteria for the administration of the National Guard Tuition Award Program which replaced KRS 38.500 (The Kentucky National Guard Educational Encouragement Fund), repealed by 1996 Ky. Acts ch. 220. This administrative regulation provides for the policy and procedures necessary to administer the financial management of the tuition program.

(c) The necessity and function of the proposed administrative regulation is as follows: The 1996 General Assembly enacted a new statute establishing the National Guard Tuition Program. The proposed regulation is necessary to implement the program.

(d) The benefits expected from the proposed administrative regulation are simplified procedures to effectively manage the disbursement and refund of funds awarded under the program.

(e) The proposed administrative regulation will direct the Department of Military Affairs to provide to KHEAA a roster, certified by the financial aid officer of the student's school, identifying students that the department has certified as eligible to receive an award. It will also set forth the procedures for the return of funds transferred to an educational institution if a student is no longer entitled to receive an award under this program.

FINANCE AND ADMINISTRATION CABINET

Office of the Secretary

July 12, 1996

Finance and Administration Cabinet

Office of the Secretary

(1) **200 KAR 5:011**, State vehicles. This proposed administrative regulation repeals 200 KAR 5:010, the Finance and Administration Cabinet's regulation relating to state vehicles.

(2) The Finance and Administration Cabinet intends to repeal 200 KAR 5:010.

(3) A public hearing to receive oral and written comments on the proposed repeal of 200 KAR 5:010 has been scheduled for 1:30 p.m., EDT, August 28, 1996, at the Fourth Floor Hearing Room, State Office Building, 501 Holmes 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 August 28, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Office of Legal and Legislative Services, Room 374 Capitol Annex, 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 REGISTER - 240

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 Legal and Legislative Services at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of administrative regulations relating to the use of state-owned vehicles was found in KRS 44.045(6). However, the 1996 General Assembly passed HB 568 which amends KRS 44.045 to substitute the Transportation Cabinet for the Finance and Administration Cabinet as the agency authorized to adopt administrative regulations governing the use of the state-owned vehicles.

(b) The administrative regulation that the Finance and Administration Cabinet intends to promulgate will not amend an existing administrative regulation. It will repeal 200 KAR 5:010.

(c) The necessity and function of the proposed administrative regulation is as follows: The statutory authority for Finance and Administration to promulgate a regulation relating to the use of state vehicles has been transferred to the Transportation Cabinet.

(d) The benefits expected from the administrative regulation are: To comply with the law as it will be in effect on July 15, 1996.

(e) The administrative regulation will be implemented by the repeal of 200 KAR 5:010.

KENTUCKY STATE BOARD OF HAIRDRESSERS AND COSMETOLOGISTS

July 1, 1996

Kentucky State Board of Hairdressers and Cosmetologists

(1) Regulation Number and Title: **201 KAR 12:020**, Examination.

(2) The Kentucky State Board of Hairdressers and Cosmetologists 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 August 26, 1996, at 10 a.m. at the Kentucky State board of Hairdressers and Cosmetologists, 314 West Second 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 August 26, 1996, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky State Board of Hairdressers and Cosmetologists, 314 West Second Street, Frankfort, Kentucky 40601, (502) 564-4262.

(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 State Board of Hairdressers and Cosmetologists 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 examinations administered by the board is KRS 317A.050.

(b) The administrative regulation that the board intends to promulgate will amend 201 KAR 12:020, as follows: Section 1 will require a nail technician student to remain in school for at least 75 days prior to examination. Other changes within the regulation upgrade the terminology and practice of "manicuring" to "nail technology".

(c) The necessity and function of the proposed administrative regulation is as follows: In accordance with legislation enacted by the 1996 General Assembly, a manicurist will be referred to as a nail technician and a student of nail technology will be required to complete 600 hours in a licensed school of cosmetology in order to be eligible for examination. A minimum of 75 days is required in order to complete 600 hours.

(d) The benefits expected from administrative regulation are: To assure the proper training and applications by nail technicians.

(e) The administrative regulation will be implemented as follows: Effective July 15, 1996, an individual enrolling in a school of cosmetology in the nail technician course will be required to complete a 600 hour course which requires a minimum enrollment of 75 days of attendance. Effective July 15, 1996, documents referring to a manicurist/manicuring will be changed to reflect nail technician/nail technology.

July 1, 1996

Kentucky State Board of Hairdressers and Cosmetologists

(1) Regulation Number and Title: **201 KAR 12:025**, Additional study after failing examination.

(2) The Kentucky State Board of Hairdressers and Cosmetologists 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 August 26, 1996, at 10 a.m. at the Kentucky State Board of Hairdressers and Cosmetologists, 314 West Second 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 August 26, 1996, the

ADMINISTRATIVE REGISTER - 241

public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky State Board of Hairdressers and Cosmetologists, 314 West Second Street, Frankfort, Kentucky 40601, (502) 564-4262.

(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 State Board of Hairdressers and Cosmetologists 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 examinations administered by the board is KRS 317A.050.

(b) The administrative regulation that the board intends to promulgate will amend 201 KAR 12:025, as follows: The terminology as it relates to the manicurist examination will be upgraded to nail technician examination.

(c) The necessity and function of the proposed administrative regulation is as follows: In accordance with legislation enacted by the 1996 General Assembly, the terminology will be upgraded and a manicurist will be referred to as a nail technician.

(d) The benefits expected from administrative regulation are: To assure the proper training and applications by nail technicians.

(e) The administrative regulation will be implemented as follows: Effective July 15, 1996, documents referring to a manicurist and manicuring will be changed to reflect nail technician and nail technology.

July 1, 1996

Kentucky State Board of Hairdressers and Cosmetologists

(1) Regulation Number and Title: **201 KAR 12:030**, License required.

(2) The Kentucky State Board of Hairdressers and Cosmetologists 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 August 26, 1996, at 10 a.m. at the Kentucky State Board of Hairdressers and Cosmetologists, 314 West Second 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 August 26, 1996, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky State Board of Hairdressers and Cosmetologists, 314 West Second Street, Frankfort, Kentucky 40601, (502) 564-4262.

(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 State Board of Hairdressers and Cosmetologists 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 requirement that a license be obtained is KRS 317A.020.

(b) The administrative regulation that the board intends to promulgate will amend 201 KAR 12:030, as follows: The terminology as it relates to a manicurist will be upgraded to nail technician. Section 2 will be amended to prohibit any unlicensed person to perform any cosmetological service in a licensed beauty salon.

(c) The necessity and function of the proposed administrative regulation is as follows: In accordance with legislation enacted by the 1996 General Assembly, the terminology will be upgraded and a manicurist will be referred to as a nail technician.

(d) The benefits expected from administrative regulation are: To assure the proper training and applications by nail technicians. To prohibit unlicensed persons to perform any cosmetological service in a salon, whether employed or otherwise.

(e) The administrative regulation will be implemented as follows: Effective July 15, 1996, documents referring to a manicurist and manicuring will be changed to reflect nail technician and nail technology. The owner and manager of a salon licensed by the board will be cited for allowing an unlicensed person to perform cosmetological services in the salon.

July 1, 1996

Kentucky State Board of Hairdressers and Cosmetologists

(1) Regulation Number and Title: **201 KAR 12:045**, Apprentice, manicurist, and instructor's licensing.

(2) The Kentucky State Board of Hairdressers and Cosmetologists 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 August 26, 1996, at 10 a.m. at the Kentucky State Board of Hairdressers and Cosmetologists, 314 West Second 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 August 26, 1996, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky State Board of Hairdressers and Cosmetologists, 314 West Second Street, Frankfort, Kentucky 40601, (502) 564-4262.

(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 State Board of Hairdressers and Cosmetologists 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 examinations administered by the board is KRS 317A.050.

(b) The administrative regulation that the board intends to promulgate will amend 201 KAR 12:045, as follows: The terminology as it relates to a manicurist will be upgraded to nail technician.

(c) The necessity and function of the proposed administrative regulation is as follows: In accordance with legislation enacted by the 1996 General Assembly, the terminology will be upgraded and a manicurist will be referred to as a nail technician.

(d) The benefits expected from administrative regulation are: To assure the proper training and applications by nail technicians.

(e) The administrative regulation will be implemented as follows: Effective July 15, 1996, documents referring to a manicurist and manicuring will be changed to reflect nail technician and nail technology.

July 1, 1996

Kentucky State Board of Hairdressers and Cosmetologists

(1) Regulation Number and Title: **201 KAR 12:060**, Inspections.

(2) The Kentucky State Board of Hairdressers and Cosmetologists 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 August 26, 1996, at 10 a.m. at the Kentucky State Board of Hairdressers and Cosmetologists, 314 West Second 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 August 26, 1996, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky State Board of Hairdressers and Cosmetologists, 314 West Second Street, Frankfort, Kentucky 40601, (502) 564-4262.

(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 State Board of Hairdressers and Cosmetologists 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 inspection of establishments licensed by the board is KRS 317A.060.

(b) The administrative regulation that the board intends to promulgate will amend 201 KAR 12:060, as follows: Section 1 of the regulation will be amended to include the practice of nail technology.

(c) The necessity and function of the proposed administrative regulation is as follows: In accordance with legislation enacted by the 1996 General Assembly, the terminology will be upgraded and manicurist/manicuring will be referred to as nail technician/nail technology.

(d) The benefits expected from administrative regulation are: To assure the proper training and applications by nail technicians.

(e) The administrative regulation will be implemented as follows: Effective July 15, 1996, terminology as it relates to manicuring will be upgraded to nail technology and establishment offering nail services only will be required to obtain a nail salon license.

July 1, 1996

Kentucky State Board of Hairdressers and Cosmetologists

(1) Regulation Number and Title: **201 KAR 12:080**, Shops' and schools' public identification.

(2) The Kentucky State Board of Hairdressers and Cosmetologists 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 August 26, 1996, at 10 a.m. at the Kentucky State Board of Hairdressers and Cosmetologists, 314 West Second 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.

ADMINISTRATIVE REGISTER - 243

(c) If a request for a public hearing is not received from the required number of people at least 20 days prior to August 26, 1996, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky State Board of Hairdressers and Cosmetologists, 314 West Second Street, Frankfort, Kentucky 40601, (502) 564-4262.

(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 State Board of Hairdressers and Cosmetologists 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 inspection of establishments licensed by the board is KRS 317A.060.

(b) The administrative regulation that the board intends to promulgate will amend 201 KAR 12:080, as follows: Section 1 of the regulation will be amended to include a nail salon.

(c) The necessity and function of the proposed administrative regulation is as follows: In accordance with legislation enacted by the 1996 General Assembly, the board will license nail salons offering only nail technology services.

(d) The benefits expected from administrative regulation are: To allow nail technicians to own and manage a business offering nail technology services.

(e) The administrative regulation will be implemented as follows: Effective July 15, 1996, establishments offering nail services only will be permitted to obtain a nail salon license.

July 1, 1996

Kentucky State Board of Hairdressers and Cosmetologists

(1) Regulation Number and Title: **201 KAR 12:082**, Schools course of instruction.

(2) The Kentucky State Board of Hairdressers and Cosmetologists 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 August 26, 1996, at 10 a.m. at the Kentucky State Board of Hairdressers and Cosmetologists, 314 West Second 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 August 26, 1996, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky State Board of Hairdressers and Cosmetologists, 314 West Second Street, Frankfort, Kentucky 40601, (502) 564-4262.

(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 State Board of Hairdressers and Cosmetologists 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 governing of schools of cosmetology is KRS 317A.060(1).

(b) The administrative regulation that the board intends to promulgate will amend 201 KAR 12:082, as follows: Section 14 is amended to increase the number of hours required for a nail technician course, amends the curriculum and course outline to 600 hours, and changes the terminology of "manicuring" to "nail technology".

(c) The necessity and function of the proposed administrative regulation is as follows: The statutes and administrative regulations as it relates to nail technology has not been changed since 1936, however, nail technology has become the fastest growing segment of the cosmetology industry through the application of artificial nails or sculptured nails through the use of acrylic, fiberglass, liquids and powders, fill ins, gels, wraps and paraffin treatments. Since preparing of the nail for the application of the chemicals used to form artificial nails as well as the chemicals used may cause harm to the nails if not applied properly, the board believes an increase in the curriculum from 300 hours to 600 hours is necessary for the health, safety and protection of the general public.

(d) The benefits expected from administrative regulation are: To assure the proper training and applications by nail technicians.

(e) The administrative regulation will be implemented as follows: Effective July 15, 1996, an individual enrolling in a school of cosmetology in the nail technician course will be required to complete a 600 hour course, which includes, but not limited to, the curriculum and course outline amended in the cited administrative regulation. Those students who have completed or are currently enrolled in the nail technician course by July 15, 1996, will only be required to complete the 300 hour course.

July 1, 1996

Kentucky State Board of Hairdressers and Cosmetologists

(1) Regulation Number and Title: **201 KAR 12:083**, Educational requirements.

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

ADMINISTRATIVE REGISTER - 244

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 26, 1996, at 10 a.m. at the Kentucky State Board of Hairdressers and Cosmetologists, 314 West Second 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 August 26, 1996, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky State Board of Hairdressers and Cosmetologists, 314 West Second Street, Frankfort, Kentucky 40601, (502) 564-4262.

(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 State Board of Hairdressers and Cosmetologists 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 schools of cosmetology is KRS 317A.060.

(b) The administrative regulation that the board intends to promulgate will amend 201 KAR 12:083, as follows: The terminology as it relates to manicurist will be upgraded to nail technician. In Sections 1 and 6 of the regulation, the application for enrollment form will be incorporated by reference. Other technical language changes appear in the amended regulation.

(c) The necessity and function of the proposed administrative regulation is as follows: In accordance with legislation enacted by the 1996 General Assembly, the terminology as it relates to manicurist will be updated.

(d) The benefits expected from administrative regulation are: To assure the proper training and applications by nail technicians.

(e) The administrative regulation will be implemented as follows: Effective July 15, 1996, all documents will be updated to reflect the terminology of nail technician/nail technology.

July 1, 1996

Kentucky State Board of Hairdressers and Cosmetologists

(1) Regulation Number and Title: **201 KAR 12:125**, Schools' student administrative regulations.

(2) The Kentucky State Board of Hairdressers and Cosmetologists 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 August 26, 1996, at 10 a.m. at the Kentucky State Board of Hairdressers and Cosmetologists, 314 West Second 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 August 26, 1996, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky State Board of Hairdressers and Cosmetologists, 314 West Second Street, Frankfort, Kentucky 40601, (502) 564-4262.

(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 State Board of Hairdressers and Cosmetologists 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 schools of cosmetology is KRS 317A.060.

(b) The administrative regulation that the board intends to promulgate will amend 201 KAR 12:125, as follows: Section 20 will require a student of nail technology to remain in school for a minimum of 75 days prior to examination. A minimum of 75 days of instruction is required to complete 600 hours. Other changes within the regulation are technical in nature only.

(c) The necessity and function of the proposed administrative regulation is as follows: In accordance with legislation enacted by the 1996 General Assembly, a student of nail technology will be required to complete 600 hours in a licensed school of cosmetology in order to be eligible for examination. A minimum of 75 days is required in order to complete 600 hours.

(d) The benefits expected from administrative regulation are: To assure the proper training and applications by nail technicians.

(e) The administrative regulation will be implemented as follows: Effective July 15, 1996, an individual enrolling in a school of cosmetology in the nail technician course will be required to complete a 600 hour course which requires a minimum enrollment of 75 days of attendance.

July 1, 1996

Kentucky State Board of Hairdressers and Cosmetologists

(1) Regulation Number and Title: **201 KAR 12:200**. The subject matter of the proposed administrative regulation is to set forth the

ADMINISTRATIVE REGISTER - 245

requirements for continuing education for the renewal of license and the requirements for the providers of continuing education classes.

(2) The Kentucky State Board of Hairdressers and Cosmetologists 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 August 26, 1996, at 10 a.m. at the Kentucky State Board of Hairdressers and Cosmetologists, 314 West Second 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 August 26, 1996, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky State Board of Hairdressers and Cosmetologists, 314 West Second Street, Frankfort, Kentucky 40601, (502) 564-4262.

(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 State Board of Hairdressers and Cosmetologists 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 renewal of license is KRS 317A.050(8).

(b) The administrative regulation that the board intends to promulgate will not amend an existing administrative regulation. It will establish the requirements for continuing education for the renewal of license and the requirements for providers of continuing education classes.

(c) The necessity and function of the proposed administrative regulation is as follows: Beginning July 1, 1997, KRS 317A.050(8) requires cosmetologists, cosmetology instructors, and nail technicians to provide proof of continuing education for renewal of license. This administrative regulation will set forth the procedures to be used by the licensee when renewing their license. This proposed administrative regulation also sets forth the requirements for providers of continuing education classes.

(d) The benefits expected from administrative regulation are: Continuing education would be beneficial to the licensee as well as the citizens of the Commonwealth of Kentucky to assure the licensee stays abreast of the ever changing industry as it relates directly to the competency of the licensee; pertains to subjects related to the theory, management and practice of cosmetology and nail technology; and pertains to the health, safety, welfare and protection of the public including but not limited to sanitation, sterilization, chemical waste disposal, safety in the work place, first aid, bloodborne pathogens, airborne pathogens and HIV/AIDs education.

(e) The administrative regulation will be implemented as follows: Effective July 1, 1997, the licensee will be required to provide a Record of Attendance for Continuing Education Credit along with the application for renewal of said license for attendance at a continuing education program approved by the board. The providers must make application to the board on an Application for Approval of Continuing Education Program and provide all documentation requested. Sponsors shall include, but not be limited to, private and vocational technical schools of cosmetology, associations and organizations whose membership consists of licensees of the board, colleges, universities or other institutions of higher education, individuals who hold an active cosmetologist license, instructor of cosmetology license or nail technician license and have special education, training and experience in cosmetology, and other persons who have a license, degree, special education, training and experience, relating to the subject matter of the program, and state agency programs. With the broad eligibility of sponsors, the programs should be available and accessible to licensees throughout the state.

BOARD OF NURSING

July 2, 1996

General Government Cabinet

Board of Nursing

(1) **201 KAR 20:390**, Nursing Incentive Scholarship Fund.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 30, 1996 at 9 a.m. (EST) in the Boardroom, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to August 30, 1996, the public hearing will be cancelled.

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

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

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

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

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

(b) Persons who wish to file this request may obtain a request form from the General Counsel, Kentucky Board of Nursing, 312

ADMINISTRATIVE REGISTER - 246

Whittington Parkway, Suite 300, Louisville, Kentucky 40222.

(7) Information relating to the proposed administrative regulation:

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

(b) The administrative regulation that the Board of Nursing intends to promulgate will amend 201 KAR 20:390. It will implement the changes to the Nursing Incentive Scholarship Fund Program enacted by the 1996 General Assembly.

(c) The necessity and function of the proposed administrative regulation is as follows: The 1996 General Assembly substantially amended the statute pertaining to the Nursing Incentive Scholarship Fund Program. The amendments to the regulation implement these changes.

(d) The benefits expected from the administrative regulation are: Implementation of the applicable legislation.

(e) The administrative regulation will be implemented as follows:

TOURISM DEVELOPMENT CABINET Department of Fish and Wildlife Resources

July 15, 1996

Tourism Development Cabinet

Department of Fish and Wildlife Resources

(1) Regulation Number and Title: **301 KAR 3:022**, Hunting and fishing license fees.

(2) The Department of Fish and Wildlife Resources 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 August 30, 1996, at 9 a.m. in the Commission Room, Arnold L. Mitchell Building, at the Game Farm, five miles west of Frankfort on U.S. 60.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to August 30, 1996, the public hearing will be canceled.

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

(b) In 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 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 150.025, 150.225 and 150.195.

(b) The administrative regulation that the department intends to promulgate will amend 301 KAR 3:022 as follows:

1. Include Peabody and Cyprus fees

2. Delete conservation camp fees from the regulation.

3. Include boat dock permit fees

4. Change time period of commercial pet and propagation permits and commercial fish propagation permits from one year from date of issue to a calendar year basis.

5. Change the time period of fur processor and fur buyers' (resident and nonresident) licenses from a calendar year to April 1-March 31.

6. Delete the fee for bird dog training device permit.

7. Establish the fee for migratory bird hunting permits.

(c) The necessity and function of the proposed administrative regulation is to establish fees and periods of validity for departmental licenses and permits.

(d) The benefits expected from the administrative regulation are to incorporate all fees into one regulation; to change the period of validity for several licenses to make their reissuance more convenient to the license holders; and to delete reference to fees no longer required.

(e) This administrative regulation will be implemented by publication of its provisions in departmental brochures and media outlets and enforcement by the department's Division of Law Enforcement.

July 15, 1996

Tourism Development Cabinet

Department of Fish and Wildlife Resources

(1) Regulation Number and Title: **301 KAR 2:140**, Seasons for wild turkey; **301 KAR 4:100**, Peabody Wildlife Management Area use requirements and restrictions.

(2) The Department of Fish and Wildlife Resources intends to amend the administrative regulations cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulations has been scheduled for August 30 at 9 a.m. in the Commission Room, Arnold L. Mitchell Building, at the Game Farm, five miles west of Frankfort on U.S. 60.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to August 30, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to John Wilson, The Department of Fish and Wildlife

ADMINISTRATIVE REGISTER - 247

Resources, #1 Game Farm Road, Frankfort, Kentucky 40601.

(b) In 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 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 150.025 and 150.390.

(b) The administrative regulations that the department intends to promulgate will:

1. Amend 301 KAR 2:140 as follows:

a. Lengthen the spring firearms season for wild turkey to 21 days, beginning on the Monday closest to April 15.

b. Make changes in wildlife management area season dates to reflect the change in statewide seasons.

c. Establish a separate turkey permit for fall archery hunting, a fall season of October 1 through December 31, and a fall season limit of two turkeys.

d. Change the check-in time for fall hunters to 9 a.m. on the day following the day the turkey was taken.

2. Amend 301 KAR 4:100 as follows:

a. Remove the prohibition against open fires and allow attended campfires.

b. Change the opening date for fishing on Goose Lake from July 1 to March 1 annually.

c. Delete the sections dealing with permit issuing agent qualifications, designation, and revocation.

(c) The necessity and function of the proposed administrative regulations are:

1. To optimize turkey hunting recreational opportunities while conserving the Commonwealth's wild turkey populations;

2. To detail requirements and restriction for the users of the Peabody Wildlife Management Area.

(d) The benefits expected from the administrative regulation are:

1. Increased hunting opportunity for fall archery turkey hunting;

2. Increased fishing opportunity and less restrictive fire use restriction on Peabody WMA.

(e) This administrative regulation will be implemented by publication in departmental brochures and media outlets, and enforcement by the department's Division of Law Enforcement.

DEPARTMENT OF AGRICULTURE

July 12, 1996

Department of Agriculture

(1) **302 KAR 3:010**, relating to a linked deposit investment program for Kentucky agribusinesses.

(2) The Kentucky Department of Agriculture intends to promulgate an administrative regulation implementing the transfer of authority of the linked deposit investment program for Kentucky agribusinesses from the Treasury Department to the Kentucky Department of Agriculture.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 30, 1996, at 9 a.m. in the conference room, Capital Plaza Tower, 7th floor, 500 Mero Street, 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 ten (10) days prior to August 30, 1996, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mark Farrow, General Counsel, Department of Agriculture, Capital Plaza Tower, 7th floor, 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 Mark Farrow, General Counsel, Department of Agriculture, Capital Plaza Tower, 7th floor, Frankfort, Kentucky 40601.

(7) The following information relates to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation as it relates to the Department of Agriculture implementation of an agribusiness linked deposit investment program is House Bill 872 (Section 5) and House Bill 753 (Section 20, to be codified as KRS 13A.312, pertaining to statutory transfers of authority requiring new regulations).

(b) The Department of Agriculture intends to promulgate a new administrative regulation relating to the approval and administration of loans to Kentucky agribusinesses permitted by the Linked Deposit Investment Program, amended in House Bill 872 which is effective July 15, 1996.

(c) The necessity and function of the proposed administrative regulation relating to House Bill 872 is as follows: House Bill 872 provides that the administration of the Linked Deposit Investment Program shall be transferred from the Treasury Department to the Cabinet for Economic Development (for small business loans) and the Agriculture Department (for agribusiness loans) and that each of the receiving agencies shall promulgate regulations to implement this transfer of authority. This proposed administrative regulation will replace the Department of Agriculture's emergency regulation pertaining to this transfer of authority.

(d) The benefits expected are adherence to statutory authority and increased efficiency in the application and procedural process for the Linked Deposit Investment Program as applied to Kentucky agribusinesses.

ADMINISTRATIVE REGISTER - 248

(e) The administrative regulation will be implemented as follows: This ordinary regulation will replace an existing emergency administrative regulation.

(8) If you have a disability for which the Department of Agriculture needs to provide accommodations, please notify us of your requirements by August 15, 1996. This request is not required to be in writing. This notice can be provided in an alternate format upon request.

CABINET FOR ECONOMIC DEVELOPMENT

July 12, 1996

Cabinet for Economic Development

(1) **307 KAR 5:010**, relating to a linked deposit investment program for small Kentucky businesses.

(2) The Kentucky Cabinet for Economic Development intends to promulgate an administrative regulation implementing the transfer of authority of the linked deposit investment program for small Kentucky businesses from the Treasury Department to the Kentucky Cabinet for Economic Development.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 30, 1996, at 9 a.m., in Room G-2 of the Capital Plaza Tower.

(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 ten (10) days prior to August 30, 1996, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Lori H. Flanery, General Counsel, 500 Mero Street, Capital Plaza Tower, 24th Floor, 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 Lori H. Flanery, General Counsel, 500 Mero Street, Capital Plaza Tower, 24th Floor, Frankfort, Kentucky 40601.

(7) The following information relates to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation as it relates to the Cabinet for Economic Development's implementation of a small business linked deposit investment program is House Bill No. 872 (Section 5) and HB 753 (Section 20, to be codified as KRS 13A.312, pertaining to statutory transfers of authority requiring new regulations).

(b) The Cabinet for Economic Development intends to promulgate a new administrative regulation relating to the approval and administration of loans to small Kentucky businesses permitted by the Linked Deposit Investment Program, amended in HB 872 which is effective July 15, 1996.

(c) The necessity and function of the proposed administrative regulation relating to House Bill No. 872 is as follows: House Bill 872 provides that the administration of the Linked Deposit Investment Program shall be transferred from the Treasury Department to the Cabinet for Economic Development (for small business loans) and the Agriculture Department (for agribusiness loans) and that each of the receiving agencies shall promulgate regulations to implement this transfer of authority. This proposed administrative regulation will replace the Cabinet for Economic Development's emergency regulation pertaining to this transfer of authority.

(d) The benefits expected are adherence to statutory authority and increased efficiency in the application and procedural process for the Linked Deposit Investment Program as applied to Kentucky small businesses.

(e) The administrative regulation will be implemented as follows: This ordinary regulation will replace an existing emergency administrative regulation.

(8) If you have a disability for which the Cabinet for Economic Development needs to provide accommodations, please notify us of your requirements by August 15, 1996. This request is not required to be in writing. This notice can be provided in an alternate format upon request.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET

Department for Environmental Protection

Division of Water

July 3, 1996

Natural Resources and Environmental Protection Cabinet

Department for Environmental Protection

Division of Water

(1) The subject matters of the administrative regulations to be amended are: **401 KAR 8:010**, Definitions for 401 KAR Chapter 8; **401 KAR 8:060**, Variances and exemptions; **401 KAR 8:070**, Public notification; **401 KAR 8:150**, Disinfection and filtration; **401 KAR 8:200**, Microbiological monitoring; **401 KAR 8:250**, Inorganic chemical sampling, analytical techniques and maximum contaminant levels; **401 KAR 8:300**, Lead and copper; **401 KAR 8:350**, Corrosivity monitoring; **401 KAR 8:400**, Synthetic organic chemicals; **401 KAR 8:420**, Volatile organic chemicals; **401 KAR 8:440**, Special testing for unregulated inorganic and synthetic organic chemicals; **401 KAR 8:500**, Disinfection by-products; **401 KAR 8:600**, Secondary standards.

(2) The Natural Resources and Environmental Protection Cabinet, Division of Water, intends to promulgate thirteen (13) administrative regulations governing the subject matters listed above.

ADMINISTRATIVE REGISTER - 249

(3) A public hearing to receive oral and written comments on the proposed administrative regulations has been scheduled for August 30, 1996 at 10 a.m. (eastern time) in Training Room D-16 at the Department for Surface Mining Reclamation and Enforcement, #2 Hudson Hollow, U.S. 127 South, 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 an agreement to attend the public hearing, are not received by the required number of people at least 20 days prior to August 30, 1996, the public hearing will be canceled.

(c) The Natural Resources and Environmental Protection Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability. The cabinet will provide, upon request, reasonable accommodations for the public hearing including auxiliary aids and services necessary to afford individuals with a disability an equal opportunity to participate in the scheduled public hearing and all other cabinet programs and activities. If you need an alternative version of this Notice of Intent, contact the Division of Water at the address below, or by telephone, 502/564-3410, or TDD 1-800-648-6056.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address. Written comments on the Notice of Intent may also be sent to the same address by 4:30 p.m. (eastern time) on August 30, 1996: Jack A. Wilson, Director, Division of Water, 14 Reilly Road, 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 Division of Water at the address listed above.

(7) Information relating to the proposed administrative regulations:

(a) The statutory authority for the promulgation of administrative regulations relating to the subject matters is KRS 224.10-100, 224.10-110, 40 CFR Part 141 (1995), Part 142 (1995), 42 USCA 300f, 300g, and 300j, 21 CFR 103.35, 110, and 129 relating to bottled water are incorporated into 401 KAR 8:060 without change.

(b) The administrative regulations that the Division of Water intends to promulgate will amend 401 KAR 8:010, Definitions for 401 KAR Chapter 8; 401 KAR 8:060, Variances and exemptions; 401 KAR 8:070, Public notification; 401 KAR 8:150, Disinfection and filtration; 401 KAR 8:200, Microbiological monitoring; 401 KAR 8:250, Inorganic chemical sampling, analytical techniques and maximum contaminant levels; 401 KAR 8:300, Lead and copper; 401 KAR 8:350, Corrosivity monitoring; 401 KAR 8:400, Synthetic organic chemicals; 401 KAR 8:420, Volatile organic chemicals; 401 KAR 8:440, Special testing for unregulated inorganic and synthetic organic chemicals; 401 KAR 8:500, Disinfection by-products; and 401 KAR 8:600, Secondary standards; to incorporate corrections to the regulations identified by the U.S. Environmental Protection Agency in a letter received by the cabinet too late to incorporate the changes into the regulations prior to their effective date. These regulations are also being amended to incorporate minor changes published by the U.S. EPA in the Federal Register published July 1, 1994 (59 FR 34325), relating to the Phase II and Phase V chemical regulations; in the Federal Register published June 30, 1994 (59 FR 33864), relating to the lead and copper rule; in the Federal Register published December 5, 1994 (59 FR 62466), relating to various analytical techniques; or in the Federal Register published June 29, 1995 (60 FR 34085), also related to analytical techniques. The cabinet is also amending 401 KAR 8:060 to include changes in the U.S. Food and Drug Administration regulations (21 Parts 103, 110, and 129) relating to bottled water as they were amended in the Federal Register published November 13, 1995 (60 FR 57123), and 401 KAR 8:010 to correct a discrepancy in the length of time to boil water in the definition for "boil water notice." All of the proposed amendments to these regulations are intended to make Kentucky's regulations for drinking water consistent with federal regulations.

(c) The necessities and functions of the proposed administrative regulations are: KRS 224.10-110 directs the cabinet to enforce administrative regulations adopted by the secretary for the regulation and control of the purification of water for public and semipublic use. The Safe Drinking Water Act, as amended by the Safe Drinking Water Act Amendments of 1986, provides for primary enforcement responsibility by states that have adopted regulations "no less stringent than the national primary drinking water regulations", as well as meeting other criteria stipulated by the Act. The Commonwealth of Kentucky has accepted and is currently exercising the primary enforcement responsibility.

(d) The benefits expected from these administrative regulations are: The amendments to these regulations will bring these administrative regulations in conformance with federal requirements. This will help assure consumers of water from public water systems a high quality product, with no confusion of the appropriate regulatory requirements.

(e) These regulations will be implemented by notifying public water systems of their requirements, maintaining a database and files for all public water systems, inspecting all public water systems, and issuing notices of violation when a water system fails to stay in compliance. The amendments to these regulations are corrections to existing regulations and will result in few changes in practice.

July 3, 1996

Natural Resources and Environmental Protection Cabinet
Department for Environmental Protection
Division of Water

(1) The subject matter of the administrative regulation to be amended is **401 KAR 8:100**, Design, construction and approval of facilities.

(2) The Natural Resources and Environmental Protection Cabinet, Division of Water, 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 August 30, 1996 at 10 a.m. (eastern time) in Training Room D-16 at the Department for Surface Mining Reclamation and Enforcement, #2 Hudson Hollow, U.S. 127 South, 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 an agreement to attend the public hearing, are not received by the required number of people

ADMINISTRATIVE REGISTER - 250

at least 20 days prior to August 30, 1996, the public hearing will be canceled.

(c) The Natural Resources and Environmental Protection Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability. The cabinet will provide, upon request, reasonable accommodations for the public hearing including auxiliary aids and services necessary to afford individuals with a disability an equal opportunity to participate in the scheduled public hearing and all other cabinet programs and activities. If you need an alternative version of this Notice of Intent, contact the Division of Water at the address below, or by telephone, 502/564-3410, or TDD 1-800-648-6056.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address. Written comments on the Notice of Intent may also be sent to the same address by 4:30 p.m. (eastern time) on August 30, 1996: Jack A. Wilson, Director, Division of Water, 14 Reilly Road, 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 Division of Water 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 is KRS 224.10-100, 224.10-110, 40 CFR 141 (1995), 42 USCA 300f, 300g, and 300j.

(b) The administrative regulation that the Division of Water intends to promulgate will amend 401 KAR 8:100, Design, construction and approval of facilities. This regulation is being amended to allow plans review engineers to waive the requirement for ductile iron pipe within 200 feet of an underground storage tank if it is clear that such protection is not needed due to hydrological or geological conditions existing at the site.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 224.10-110 directs the cabinet to enforce administrative regulations adopted by the secretary for the regulation and control of the purification of water for public and semipublic use. The Safe Drinking Water Act, as amended by the Safe Drinking Water Act Amendments of 1986, provides for primary enforcement responsibility by states that have adopted regulations "no less stringent than the national primary drinking water regulations", as well as meeting other criteria stipulated by the Act. The Commonwealth of Kentucky has accepted and is currently exercising this primary enforcement responsibility. This administrative regulation sets out design plan requirements for the construction of new and expanded facilities that deliver pure water for public or semipublic use, as well as stipulating certain reporting requirements and requiring modifications to existing facilities for certain line replacements, and feeding activated carbon.

(d) The benefits expected from the administrative regulation are: The amendments to this regulation will allow engineers in the plans review section to approve plans for water lines within 200 feet of an underground storage tank that do not call for ductile iron pipe if it is shown that such pipe is unnecessary due to hydrological or geological conditions. This will allow for assurance of properly laid water lines and a high quality of water, without causing the public water system to bear unnecessary costs.

(e) This regulation will be implemented by a review of plans submitted by professional engineers for new or modified water systems.

July 3, 1996

Natural Resources and Environmental Protection Cabinet
Department for Environmental Protection
Division of Water

(1) The subject matter of the administrative regulation to be amended is **401 KAR 8:700**, Bottled water.

(2) The Natural Resources and Environmental Protection Cabinet, Division of Water, 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 August 30, 1996 at 10 a.m. (eastern time) in Training Room D-16 at the Department for Surface Mining Reclamation and Enforcement, #2 Hudson Hollow, U.S. 127 South, 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 an agreement to attend the public hearing, are not received by the required number of people at least 20 days prior to August 30, 1996, the public hearing will be canceled.

(c) The Natural Resources and Environmental Protection Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability. The cabinet will provide, upon request, reasonable accommodations for the public hearing including auxiliary aids and services necessary to afford individuals with a disability an equal opportunity to participate in the scheduled public hearing and all other cabinet programs and activities. If you need an alternative version of this Notice of Intent, contact the Division of Water at the address below, or by telephone, 502/564-3410, or TDD 1-800-648-6056.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address. Written comments on the Notice of Intent may also be sent to the same address by 4:30 p.m. (eastern time) on August 30, 1996: Jack A. Wilson, Director, Division of Water, 14 Reilly Road, 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 Division of Water 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 is KRS 224.10-100 and

ADMINISTRATIVE REGISTER - 251

224.10-110.

(b) The administrative regulation that the Division of Water intends to promulgate will amend 401 KAR 8:700, Bottled water. This regulation is being amended to allow public water systems which bottle water to sample for chemical contaminants in accordance with the requirements for community public water systems which require sampling every three years. The current regulation requires such sampling once a year, but the cabinet considers this sampling period to be excessive and needlessly costly to public water systems which bottle water.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS Chapter 224.10-110 directs the cabinet to enforce rules and regulations adopted by the secretary for the regulation and control of the purification of water for public and semipublic use. The purpose of this regulation is to set out provisions to assure the purity of water, placed in bottles, that will be resold as a food for human consumption or other consumer use.

(d) The benefits expected from the administrative regulation are: The amendments to this regulation will allow public water systems which bottle water to monitor for chemical contamination on the same schedule as community public water systems. The current requirement for annual testing is unnecessary for public health and is overly costly for those systems. This amendment will allow for assurance of a high quality of water, without causing the bottled water system to bear unnecessary costs.

(e) This regulation will be implemented by notifying the water system of the requirements, maintaining a database and file on the water system, inspecting the water system, and issuing notices of violation when the water system is out of compliance.

Division for Air Quality

July 12, 1996

Natural Resources and Environmental Protection Cabinet

Department for Environmental Protection

Division for Air Quality

(1) **401 KAR 51:010**, Attainment status designations, will upon adoption, amend the existing regulation. The subject matter of this amendment is a revision to redesignate Boyd County and a portion of Greenup County from moderate ozone nonattainment to attainment. The amendment will also add a requirement that a road or intersection of two or more roads that defines a nonattainment boundary for an area in a county designated as nonattainment for ozone shall include as nonattainment an area extending 750 feet from the center of the road or intersection. This applies to any nonattainment classification except marginal.

(2) The Division for Air Quality intends to promulgate one amended administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed amendment has been scheduled for August 23, 1996, at 10 a.m. (ET), in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, 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 10 days prior to August 23, 1996, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Division for Air Quality, Attention: Kenneth M. Hines, Branch Manager, 803 Schenkel Lane, 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 Division for Air Quality at the address listed above.

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

(a) The statutory authority for the promulgation of an administrative regulation relating to the designation of ozone nonattainment areas is KRS 224.10-100 and 42 USC 7401-7626.

(b) The administrative regulation that the Division for Air Quality intends to promulgate will amend 401 KAR 51:010, Attainment status designations. It will make the attainment status designations for ozone agree with the U.S. EPA designations.

(c) The necessity and function of the proposed amended administrative regulation is as follows: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. 42 USC 7401-7626 likewise requires the state to implement standards for national primary and secondary ambient air quality. The Division for Air Quality proposes this amendment to update the status for ozone nonattainment for areas within the state and to assure compatibility with the U.S. EPA designations.

(d) The benefit expected from the amended regulation is that the state regulations will be applied to the areas based on the most recent ozone classification.

(e) The administrative regulation will be implemented as follows: On and after the effective date of this administrative regulation, affected sources shall comply with the designations in 401 KAR 51:010, as part of the existing regulatory program.

July 12, 1996

Natural Resources and Environmental Protection Cabinet

Department for Environmental Protection

Division for Air Quality

(1) **401 KAR 51:017**, Prevention of significant deterioration of air quality, will upon adoption, amend the existing regulation. The subject matter of this amendment is the state's adoption of federal PSD rule revisions which will update the State Implementation Plan (SIP). These federal changes include a revision to the "Guidelines on Air Quality Models" document in the federal PSD rule (Supplement C); the replacement of particulate matter (PM) increments with PM₁₀; and the addition of a federal exclusion for pollution control projects undertaken at electric utility units.

ADMINISTRATIVE REGISTER - 252

(2) The Division for Air Quality intends to promulgate one amended administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed amendment has been scheduled for August 23, 1996, at 10 a.m. (ET), in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, 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 10 days prior to August 23, 1996, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Division for Air Quality, Attention: Kenneth M. Hines, Branch Manager, 803 Schenkel Lane, 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 Division for Air Quality at the address listed above.

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

(a) The statutory authority for the promulgation of an administrative regulation relating to prevention of significant deterioration of air quality in attainment areas is KRS 224.10-100, 42 USC 7470 through 7492 (Clean Air Act, Title I, Part C), and 40 CFR 51.166.

(b) The administrative regulation that the Division for Air Quality intends to promulgate will amend 401 KAR 51:017, Prevention of significant deterioration of air quality. This amendment relates to revisions to the "Guideline on Air Quality Models" document in the federal PSD rules, as promulgated in the Federal Register July 20, 1993 (58 FR 38816) and August 9, 1995 (60 FR 40465); to the PSD allowable increases (increments) for particulate matter with an aerodynamic diameter of less than or equal to a nominal 10 micrometers (PM-10), as promulgated in the Federal Register June 3, 1993 (58 FR 31622); and to exclusion for pollution control projects undertaken at electric utility units, as promulgated in the Federal Register July 21, 1992 (57 FR 32314).

(c) The necessity and function of the proposed amended administrative regulation is as follows: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. This administrative regulation provides for the prevention of significant deterioration of ambient air quality.

(d) The benefit expected from the amended regulation is that the prevention of significant deterioration of air quality provisions will clearly satisfy Clean Air Act requirements and Kentucky's PSD program will continue to be approved.

(e) The administrative regulation will be implemented as follows: On and after the effective date of this administrative regulation, affected sources shall comply with the provisions of 401 KAR 51:017, as part of the existing regulatory program.

OFFICE OF THE PETROLEUM STORAGE TANK ENVIRONMENTAL ASSURANCE FUND

July 3, 1996

Office of the Petroleum Storage Tank Environmental Assurance Fund

(1) Subject Matter: **415 KAR 1:050**, Definitions. The subject matter of the proposed amended administrative regulation is the definitions for use in 415 KAR Chapter 1. The amendments reflect a recent reorganization, name change, and the addition of definitions contained in, or amended, by HB 167.

(2) The Office of the Petroleum Storage Tank Environmental Assurance Fund intends to promulgate an amended administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed amended administrative regulation has been scheduled for August 29, 1996, at 1:30 p.m. at the Office of the Petroleum Storage Tank Environmental Assurance Fund at 911 Leawood Drive, Frankfort, Kentucky, in the second floor conference room.

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

1. It is requested, in writing, by at least five people, or by an administrative body, or 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 August 29, 1996, 1:30 p.m. EDT, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to: David B. Wicker, Staff Counsel, 911 Leawood, 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 Office of the Petroleum Storage Tank Environmental Assurance Fund at the above address.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of this administrative regulation is found in KRS 224.60-130.

(b) The amended administrative regulation the fund intends to promulgate will reflect a recent reorganization, name change, and add definitions from HB 167.

(c) The necessity and function of the regulation is as follows: Definitions for the regulations are needed to lend clarity to terms used in the regulations. KRS Chapter 13A requires that all statutory definitions have the same meaning as the definition in the administrative regulation.

ADMINISTRATIVE REGISTER - 253

(d) The benefits of the amendments are that they will avoid confusion by reflecting the reorganization, the name change, and the amendments of HB 167.

(e) No implementation will be needed.

July 3, 1996

Office of the Petroleum Storage Tank Environmental Assurance Fund

(1) Subject Matter: **415 KAR 1:060**, Financial responsibility account. The subject matter of the proposed amended administrative regulation is the procedures to qualify for participation in the FRA, the federal financial responsibility showing. The amendments reflect a change in organizational structure and name change caused by recent executive orders. The amendments also include: the motor fuel requirements from HB 167, make a certificate of eligibility valid for 60 days after the transfer of the facility, make the owner/operator responsible for the entry level if transferred from the Financial Responsibility Account to the Petroleum Storage Tank Account, and remove the penalties for noncompliance.

(2) The Office of the Petroleum Storage Tank Environmental Assurance Fund intends to promulgate an amended administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed amended administrative regulation has been scheduled for August 29, 1996, at 1:30 p.m. at the Office of the Petroleum Storage Tank Environmental Assurance Fund at 911 Leawood Drive, Frankfort, Kentucky, in the second floor conference room.

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

1. It is requested, in writing, by at least five people, or by an administrative body, or 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 August 29, 1996, 1:30 p.m. EDT, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to: David B. Wicker, Staff Counsel, 911 Leawood Drive, 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 Office of the Petroleum Storage Tank Environmental Assurance Fund at the above address.

(7) Information relating to the proposed amended administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation is found in KRS 224.60-130.

(b) The administrative regulation the fund intends to promulgate will amend the existing administrative regulation by: changing incorrect organizational references, including the motor fuel requirement from HB 167, make a certificate of eligibility valid for 60 days after the transfer of the facility, make the owner/operator responsible for the entry level if the facility is transferred from the Financial Responsibility Account to the Petroleum Storage Tank Account, and remove all compliance penalties.

(c) The necessity and function of the proposed administrative regulation is as follows: The regulations must be amended to comply with new amendments of KRS Chapter 224, to ease environmental concerns on the transfer of property, and to remove financial penalty due to noncompliance.

(d) The benefits expected from the amended regulation is to ease concerns of those involved in real estate transactions of covered facilities, to ensure the owner/operator has no incentive to not comply with compliance standards, and remove the unfair burdens caused by penalties for failure to show compliance with UST regulations.

(e) The motor fuels provision will be implemented after July 15, 1996. The remaining amendment will not require implementation steps by the fund.

July 3, 1996

Office of the Petroleum Storage Tank Environmental Assurance Fund

(1) Subject Matter: **415 KAR 1:070**, Petroleum Storage Tank Account. The subject matter of the proposed amended administrative regulation is the eligibility for payment from the Petroleum Storage Tank Account. The amendments reflect a recent reorganization and require that for payment of activities directed by the cabinet, the owner/operator must substantiate the necessity of corrective action.

(2) The Office of the Petroleum Storage Tank Environmental Assurance Fund intends to promulgate an amended administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed amended administrative regulation has been scheduled for August 29, 1996, at 1:30 p.m. at the Office of the Petroleum Storage Tank Environmental Assurance Fund at 911 Leawood Drive, Frankfort, Kentucky, in the second floor conference room.

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

1. It is requested, in writing, by at least five people, or by an administrative body, or 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 August 29, 1996, 1:30 p.m. EDT, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to: David B. Wicker, Staff Counsel, 911 Leawood Drive, 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 REGISTER - 254

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 Petroleum Storage Tank Environmental Assurance Fund at the above address.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation for this subject matter is KRS 224.60-130.

(b) The proposed regulation will amend the current regulation by changing the name and organization of the agency and by requiring that the owner/operator prove the necessity of corrective action for any activity directed by the Natural Resources and Environmental Protection Cabinet Protection and Regulation before payment.

(c) The necessity and function of the amended regulation is to set the standards for payment for the Petroleum Storage Tank Account. The amendments conform the regulation to a recent reorganization of the fund and require proof of the necessity of corrective action for site investigations or corrective actions ordered by the cabinet. This last amendment was necessary to enable the fund to meet its statutory charge to only pay for the costs of corrective action.

(d) The benefit expected from the amendments are compliance with the statutory mandate of the fund and to lessen the confusion among fund participants concerning the reorganization.

July 3, 1996

Office of the Petroleum Storage Tank Environmental Assurance Fund

(1) Subject Matter: **415 KAR 1:080**, Claims procedure. The subject matter of the proposed amended administrative regulation is the procedure for the submittal and payment of claims presented to the fund. The amendments allow the staff to request additional information to verify claims, when needed, remove the \$1,000 minimum threshold for presenting claims, clarifies when unobligated claims will be considered received, and reflects a recent reorganization and name change.

(2) The Office of the Petroleum Storage Tank Environmental Assurance Fund intends to promulgate an amended administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed amended administrative regulation has been scheduled for August 29, 1996, at 1:30 p.m. at the Office of the Petroleum Storage Tank Environmental Assurance Fund at 911 Leawood Drive, Frankfort, Kentucky, in the second floor conference room.

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

1. It is requested, in writing, by at least five people, or by an administrative body, or 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 August 29, 1996, 1:30 p.m. EDT, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to: David B. Wicker, Staff Counsel, 911 Leawood Drive, 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 Office of the Petroleum Storage Tank Environmental Assurance Fund at the above address.

(7) Information relating to the proposed amended regulation:

(a) The statutory authority for the promulgation of an administrative regulation for this subject matter is KRS 224.60-130.

(b) The proposed regulation will amend the current regulation by allowing the fund staff to request additional information for all determinations, when necessary, remove a \$1,000 minimum for claims, clarifies when an unobligated claim is considered received, and recognizes the organization changes in the agency.

(c) The necessity and function of the proposed regulation is as follows: To ensure the orderly and prompt payment of claims by the fund, it is necessary for procedures to be set in place. The regulation provides those procedures, enabling the fund to comply with its statutory mandate. The amendments will allow a more rapid and complete evaluation and payment of claims.

(d) The benefit expected from the amendments to this regulation is to make receipt of payment from the fund more efficient. If additional information is required, it can be requested. Other benefits will be to reflect a recent reorganization of the agency.

July 3, 1996

Office of the Petroleum Storage Tank Environmental Assurance Fund

(1) Subject Matter: **415 KAR 1:090**, Ranking system. The subject matter of the proposed amended regulation is the ranking system determining the priority for payment from the Petroleum Storage Tank Account. The amendment eases a restriction in payment priority one and reflects the changes from a recent reorganization.

(2) The Office of the Petroleum Storage Tank Environmental Assurance Fund intends to promulgate an amended administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed amended administrative regulation has been scheduled for August 29, 1996, at 1:30 p.m. at the Office of the Petroleum Storage Tank Environmental Assurance Fund at 911 Leawood Drive, Frankfort, Kentucky, in the second floor conference room.

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

1. It is requested, in writing, by at least five people, or by an administrative body, or 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 August 29, 1996, 1:30 p.m. EDT, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to: David B. Wicker, Staff Counsel, 911 Leawood

ADMINISTRATIVE REGISTER - 255

Drive, 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 Office of the Petroleum Storage Tank Environmental Assurance Fund at the above address.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for this regulation is KRS 224.60-130.

(b) The regulation that the fund intends to promulgate will amend the current regulation by removing the requirement for payment priority one that the owner only owns one facility, leaving the eligibility to income and number of tanks requirements. The remaining amendments reflect a recent reorganization and name change.

(c) The necessity and function of the proposed regulation is as follows: KRS 224.60-130 requires the fund to operate the PSTA as a ranked account, based on income and environmental harm. This regulation enlarges the group of people that will be able to join this category by removing a restriction.

(d) The benefit of this amended regulation is to enlarge the number of people eligible for payment priority one in PSTA and reflect a recent reorganization in the agency, avoiding confusion in the regulated public.

July 3, 1996

Office of the Petroleum Storage Tank Environmental Assurance Fund

(1) Subject Matter: **415 KAR 1:100**, Third party claims. The subject matter of the proposed regulation is the extent and procedures of the fund's third party liability coverage. The amendments change the scope of coverage to comply with the HB 167 definition of property damage. Also, the amendments reflect a recent reorganization of the agency.

(2) The Office of the Petroleum Storage Tank Environmental Assurance Fund intends to promulgate an amended administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed amended administrative regulation has been scheduled for August 29, 1996, at 1:30 p.m. at the Office of the Petroleum Storage Tank Environmental Assurance Fund at 911 Leawood Drive, Frankfort, Kentucky, in the second floor conference room.

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

1. It is requested, in writing, by at least five people, or by an administrative body, or 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 August 29, 1996, 1:30 p.m. EDT, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to: David B. Wicker, Staff Counsel, 911 Leawood Drive, 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 Office of the Petroleum Storage Tank Environmental Assurance Fund at the above address.

(7) Information relating to the proposed amended administrative regulation:

(a) The statutory authority for this regulation is found in KRS 224.60-130 and 224.60-140.

(b) The proposed regulation will amend the current regulation as follows: HB 167 changed the scope of coverage for the third party liability coverage. These amendments reflect that change. Also, the amendments reflect a recent organizational change in the agency.

(c) The necessity and function of the proposed regulation is as follows: KRS 224.60-140 requires the fund to reimburse owners/operators for third party liability claims due to a covered release. This amendment corresponds with the change in definitions contained in HB 167.

(d) The benefits expected from the amended regulation is consistency between the statutory and regulatory definition of the coverage provided by this regulation. The amendment also recognizes a recent reorganization by the agency.

July 3, 1996

Office of the Petroleum Storage Tank Environmental Assurance Fund

(1) Subject Matter: **415 KAR 1:110**, Contractor cost. The subject matter of the proposed amended regulation is the range of costs to be reimbursed by the Fund for corrective action. The amendments change all cubic yard costs to per ton costs, adds hydrogeologist to the list of reimbursable job descriptions, allows the executive director to approve new degrees to be considered environmental specialists, changes the reimbursement levels for laboratory samples, and eliminates the bid proposal requirements. Also, a recent reorganization by the agency is reflected in the regulations.

(2) The Office of the Petroleum Storage Tank Environmental Assurance Fund intends to promulgate an amended administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed amended administrative regulation has been scheduled for August 29, 1996, at 1:30 p.m. at the Office of the Petroleum Storage Tank Environmental Assurance Fund at 911 Leawood Drive, Frankfort, Kentucky, in the second floor conference room.

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

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

ADMINISTRATIVE REGISTER - 256

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 August 29, 1996, 1:30 p.m. EDT, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to: David B. Wicker, Staff Counsel, 911 Leawood Drive, 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 Office of the Petroleum Storage Tank Environmental Assurance Fund at the above address.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for this regulation is KRS 224.60-130.

(b) The regulation proposed by the fund will amend the current regulation by updating several charges, changing all per cubic measurements to per ton, adding hydrogeologist to the list of reimbursable job descriptions, allows the executive director to add degrees to the qualification requirements of environmental specialist, changes the reimbursement levels for laboratory samples, eliminates the bid proposal requirement, and includes the changes made by a recent reorganization of the agency.

(c) The necessity and function of the proposed regulation is as follows: KRS 224.60-130 requires the fund to establish a range of costs for the reimbursement of the costs of corrective action. These amendments are necessary to reflect changes in the marketplace and the addition of new professionals in the industry.

(d) The benefit of this amended regulation is to more completely reimburse the owner/operator for corrective actions costs. The amendments are consistent with the way the contractors bill services. The reduced laboratory fees represent substantial cost reduction to the fund and reflect the price at which qualified laboratories can operate.

July 3, 1996

Office of the Petroleum Storage Tank Environmental Assurance Fund

(1) Subject Matter: **415 KAR 1:114**, Contractor certification. The subject matter of the proposed amended administrative regulation is the requirements imposed on environmental contractors to receive certification to be eligible for reimbursement of corrective action cost from the fund. The amendments reflect a recent reorganization, name change, and extension of certification renewal to two years rather than one.

(2) The Office of the Petroleum Storage Tank Environmental Assurance Fund intends to promulgate an amended administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed amended administrative regulation has been scheduled for August 29, 1996, at 1:30 p.m. at the Petroleum Storage Tank Environmental Assurance Fund Commission offices at 911 Leawood Drive, Frankfort, Kentucky in the second floor conference room.

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

1. It is requested, in writing, by at least five people, or by an administrative body, or association, having at least five 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 August 29, 1995, 1:30 p.m. EDT, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to: David B. Wicker, Staff Counsel, 911 Leawood Drive, 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 the Office of the Petroleum Storage Tank Environmental Assurance Fund at the above address.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to contractor certification is found in KRS 224.60-130(2)(a).

(b) The administrative regulation that the fund intends to promulgate will amend the existing regulation by increasing the length of the certification from one to two, and reflecting a recent organizational change by the agency.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 224.60-130(a) requires the fund to establish criteria to be met by persons who contract to perform corrective action to be eligible for reimbursement from the fund. This amendment will allow the fund to better serve its constituency by easing the burden on the certified individual.

(d) The benefits expected from the administrative regulation is to lessen the burden on the certified individual by changing the annual recertification to biannual.

July 3, 1996

Office of the Petroleum Storage Tank Environmental Assurance Fund

(1) Subject Matter: **415 KAR 1:120**, Hearings. The subject matter of the proposed amended regulation is the procedure to provide due process administrative hearings. The amendments are an effort to comply with KRS Chapter 13B.

(2) The Office of the Petroleum Storage Tank Environmental Assurance Fund intends to promulgate an amended administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed amended administrative regulation has been scheduled

for August 29, 1996, at 1:30 p.m. at the Office of the Petroleum Storage Tank Environmental Assurance Fund at 911 Leawood Drive, Frankfort, Kentucky, in the second floor conference room.

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

1. It is requested, in writing, by at least five people, or by an administrative body, or 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 August 29, 1996, 1:30 p.m. EDT, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to: David B. Wicker, Staff Counsel, 911 Leawood Drive, 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 Office of the Petroleum Storage Tank Environmental Assurance Fund at the above address.

(7) Information about the regulation:

(a) The statutory authority for this regulation is KRS 224.60-130.

(b) The amendments to this regulation conform to the requirements of KRS Chapter 13B. The amendments also reflect a recent reorganization in the agency.

(c) The necessity and function of the regulation is as follows: KRS 224.60-130 allows the fund to hear complaints regarding claim payments. KRS Chapter 13B requires certain due process standards be adopted by the agency. This regulation imposes similar standards as in KRS Chapter 13B for the agency's administrative hearings.

(d) The benefit of this amended regulation is the minimum due process requirements of KRS Chapter 13B are now guaranteed to the public.

(e) Cases filed prior to the effective date of this regulation will be switched to these procedures if no adverse effect is had on the petitioner or agency. New cases will proceed under this regulation.

July 3, 1996

Office of the Petroleum Storage Tank Environmental Assurance Fund

(1) Subject Matter: **415 KAR 1:125**, Discovery procedure. The subject matter of the new proposed regulation is a set of procedures governing the practice of discovery during administrative hearings.

(2) The Office of the Petroleum Storage Tank Environmental Assurance Fund intends to promulgate an amended administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed amended administrative regulation has been scheduled for August 29, 1996, at 1:30 p.m. at the Office of the Petroleum Storage Tank Environmental Assurance Fund at 911 Leawood Drive, Frankfort, Kentucky, in the second floor conference room.

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

1. It is requested, in writing, by at least five people, or by an administrative body, or 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 August 29, 1996, 1:30 p.m. EDT, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to: David B. Wicker, Staff Counsel, 911 Leawood Drive, 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 Office of the Petroleum Storage Tank Environmental Assurance Fund at the above address.

(7) Information concerning to the proposed regulation:

(a) The statutory authority for this regulation is KRS 224.60-130.

(b) The proposed regulation provides a discovery procedure in compliance with KRS Chapter 13B. The proposed regulation guarantees certain due process standards during the conduct of administrative hearings.

(c) The necessity and function of the regulation is as follows: KRS 224.60-130 allows the fund to hear complaints regarding claim payments. KRS Chapter 13B requires certain due process standards be adopted by the agency. This regulation adopts the standards in KRS Chapter 13B for the agency's administrative hearings.

(d) The benefit of this amended regulation is the minimum due process requirements of KRS Chapter 13B are now guaranteed to the public.

(e) Cases filed prior to the effective date of this regulation will be switched to these procedures if no adverse effect is had on the petitioner or agency. New cases will proceed under this regulation.

ADMINISTRATIVE REGISTER - 258

KENTUCKY JUSTICE CABINET Division of Medical Examiners Services

15 July 1996

Kentucky Justice Cabinet

Division of Medical Examiners Services

(1) Regulation Number and Title: Sexual assault nurse examiner statewide medical protocol, **500 KAR 12:010**.

(2) The Division of Medical Examiner 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 August 21, 1996 at 10 a.m. at the Medical Examiners Building, 100 Sower Boulevard, 2nd Floor Medical Examiners Office, 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 is not received from the required number of people at least 10 days prior to August 21, 1996 the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to Mr. David Jones, Director, Medical Examiners Office, Suite 200, 100 Sower Boulevard, Frankfort, Kentucky 40601.

(b) On the 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.

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation governing the statewide medical protocol for a sexual assault nurse examiner is House Bill 495 passed by the 1996 General Assembly and signed by the Governor. This act mandates that the Chief Medical Examiner develop a statewide medical protocol for use by a Sexual Assault Nurse Examiner and that those regulations shall be promulgated by the Secretary of Justice.

(b) The administrative regulation that the department intends to promulgate will not amend an existing administrative regulation. It will establish the protocol to be used by sexual assault nurse examiners for the examination of a victim upon the request of a peace officer, prosecuting attorney, and with the consent of the victim for the purpose of examining a victim of a sexual assault and for the purposes of gathering physical evidence for the prosecution of the sexual assault.

(c) The necessity and function of the proposed administrative regulation is to establish a statewide standard medical protocol that shall be utilized by all sexual assault nurse examiners when examining a victim of sexual assault and when gathering physical evidence. This administrative regulation is necessary to ensure that the protocol is standardized as required by House Bill 495 for statewide use.

(d) The benefits expected from the administrative regulation are the establishment of a uniform procedure for the licensing process and a uniform procedure for the appeal process.

(e) The administrative regulation will be implemented as follows: A regular administrative regulation.

Department of Corrections

July 11, 1996

Justice Cabinet

Department of Corrections

(1) Regulation Number and Title: **501 KAR 6:020**, Department of Corrections: open records, use of force, inmate grievance procedure, and inmate visits.

(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 August 30, 1996 at 9 a.m., in the Fifth Floor Conference Room, 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 August 30, 1996, 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.

ADMINISTRATIVE REGISTER - 259

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

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

1. Open records (6.1) has been totally revised to meet the requirements of KRS Chapters 13A, 61 and 197.025.

2. Use of force (9.1) shall be amended to (a) reflect the correct references, (b) clarify the inclusion of the use of mechanical restraints,

(c) clarify the progressive levels of force, and (d) comply with drafting rules in KRS Chapter

3. Inmate grievance procedure (14.6) shall be amended to reflect that the court may now hold in abeyance any litigation involving an issue an inmate could have pursued through the grievance system and did not. The revision shall affect the established time limits within which an inmate has to file a grievance.

4. Inmate visits (16.1) has been totally revised to meet the requirements of KRS Chapters 13A; to clarify instances where visitation may be permitted without proper identification; and, to clarify the screening process for visitors and limit the number of nonfamily visitors permitted per inmate.

(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.

July 12, 1996

Justice Cabinet

Department of Corrections

(1) Regulation Number and Title: **501 KAR 6:050**, Luther Lockett Correctional Complex.

(2) The Justice Cabinet, Department of Corrections, 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 August 30, 1996, at 9 a.m., in the Auditorium, in the State Office Building, 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 10 days prior to August 30, 1996, 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 above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of this administrative regulation relating to the subject matter 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 6:050, Luther Lockett Correctional Complex, as follows:

1. Duty officer responsibility (LLCC 01-12-01) shall be amended to include shift captains as duty officers.

2. Smoking policy (LLCC 01-13-01) shall be amended to include Box 1 and toxic caustic buildings as non smoking areas.

3. Fiscal management insurance (LLCC 02-01-04) shall be amended to show the new KRS 44.070 referencing the Board of Claims.

4. Offender records (LLCC 08-01-01) shall be amended to clarify storage and access of inmate records, court orders and Parole Board requirements from the Offender Records Office.

5. Storage of expunged records (LLCC 08-04-01) shall be amended to clarify the title of the policy to Storage of Void Records.

6. Psychological and psychiatric reports (LLCC 08-05-01) shall be amended to delete the work requested to clarify the intent.

7. Unit telephone procedure (LLCC 11-18-01) shall be deleted because new equipment does not require the maintenance of a telephone log.

8. Pretrial contract hold status policy (LLCC 12-01-02) shall be deleted because 501 KAR 6:020, Safekeepers Policy 10.3, addresses the required information.

9. Institutional inspections (LLCC 14-05-01) shall be amended to give responsibilities of security, weapons, chemical agents, and restraint devices inspections to the senior captain. Also to include pest control availability by contract.

10. Inmate self administration of medication (LLCC 15-03-04) shall be amended to simplify the procedure for inmates participating in this program.

11. Classifications and security levels (LLCC 21-02-01) shall be deleted based upon duplication of this information in the Department of Corrections Classification Manual.

12. Classification process (LLCC 21-03-01) shall be deleted based upon duplication of this information in the Department of Corrections Classification Manual.

(c) The necessity and function of the proposed administrative regulation is as follows:

1. KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorizes the commissioner to promulgate 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.

ADMINISTRATIVE REGISTER - 260

2. This administrative regulation updates operating procedures at the Luther Lockett Correctional Complex to comply with KRS Chapter 13A and to reflect current operating procedures.

(d) The benefits expected from this administrative regulation are: To comply with KRS Chapter 13A and to codify current operating procedures.

(e) This administrative regulation will be implemented as follows: Staff will comply with operational procedures and standards noted in policy changes.

July 12, 1996

Justice Cabinet, Department of Corrections

(1) Regulation Number and Title: **501 KAR 6:130**, Western Kentucky Correctional Complex.

(2) The Justice Cabinet, Department of Corrections, 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 August 30, 1996, at 9 a.m., in the Auditorium, in the State Office Building, 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 10 days prior to August 30, 1996, 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 above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of this administrative regulation relating to the subject matter 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, Western Kentucky Correctional Complex, as follows:

1. Food service meals, menus, nutrition and diets (WKCC 11-03-01) shall be amended to meet requirements of the American Correctional Association (ACA) Standards and to provide specific guidelines for institutional staff.
2. Education programs (WKCC 20-01-01) shall be amended with minor changes in policy to conform with third edition American Correctional Association Standards. Specific definition of program accessibility and assessment of students.
3. Inmate recreation and leisure time activities (WKCC 22-00-01) shall be amended with minor changes throughout to comply with ACA Standards and to delete the section that pertains to the sale of arts and crafts.
4. Inmate club and organizations (WKCC 22-00-02) shall be amended to make minor word changes in Attachment II and III, and to comply with 3rd edition ACA Standards.

(c) The necessity and function of the proposed administrative regulation is as follows:

1. KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorizes the commissioner to promulgate 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.

2. This administrative regulation updates operating procedures at the Western Kentucky Correctional Complex to comply with KRS Chapter 13A and to reflect current operating procedures.

(d) The benefits expected from this administrative regulation are: To comply with KRS Chapter 13A and to codify current operating procedures.

(e) This administrative regulation will be implemented as follows: Staff will comply with operational procedures and standards noted in policy changes.

July 11, 1995

Justice Cabinet

Department of Corrections

(1) Regulation Number and Title: **501 KAR 13:010**, Life safety issues.

(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 August 30, 1996 at 9 a.m., in the Fifth Floor Conference Room 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 August 30, 1996 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, 197.020 and 532.100.

(b) The administrative regulation that the Department of Corrections intends to promulgate will amend 501 KAR 13:010 as follows: References to Class D felons have been deleted and replaced with the phrase "state prisoners" to reflect recent legislative changes and amended to meet the requirements of KRS Chapter 13A.

(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.

TRANSPORTATION CABINET

July 12, 1996

Transportation Cabinet

(1) **600 KAR 1:120.** Purchase, use, lease, maintenance and disposal of state-owned motor vehicles.

(2) The Kentucky Transportation Cabinet intends to promulgate an administrative regulation governing the purchase, use, lease, maintenance and disposal of state-owned motor vehicles in order to comply with the changes to KRS 44.045 as passed by the 1996 General Assembly in House Bill 568.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 28, 1996 at 1:30 p.m. local prevailing time, at 501 High Street, 4th Floor Hearing Room of the State Office Building, 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 August 30, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Sandra Pullen Davis, 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 this administrative regulation is KRS 44.045.

(b) The administrative regulation that the Transportation Cabinet intends to promulgate will be an amendment of an existing administrative regulation to implement HB 568 as enacted by the 1996 General Assembly.

(c) The necessity and function of the proposed administrative regulation is as follows: In order to assure the most effective utilization of state-owned vehicles, this administrative regulation establishes procedures governing the purchase, licensure, use, lease, maintenance, and disposal of state-owned vehicles.

(d) The benefit expected from this administrative regulation amendment is compliance with state law.

(8) If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by August 15, 1996. This request does not have to be in writing. This notice can be provided in an alternate format upon request.

July 12, 1996

Transportation Cabinet

(1) **601 KAR 11:040,** relating to medical waivers for commercial drivers.

(2) The Kentucky Transportation Cabinet intends to promulgate an administrative regulation amending the existing administrative regulation relating to medical waivers for commercial drivers. Specific items to be addressed in the amendment are the hearing process under KRS Chapter 13B and the update of forms used in the medical waiver program. The Transportation Cabinet will also evaluate the remainder of the administrative regulation to ensure that it is current.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 28, 1996 at 10 a.m. local prevailing time, at 501 High Street, 4th Floor Hearing Room, Frankfort, Kentucky 40622.

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

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people

ADMINISTRATIVE REGISTER - 262

at least 20 days prior to August 28, 1996 the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Sandra Pullen Davis, 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 medical waivers for commercial drivers operating in intrastate commerce is KRS 281A.040, KRS 281.600, 49 CFR 383 Subpart E, 49 CFR 391 Subpart E.

(b) The administrative regulation that the Transportation Cabinet intends to promulgate will amend an existing administrative regulation.

(c) The necessity and function of the proposed administrative regulation is as follows: The federal requirements for the issuance of a commercial driver's license to a driver operating in interstate commerce include a certification that the driver meets the qualification requirements contained in 49 CFR Part 391. The Federal Highway Administration does not require a person who operates entirely in intrastate commerce to be subject to 49 CFR Part 391. He is subject however, to Kentucky driver qualification requirements. In 601 KAR 1:005 the Transportation Cabinet adopted the majority of the driver qualification requirements of 49 CFR Part 391 on both an interstate and intrastate commerce basis. However, medical waivers in addition to those allowed in 49 CFR 391.49 are allowed by the Federal Highway Administration for drivers operating exclusively in intrastate commerce. This administrative regulation sets forth the procedure and standards for obtaining an intrastate medical waiver.

(d) The benefits expected are compliance with state law found in KRS Chapter 13B by updating the administrative hearing process in the administrative regulation.

(8) Any person with a disability for which the Transportation Cabinet needs to make an accommodation in order for the person to participate in the public comment hearing should notify Sandra Pullen Davis at the above-mentioned address no later than August 15, 1996.

July 15, 1996

Transportation Cabinet

(1) **603 KAR 5:330**, Overweight annual permits.

(2) The Kentucky Transportation Cabinet intends to promulgate an administrative regulation governing the annual permit for overweight loads which was required by HB 168 passed by the 1996 General Assembly.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 28, 1996 at 9:30 a.m. local prevailing time, at 501 High Street, 4th Floor Hearing Room of the State Office Building, 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 August 28, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Sandra Pullen Davis, 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 this administrative regulation is HB 168 as enacted by the 1996 General Assembly.

(b) The administrative regulation that the Transportation Cabinet intends to promulgate will be a new administrative regulation designed to implement HB 168 as enacted by the 1996 General Assembly.

(c) The necessity and function of the proposed administrative regulation is as follows: HB 168, passed by the 1996 General Assembly, established a new type of annual permit for the transportation of nondivisible overweight loads. This administrative regulation establishes the permit application procedures for this permit as well as the movement requirements necessary in the interest of highway safety and convenience.

(d) The benefit expected from this administrative regulation is increased highway safety.

(8) If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by August 23, 1996. This request does not have to be in writing. This notice can be provided in an alternate format upon request.

KENTUCKY BOARD OF EDUCATION

July 10, 1996

Kentucky Board of Education

(1) Administrative Regulation Number and Title: **704 KAR 3:345**, Evaluation guidelines.

(2) The Kentucky Board of Education intends to promulgate an amendment to 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 Wednesday, August 28, 1996, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky.

ADMINISTRATIVE REGISTER - 263

- (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 August 28, 1996, 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 administrative regulation.
- (a) The statutory authority for the revision of an administrative regulation relating to evaluation is KRS 156.101.
- (b) The administrative regulation that the Kentucky Board Education intends to revise will comply with revisions made to KRS 156.101 by the 1996 General Assembly in HB 97.
- (c) The necessity and function of the proposed administrative regulation revision is as follows: KRS 156.101 has been changed to make the review of evaluation plans contingent upon the adoption of revisions, instead of annually. This proposed administrative regulation revision brings the regulation in line with that language.
- (d) The benefits expected from the revision to the administrative regulation are: Less paper work for the school districts. Save time annually through not reviewing the plan.

EDUCATION PROFESSIONAL STANDARDS BOARD

June 1996

Education Professional Standards Board

- (1) **704 KAR 20:260**, Junior Reserve Officers Training Corps certification.
- (2) The Education Professional Standards Board intends to amend 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 August 30, 1996, at 10 a.m. in the First Floor Conference Room, Capital Plaza Tower, 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 August 30, 1996, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Dr. Betty Lindsey, Executive Director, Education Professional Standards Board, 1024 Capital Center Drive, Frankfort, Kentucky 40601, (502) 573-4606.
- (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 regulation 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 Education Professional Standards Board 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 704 KAR 20:260, Junior Reserve Officers Training Corps certification is KRS 161.028 and 161.030.
- (b) The administrative regulation that the Education Professional Standards Board intends to amend will provide changes related to the years of service before an individual is eligible to serve as an instructor for Junior Reserve Officers training.
- (c) The necessity and function of the proposed administrative regulation is as follows: KRS 161.020 and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Educational Professional Standards Board. This administrative regulation establishes that an individual can serve as an instructor of Junior Reserve Officers training based upon an official recommendation by the appropriate branch of military service.
- (d) The benefits expected from administrative regulation are: To align the current military retirement guidelines and the administrative regulation.
- (e) The administrative regulation will be implemented as follows: A communication from the Division of Certification shall disseminate the changes in the regulation to the appropriate branches of the military and local school districts.

June 1996

Education Professional Standards Board

- (1) **704 KAR 20:305**, Written examination prerequisites for teacher certification.

(2) The Education Professional Standards Board 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 August 30, 1996, at 10 a.m. in the 1st floor conference room, Capital Plaza Tower, 500 Mero Street, 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 an 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 August 30, 1996 the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Education Professional Standards Board, 1024 Capital Center Drive, 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 Education Professional Standards Board 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 written examination prerequisites for teacher certification is KRS 161.030.

(b) The administrative regulation that the Education Professional Standards Board intends to promulgate will amend 704 KAR 20: 305 as follows: Section 3(1) will be changed to add the new passing score for the interdisciplinary early childhood education test. Section 3(3) will be changed to delete the middle school Praxis II assessment requirements which were to become effective on September 1, 1996. It will reestablish the current assessment requirement which is in effect until August 31, 1996.

(c) The necessity and function of the proposed administrative regulation is as follows: Educational Testing Service (ETS) has recommended that the Education Professional Standards Board postpone the adoption of the middle school assessments which were to be required for teacher certification beginning on September 1, 1996, as established in 704 KAR 20:305. There is a need to delete these assessments from the regulation and reestablish the current required middle school assessment until further notice.

(d) The benefits expected from administrative regulation are: The postponement of the new middle school assessments required for certification will allow ETS to conduct additional studies in Kentucky that will improve the legal defensibility of the use of middle school assessments and be responsive to the inquiries of candidates and higher education institutions.

(e) The administrative regulation will be implemented as follows: The amendment to the regulation will be communicated to colleges and universities which have teacher preparation programs as soon as possible in order for middle school teacher candidates to register for the appropriate specialty exam. The Office of Teacher Education and Certification will work with ETS to ensure that each candidate who has already registered for the assessments which are to be deleted will receive a refund of the candidate's assessment fee.

June 1996

Education Professional Standards Board

(1) **704 KAR 20:460**, Examination prerequisites for principal certification.

(2) The Education Professional Standards Board 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 August 30, 1996, at 10 a.m. in the 1st floor conference room, Capital Plaza Tower, 500 Mero Street, 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 an 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 August 30, 1996, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Education Professional Standards Board, 1024 Capital Center Drive, 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 Education Professional Standards Board 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 examination prerequisites for principal certification is KRS 161.028 and KRS 161.027.

(b) The administrative regulation that the Education Professional Standards Board intends to promulgate will amend is 704 KAR 20:460 as follows: Section 5(2) will be amended to specify an assessment fee of \$30 for taking the Kentucky Specialty Test of Instructional and Administrative Practices. Section 7 will be amended to conform to the revision to KRS 161.027 enacted during the 1996 General Assembly. The newly enacted revision to KRS 161.027 extends the validity of the Statement of Eligibility for Internship from four (4) years to five (5) years.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 161.027 and 161.028 vest authority to the Education Professional Standards Board to establish a reasonable fee to be charged applicants for the actual cost of administration of the tests required for principal certification. The specific amount of the fee to be charged needs to be noted in 704 KAR 20:460. In addition, Section 7 must be amended to conform to the revision to KRS 161.027 enacted during the 1996 General Assembly.

ADMINISTRATIVE REGISTER - 265

(d) The benefits expected from administrative regulation are: The assessment fee of \$30 will provide the funds to the Division of Testing and Internship to pay the costs of test development, proctor fee, printing of test study guides, tests, and registration forms, postage, and scoring of tests.

(e) The administrative regulation will be implemented as follows: The regulation will be communicated to colleges and universities which have approved programs for principal certification. In addition, local school districts will be advised of the amendment to the regulation.

June 24, 1996

Education Professional Standards Board

(1) **704 KAR 20:475**, Probationary certificate for teachers of technology education.

(2) The Education Professional Standards Board intends to promulgate an emergency 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 August 30, 1996, at 10 a.m. in the First Floor Conference Room, Capital Plaza Tower, 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 August 30, 1996, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Dr. Betty Lindsey, Executive Secretary, Education Professional Standards Board, 1024 Capital Center Drive, Frankfort, Kentucky 40601, (502) 573-4606.

(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 Education Professional Standards Board 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 a probationary certificate for teachers of technology education is KRS 161.028 and 161.030.

(b) The administrative regulation that the Education Professional Standards Board intends to promulgate will provide for the issuance of a probationary certificate for teachers of technology education when a qualified teacher is not available as attested by the local superintendent.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 161.020 and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Educational Professional Standards Board; furthermore, the teacher education institutions are required to be approved for offering the preparation programs corresponding to particular certificates on the basis of standards and procedures adopted by the Education Professional Standards Board. This administrative regulation establishes a plan for recruiting certified classroom teachers into positions for teachers of technology education.

(d) The benefits expected from administrative regulation are: There is a shortage of certified and qualified teachers of technology education. This administrative regulation will provide for recruiting certified middle and secondary school teachers into technology teaching positions (examples include, but are not limited to drafting, electronic communication systems, woods, metals, computer aided manufacturing, electricity/electronics, transportation systems). The proposed regulation shall provide for training related to student safety. Furthermore, the applicant shall have developed a plan with an appropriate technology education teacher trainer and a program consultant representing the Division of Secondary Vocational Education which shall lead to full certification and to include a personal professional development plan.

(e) The administrative regulation will be implemented as follows: A joint communication from the Division of Certification and the Division of Secondary Vocational Education shall communicate the provisions of the recruitment plan to local school districts and the procedures for applying for the probationary certificate for teachers of technology education.

June 1996

Education Professional Standards Board

(1) **704 KAR 20:585**, Procedures for certificate revocation.

(2) The Education Professional Standards Board 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 August 30, 1996, at 10 a.m. in the first floor conference room at the Capital Plaza Tower, 500 Mero Street, 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 an 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 August 30, 1996, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Education Professional Standards Board, 1024 Capital Center Drive, 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 REGISTER - 266

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 Education Professional Standards Board 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 revocation of certificates is KRS 161.028 and 161.120.

(b) The administrative regulation that the Education Professional Standards Board will amend is 704 KAR 20:585. This regulation was adopted in 1993. Prior to 1993, revocation procedures were specified in 704 KAR 20:580 which was adopted in 1992.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 161.120 provides that any certificate issued under KRS 161.010 to 161.100 or any certificate or license issued under any previous law to superintendents, principals, teachers, supervisors, directors of pupil personnel, or other administrative supervisory, or instructional employees may be revoked by the Education Professional Standards Board for reasons specified in the statute. The statute also provides for a hearing process as a part of the revocation procedures. The proposed amendments are to comply with revisions to KRS 161.120 made by the 1996 Kentucky General Assembly and to comply with the provisions of KRS Chapter 13B.

(d) The benefits expected from administrative regulation are: Conformance of regulation with statutory changes.

(e) The administrative regulation will be implemented as follows: The amended regulation will be communicated to local school superintendents and professional education organizations by the Office of Teacher Education and Certification.

June 24, 1996

Education Professional Standards Board

(1) **704 KAR 20:695**, Standards for accreditation of teacher education.

(2) The Education Professional Standards 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 August 30, 1996, at 10 a.m. in the 1st Floor Conference Room, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.

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

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

(c) If a request for a public hearing is not received from the required number of people at least 20 days prior to August 30, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Education Professional Standards Board, 1024 Capital Center Drive, Frankfort, Kentucky 40601, (502) 573-4606.

(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 regulation 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 Education Professional Standards Board 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 standards for accreditation of teacher education is KRS 161.028.

(b) The administrative regulation that the Education Professional Standards Board intends to promulgate will consolidate all accreditation standards and procedures for programs to prepare school personnel into one regulation.

(c) The necessity and function of the proposed administrative regulation is as follows: Standards for accreditation of education units in colleges and universities have existed in different sections of the Teacher Preparation and Certification Handbook, with redundancies between national and state standards. Redundancies have been eliminated, and accreditation requirements clarified and streamlined. In addition, the proposed regulation will create a statewide committee to review accreditation judgements of visiting teams to ensure consistency across institutions, and to recommend ways of streamlining procedures throughout the state.

(d) The benefits expected from administrative regulation are:

1. Consolidation of accreditation standards, procedures, and policies into one regulation accessible to all stakeholders.
2. Consistency in team judgements across institutions.
3. Regular review of accreditation policies and procedures, resulting in systematic improvements.

(e) The administrative regulation will be implemented as follows: Institutions that offer teacher preparation programs approved by the Education Professional Standards Board, will be copied with this regulation and required to forward an acknowledgement of receipt. Technical assistance visits by board staff will continue to be available on request, and will be scheduled for each institution at least one year prior to an on-site accreditation visit.

June 24, 1996

Education Professional Standards Board

(1) **704 KAR 20:700**, Standards for admission to teacher education.

(2) The Education Professional Standards 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 August 30, 1996, at 10 a.m. in the 1st Floor Conference Room, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.

ADMINISTRATIVE REGISTER - 267

(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 August 30, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Education Professional Standards Board, 1024 Capital Center Drive, Frankfort, Kentucky 40601, (502) 573-4606.

(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 regulation 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 Education Professional Standards Board 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 standards for admission to teacher education is KRS 161.028.

(b) The administrative regulation that the Education Professional Standards Board intends to promulgate will articulate institutional responsibilities for ensuring that all applicants to teacher education programs meet specified entry standards.

(c) The necessity and function of the proposed administrative regulation is as follows: Standards for admission to education programs are set forth in the Teacher Preparation and Certification Handbook, but have never been put into regulation.

(d) The benefits expected from administrative regulation are: Consolidation of entry requirements for teacher education into one regulation that will be accessible to all stakeholders.

(e) The administrative regulation will be implemented as follows: Institutions that offer approved teacher preparation programs will be copied with this regulation and required to forward an acknowledgement of receipt. They will continue to report admission data to the Education Professional Standards Board on an annual basis.

June 24, 1996

Education Professional Standards Board

(1) **704 KAR 20:705**, Admission, placement, and supervision in student teaching.

(2) The Education Professional Standards 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 August 30, 1996, at 10 a.m. in the 1st Floor Conference Room, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.

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

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

(c) If a request for a public hearing is not received from the required number of people at least 20 days prior to August 30, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Education Professional Standards Board, 1024 Capital Center Drive, Frankfort, Kentucky 40601, (502) 573-4606.

(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 regulation 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 Education Professional Standards Board 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 admission, placement, and supervision in student teaching is KRS 161.028.

(b) The administrative regulation that the Education Professional Standards Board intends to promulgate will consolidate board expectations into one regulation accessible to stakeholders, and make adherence to the board's professional code of ethics a responsibility of all student teachers.

(c) The necessity and function of the proposed administrative regulation is as follows: Standards for admission, placement, and supervision in student teaching are set forth in the Teacher Preparation and Certification Handbook, but have never been put into regulation.

(d) The benefits expected from administrative regulation are: Availability to all stakeholders of state guidelines governing admission, placement, and supervision in student teaching.

(e) The administrative regulation will be implemented as follows: A copy of the regulation and copies of the professional code of ethics will be sent to each institution that offers programs to prepare candidates for an initial teaching license. Institutions will be required to acknowledge receipt. Additional copies of the professional code of ethics will be sent to institutions upon request. Institutional implementation of standards relating to student teaching will be investigated by on-site board of examiners teams each five years, with a team report sent to the Education Professional Standards Board.

ADMINISTRATIVE REGISTER - 268

June 24, 1996

Education Professional Standards Board

- (1) **704 KAR 20:710**, Professional certificate for instructional leadership - school principal.
- (2) The Education Professional Standards Board 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 August 30, 1996 at 10 a.m., in the First Floor Conference room, Capital Plaza Tower, 500 Mero St., 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 August 30, 1996, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Dr. Betty Lindsey, Education Professional Standards Board, 1024 Capital Center Drive, 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 Education Professional Standards Board 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 requirements for the issuance of the school principal certification is KRS 161.020, 161.028 and 161.030.
 - (b) The administrative regulation that the Education Professional Standards Board will promulgate is 704 KAR 20:710.
 - (c) The necessity and function of the proposed administrative regulation is as follows: KRS 161.020 requires that teachers and other professional school personnel hold certificates of legal qualification for their respective positions to be issued upon completion of programs of preparation prescribed by the Education Professional Standards Board. Additionally, KRS 161.027 specifically requires a preparation program for principals and teacher education institutions are required to be approved for offering the preparation programs corresponding to particular certificates on the basis of standards and procedures established by the Education Professional Standards Board. This administrative regulation establishes the preparation and certification program for school principals, at all grade levels.
 - (d) The benefits expected from the administrative regulation are: Providing an opportunity to achieve certification at the master's level; providing the potential to decrease the shortage of principal candidates; providing reciprocity for certification with other states.
 - (e) The administrative regulation will be implemented as follows: The regulation will be communicated to colleges, universities, and other entities having approved preparation programs for instructional leadership - school principal. As the need arises, Division of Certification staff will inform local school districts about the regulations and procedures for applying for certification under 704 KAR 20:710, Instructional leadership - school principal.

WORKFORCE DEVELOPMENT CABINET Department for Employment Services

June 17, 1996

Workforce Development Cabinet

Department for Employment Services

- (1) **787 KAR 1:200**, Maximum weekly benefit rate.
- (2) The Workforce Development Cabinet, Department for Employment Services, Division of Unemployment 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 August 29, 1996, 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 August 29, 1996, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Beverly Haverstock, General Counsel, Office of General Counsel, Workforce Development Cabinet, 2nd Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, (502) 564-6606.
 - (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 Employment Services, 275 East Main Street, 2nd Floor East, 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 Workforce Development Cabinet 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 maximum weekly benefit rate is state statute and by federal regulation.

(b) The administrative regulation that the Department for Employment Services intends to promulgate will amend 787 KAR 1:200, Maximum weekly benefit rate. It will set the unemployment insurance maximum weekly unemployment insurance benefit rate that is in effect for the year July 1, 1996, through June 30, 1997.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 341.380 requires the Secretary for Workforce Development to determine the average weekly wage for insured employment. 55 percent of this amount adjusted to the nearest multiple of one dollar constitutes the maximum weekly unemployment insurance benefit rate for those workers whose benefit year commences on or after July 1, 1996, and prior to July 1, 1997. This administrative regulation applies the mathematical computation required by statute and contains the determination of the maximum weekly benefit rate.

(d) The benefit expected from this administrative regulation is: This proposed administrative regulation sets forth the maximum weekly unemployment insurance benefit rate for the year July 1, 1996, through June 30, 1997.

KENTUCKY BOARD OF TAX APPEALS

July 9, 1996

Kentucky Board of Tax Appeals

(1) Regulation Number and Title; or subject matter if new: **802 KAR 1:010**, Rules of practice and procedure.

(2) The Kentucky Board of Tax Appeals 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 has been scheduled for Thursday, August 29, 1996, at 9 a.m., at Room 111, 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 the 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 10 days prior to August 29, 1996, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mr. Jody A. Lassiter, General Counsel, Kentucky Board of Tax Appeals, 90 Airport Road, Suite 2, 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 Kentucky Board of Tax Appeals 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 131.345(1).

(b) The administrative regulation that the Kentucky Board of Tax Appeals intends to promulgate will amend 802 KAR 1:010, Rules of practice and procedure. It will conform the Kentucky Board of Tax Appeals' rules of practice and procedure to KRS Chapter 13B, which shall govern the conduct of administrative hearings effective July 15, 1996.

(c) The Necessity and Function of the proposed administrative regulation is as follows: The proposed administrative regulation is necessary to conform the Kentucky Board of Tax Appeals' rules of practice and procedure to KRS Chapter 13B, which shall govern conduct of administrative hearings effective July 15, 1996. The proposed administrative regulation will function as the prescribed rules of practice and procedure for all appeals to the Kentucky Board of Tax Appeals.

(d) The benefits expected from administrative regulation are:

1. To inform the public of new administrative hearing procedures mandated by KRS Chapter 13B which will be applicable to all appeals to the Kentucky Board of Tax Appeals after July 15, 1996;

2. To provide to parties appealing to the Kentucky Board of Tax Appeals rules of practice and procedure which are consistent with KRS Chapter 13B; and

3. To implement a simpler, fairer, and more efficient appeal process while protecting the constitutional due process rights of the parties.

(e) The administrative regulation will be implemented as follows: All appeals to and hearings conducted before the Kentucky Board of Tax Appeals shall comply with the proposed administrative regulation, KRS Chapter 13B, and KRS 131.310-.370.

ADMINISTRATIVE REGISTER - 270

LABOR CABINET Department of Workplace Standards Kentucky Occupational Safety and Health

July 15, 1996
Labor Cabinet
Department of Workplace Standards
Kentucky Occupational Safety and Health

- (1) Regulation Number and Title: **803 KAR 2:019**. Receiving and unloading bulk hazardous liquids.
- (2) The Kentucky Occupational Safety and Health Standards Board intends to amend the regulation cited above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 30, 1996, at 2 p.m. (ET), in the Bay 3 Conference Room at 1047 U.S. 127 South, 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 at least 20 days prior to August 30, 1996, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, Frankfort, Kentucky 40601.
- (b) On a request for public hearing, a persons 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 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 occupational safety and health is KRS Chapter 338.
- (b) The administrative regulation that the Kentucky Occupational Safety and Health Standards Program intends to promulgate will amend 803 KAR 2:019 to update references to other standards.
- (c) The necessity and function of the proposed administrative regulation is: Kentucky's Occupational Safety and Health Program is mandated by federal law to be at least as effective as the federal program. Kentucky does not have an effective alternative to these amendments; accordingly, in order to maintain its state program, Kentucky must adopt the federal requirements.
- (d) The benefits expected from the proposed administrative regulation are: This proposed amendment will eliminate confusion by updating references to other standards.
- (e) The administrative regulation will be implemented as follows: The proposed administrative regulation will be implemented by the Division of OSH Education and Training through its training sessions and seminars and its voluntary surveys, and by the Division of Compliance through its enforcement investigations.

July 15, 1996
Labor Cabinet
Department of Workplace Standards
Kentucky Occupational Safety and Health

- (1) Regulation Number and Title: **803 KAR 2:200**. Confined space entry.
- (2) The Kentucky Occupational Safety and Health Standards Board intends to amend the regulation cited above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 30, 1996, at 2 p.m. (ET), in the Bay 3 Conference Room at 1047 U.S. 127 South, 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 at least 20 days prior to August 30, 1996, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, Frankfort, Kentucky 40601.
- (b) On a request for public hearing, a persons 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 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 occupational safety and health is KRS Chapter 338.
- (b) The administrative regulation that the Kentucky Occupational Safety and Health Standards Program intends to promulgate will amend 803 KAR 2:200 remove the coverage of the regulation to reference to maritime operations.
- (c) The necessity and function of the proposed administrative regulation is: Kentucky's Occupational Safety and Health Program is mandated by federal law to be at least as effective as the federal program. Kentucky does not have an effective alternative to these amendments;

ADMINISTRATIVE REGISTER - 271

accordingly, in order to maintain its state program, Kentucky must adopt the federal requirements.

(d) The benefits expected from the proposed administrative regulation are: The proposed amendment will eliminate confusion on the part of those affected as confined space entry in maritime operations is also covered in 803 KAR 2:500.

(e) The administrative regulation will be implemented as follows: The proposed administrative regulation will be implemented by the Division of OSH Education and Training through its training sessions and seminars and its voluntary surveys, and by the Division of Compliance through its enforcement investigations.

July 15, 1996

Labor Cabinet

Department of Workplace Standards

Kentucky Occupational Safety and Health

(1) Regulation Number and Title: **803 KAR 2:300**. Adoption of 29 CFR Part 1910.1-6.

(2) The Kentucky Occupational Safety and Health Standards Board intends to amend the regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 30, 1996, at 2 p.m. (ET), in the Bay 3 Conference Room at 1047 U.S. 127 South, 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 at least 20 days prior to August 30, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, Frankfort, Kentucky 40601.

(b) On a request for public hearing, a persons 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 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 occupational safety and health is KRS Chapter 338.

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend 803 KAR 2:300, as follows: The revisions to 29 CFR Part 1910.6, "Incorporation by Reference," as published in the Federal Register, Volume 61, Number 46, March 7, 1996, will be incorporated by reference. The revisions consolidate and update names and addresses of consensus organizations that have safety and health standards promulgated by the Occupational Safety and Health Administration (OSHA).

(c) The necessity and function of the proposed administrative regulation is: Kentucky's Occupational Safety and Health Program is mandated by federal law to be at least as effective as the federal program. Kentucky does not have an effective alternative to these amendments; accordingly, in order to maintain its state program, Kentucky must adopt the federal requirements.

(d) The benefits expected from the proposed administrative regulation are: This proposed amendment will adopt changes in existing occupational safety and health standards which simplify for those affected the referencing of the consensus organizations that have standards adopted by OSHA.

(e) The administrative regulation will be implemented as follows: The proposed administrative regulation will be implemented by the Division of OSH Education and Training through its training sessions and seminars and its voluntary surveys, and by the Division of Compliance through its enforcement investigations.

July 15, 1996

Labor Cabinet

Department of Workplace Standards

Kentucky Occupational Safety and Health

(1) Regulation Number and Title: **803 KAR 2:301**. Adoption of 29 CFR Part 1910.7-19.

(2) The Kentucky Occupational Safety and Health Standards Board intends to amend the regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 30, 1996, at 2 p.m. (ET), in the Bay 3 Conference Room at 1047 U.S. 127 South, 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 at least 20 days prior to August 30, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, Frankfort, Kentucky 40601.

(b) On a request for public hearing, a persons 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 at the address listed above.

(7) Information relating to the proposed administrative regulation.

ADMINISTRATIVE REGISTER - 272

(a) The statutory authority for the promulgation of an administrative regulation relating to occupational safety and health is KRS Chapter 338.

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend 803 KAR 2:301, as follows: The revisions to 29 CFR Part 1910.17, "Effective Dates," as published in the Federal Register, Volume 61, Number 46, March 7, 1996, will be incorporated by reference. The revisions remove two paragraphs from the existing standard and correct a reference to the removed paragraphs in the remaining paragraph.

(c) The necessity and function of the proposed administrative regulation is: Kentucky's Occupational Safety and Health Program is mandated by federal law to be at least as effective as the federal program. Kentucky does not have an effective alternative to these amendments; accordingly, in order to maintain its state program, Kentucky must adopt the federal requirements.

(d) The benefits expected from the proposed administrative regulation are: This proposed amendment will adopt changes in the existing occupational safety and health standard by removing expired effective dates.

(e) The administrative regulation will be implemented as follows: The proposed administrative regulation will be implemented by the Division of OSH Education and Training through its training sessions and seminars and its voluntary surveys, and by the Division of Compliance through its enforcement investigations.

July 15, 1996

Labor Cabinet

Department of Workplace Standards

Kentucky Occupational Safety and Health

(1) Regulation Number and Title: **803 KAR 2:302**. Adoption of 29 CFR Part 1910.20.

(2) The Kentucky Occupational Safety and Health Standards Board intends to amend the regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 30, 1996, at 2 p.m. (ET), in the Bay 3 Conference Room at 1047 U.S. 127 South, 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 at least 20 days prior to August 30, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, Frankfort, Kentucky 40601.

(b) On a request for public hearing, a persons 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 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 occupational safety and health is KRS Chapter 338.

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend 803 KAR 2:302, as follows: The revisions to 29 CFR Part 1910.20, "Access to Employee Exposure and Medical Records," as published in the Federal Register, Volume 61, Number 46, March 7, 1996, will be incorporated by reference. The revisions correct a typographical error and add reference to another standard.

(c) The necessity and function of the proposed administrative regulation is: Kentucky's Occupational Safety and Health Program is mandated by federal law to be at least as effective as the federal program. Kentucky does not have an effective alternative to these amendments; accordingly, in order to maintain its state program, Kentucky must adopt the federal requirements.

(d) The benefits expected from the proposed administrative regulation are: This proposed amendment will adopt changes in the existing occupational safety and health standard by clarifying, for those affected, the definition of "toxic substance or harmful physical agent."

(e) The administrative regulation will be implemented as follows: The proposed administrative regulation will be implemented by the Division of OSH Education and Training through its training sessions and seminars and its voluntary surveys, and by the Division of Compliance through its enforcement investigations.

July 15, 1996

Labor Cabinet

Department of Workplace Standards

Kentucky Occupational Safety and Health

(1) Regulation Number and Title: **803 KAR 2:303**. Adoption of 29 CFR Part 1910.21-.32.

(2) The Kentucky Occupational Safety and Health Standards Board intends to amend the regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 30, 1996, at 2 p.m. (ET), in the Bay 3 Conference Room at 1047 U.S. 127 South, 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 at least 20 days prior to August 30, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, Frankfort, Kentucky 40601.

ADMINISTRATIVE REGISTER - 273

(b) On a request for public hearing, a persons 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 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 occupational safety and health is KRS Chapter 338.

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend 803 KAR 2:303, as follows: The revisions to 29 CFR Part 1910.30, "Other Working Surfaces," and remove 29 CFR Part 1910.31, "Sources of Standards," and 29 CFR Part 1910.32, Standards Organizations," as published in the Federal Register, Volume 61, Number 46, March 7, 1996, will be incorporated by reference. The revisions add reference to another standard and remove two standards.

(c) The necessity and function of the proposed administrative regulation is: Kentucky's Occupational Safety and Health Program is mandated by federal law to be at least as effective as the federal program. Kentucky does not have an effective alternative to these amendments; accordingly, in order to maintain its state program, Kentucky must adopt the federal requirements.

(d) The benefits expected from the proposed administrative regulation are: This proposed amendment will adopt changes in the existing occupational safety and health standard by updating information on the referenced consensus standard and removes two standards whose information is found elsewhere in the regulations.

(e) The administrative regulation will be implemented as follows: The proposed administrative regulation will be implemented by the Division of OSH Education and Training through its training sessions and seminars and its voluntary surveys, and by the Division of Compliance through its enforcement investigations.

July 15, 1996

Labor Cabinet

Department of Workplace Standards

Kentucky Occupational Safety and Health

(1) Regulation Number and Title: **803 KAR 2:304**. Adoption of 29 CFR Part 1910.35-.40.

(2) The Kentucky Occupational Safety and Health Standards Board intends to amend the regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 30, 1996, at 2 p.m. (ET), in the Bay 3 Conference Room at 1047 U.S. 127 South, 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 at least 20 days prior to August 30, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, Frankfort, Kentucky 40601.

(b) On a request for public hearing, a persons 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 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 occupational safety and health is KRS Chapter 338.

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend 803 KAR 2:304, as follows: The revisions to 29 CFR Part 1910.39, "Sources of Standards," and 29 CFR Part 1910.40, "Standards Organizations," as published in the Federal Register, Volume 61, Number 46, March 7, 1996, will be incorporated by reference. The revisions remove these two standards.

(c) The necessity and function of the proposed administrative regulation is: Kentucky's Occupational Safety and Health Program is mandated by federal law to be at least as effective as the federal program. Kentucky does not have an effective alternative to these amendments; accordingly, in order to maintain its state program, Kentucky must adopt the federal requirements.

(d) The benefits expected from the proposed administrative regulation are: This proposed amendment removes two standards whose information is found elsewhere in the regulations, eliminating redundancy.

(e) The administrative regulation will be implemented as follows: The proposed administrative regulation will be implemented by the Division of OSH Education and Training through its training sessions and seminars and its voluntary surveys, and by the Division of Compliance through its enforcement investigations.

July 15, 1996

Labor Cabinet

Department of Workplace Standards

Kentucky Occupational Safety and Health

(1) Regulation Number and Title: **803 KAR 2:305**. Adoption of 29 CFR Part 1910.66-.70.

(2) The Kentucky Occupational Safety and Health Standards Board intends to amend the regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August

ADMINISTRATIVE REGISTER - 274

30, 1996, at 2 p.m. (ET), in the Bay 3 Conference Room at 1047 U.S. 127 South, 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 at least 20 days prior to August 30, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, Frankfort, Kentucky 40601.

(b) On a request for public hearing, a persons 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 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 occupational safety and health is KRS Chapter 338.

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend 803 KAR 2:305, as follows: The revisions to 29 CFR Part 1910.66, "Powered Platforms for Building Maintenance," 29 CFR Part 1910.67, "Vehicle-Mounted Elevated and Rotating Work Platforms," 29 CFR Part 1910.68, "Manlifts," 29 CFR Part 1910.69, "Sources of Standards," and 29 CFR Part 1910.70, "Standards Organizations," as published in the Federal Register, Volume 61, Number 46, March 7, 1996, will be incorporated by reference. The revisions add references to another standard and remove two standards.

(c) The necessity and function of the proposed administrative regulation is: Kentucky's Occupational Safety and Health Program is mandated by federal law to be at least as effective as the federal program. Kentucky does not have an effective alternative to these amendments; accordingly, in order to maintain its state program, Kentucky must adopt the federal requirements.

(d) The benefits expected from the proposed administrative regulation are: These proposed amendments will update information on the referenced consensus standard and remove two standards whose information is found elsewhere in the regulations, eliminating redundancy.

(e) The administrative regulation will be implemented as follows: The proposed administrative regulation will be implemented by the Division of OSH Education and Training through its training sessions and seminars and its voluntary surveys, and by the Division of Compliance through its enforcement investigations.

July 15, 1996

Labor Cabinet

Department of Workplace Standards

Kentucky Occupational Safety and Health

(1) Regulation Number and Title: **803 KAR 2:306**. Adoption of 29 CFR Part 1910.94-.100

(2) The Kentucky Occupational Safety and Health Standards Board intends to amend the regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 30, 1996, at 2 p.m. (ET), in the Bay 3 Conference Room at 1047 U.S. 127 South, 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 at least 20 days prior to August 30, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, Frankfort, Kentucky 40601.

(b) On a request for public hearing, a persons 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 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 occupational safety and health is KRS Chapter 338.

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend 803 KAR 2:306, as follows: The revisions to 29 CFR Part 1910.94, "Ventilation," 29 CFR Part 1910.95, "Occupational Noise Exposure," 29 CFR Part 1910.97, "Nonionizing Radiation," 29 CFR Part 1910.99, "Sources of Standards," and 29 CFR Part 1910.100, "Standards Organizations," as published in the Federal Register, Volume 61, Number 46, March 7, 1996, will be incorporated by reference. The revisions add references to another standard and remove two standards.

(c) The necessity and function of the proposed administrative regulation is: Kentucky's Occupational Safety and Health Program is mandated by federal law to be at least as effective as the federal program. Kentucky does not have an effective alternative to these amendments; accordingly, in order to maintain its state program, Kentucky must adopt the federal requirements.

(d) The benefits expected from the proposed administrative regulation are: These proposed amendments will update information on the referenced consensus standards and remove two standards whose information is found elsewhere in the regulations, eliminating redundancy.

(e) The administrative regulation will be implemented as follows: The proposed administrative regulation will be implemented by the Division of OSH Education and Training through its training sessions and seminars and its voluntary surveys, and by the Division of Compliance

through its enforcement investigations.

July 15, 1996

Labor Cabinet

Department of Workplace Standards

Kentucky Occupational Safety and Health

(1) Regulation Number and Title: **803 KAR 2:307**. Adoption of 29 CFR Part 1910.101-.120

(2) The Kentucky Occupational Safety and Health Standards Board intends to amend the regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 30, 1996, at 2 p.m. (ET), in the Bay 3 Conference Room at 1047 U.S. 127 South, 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 at least 20 days prior to August 30, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, Frankfort, Kentucky 40601.

(b) On a request for public hearing, a persons 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 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 occupational safety and health is KRS Chapter 338.

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend 803 KAR 2:307, as follows: The revisions to 29 CFR Part 1910, Subpart H, "Hazardous Materials," as published in the Federal Register, Volume 61, Number 46, March 7, 1996, will be incorporated by reference. The revisions add references to another standard and remove two standards.

(c) The necessity and function of the proposed administrative regulation is: Kentucky's Occupational Safety and Health Program is mandated by federal law to be at least as effective as the federal program. Kentucky does not have an effective alternative to these amendments; accordingly, in order to maintain its state program, Kentucky must adopt the federal requirements.

(d) The benefits expected from the proposed administrative regulation are: These proposed amendments will update information on the referenced consensus standards, remove two standards whose information is found elsewhere in the regulations, eliminating redundancy, and remove an expired effective date.

(e) The administrative regulation will be implemented as follows: The proposed administrative regulation will be implemented by the Division of OSH Education and Training through its training sessions and seminars and its voluntary surveys, and by the Division of Compliance through its enforcement investigations.

July 15, 1996

Labor Cabinet

Department of Workplace Standards

Kentucky Occupational Safety and Health

(1) Regulation Number and Title: **803 KAR 2:308**. Adoption of 29 CFR Part 1910.132-140.

(2) The Kentucky Occupational Safety and Health Standards Board intends to amend the regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 30, 1996, at 2 p.m. (ET), in the Bay 3 Conference Room at 1047 U.S. 127 South, 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 at least 20 days prior to August 30, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, Frankfort, Kentucky 40601.

(b) On a request for public hearing, a persons 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 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 occupational safety and health is KRS Chapter 338.

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend 803 KAR 2:308, as follows: The revisions to 29 CFR Part 1910.133, "Eye and Face Protection," 29 CFR Part 1910.135, "Head Protection," 29 CFR Part 1910.136, "Foot Protection," 29 CFR Part 1910.139, "Sources of Standards," and 29 CFR Part 1910.140, "Standards Organizations," as published in the Federal Register, Volume 61, Number 46, March 7, 1996, will be incorporated by reference. The revisions add references to another

ADMINISTRATIVE REGISTER - 276

standard and remove two standards.

(c) The necessity and function of the proposed administrative regulation is: Kentucky's Occupational Safety and Health Program is mandated by federal law to be at least as effective as the federal program. Kentucky does not have an effective alternative to these amendments; accordingly, in order to maintain its state program, Kentucky must adopt the federal requirements.

(d) The benefits expected from the proposed administrative regulation are: These proposed amendments will update information on the referenced consensus standards, and remove two standards whose information is found elsewhere in the regulations, eliminating redundancy.

(e) The administrative regulation will be implemented as follows: The proposed administrative regulation will be implemented by the Division of OSH Education and Training through its training sessions and seminars and its voluntary surveys, and by the Division of Compliance through its enforcement investigations.

July 15, 1996

Labor Cabinet

Department of Workplace Standards

Kentucky Occupational Safety and Health

(1) Regulation Number and Title: **803 KAR 2:309**. Adoption of 29 CFR Part 1910.132-140.

(2) The Kentucky Occupational Safety and Health Standards Board intends to amend the regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 30, 1996, at 2 p.m. (ET), in the Bay 3 Conference Room at 1047 U.S. 127 South, 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 at least 20 days prior to August 30, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, Frankfort, Kentucky 40601.

(b) On a request for public hearing, a persons 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 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 occupational safety and health is KRS Chapter 338.

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend 803 KAR 2:308, as follows: The revisions to 29 CFR Part 1910.133, "Eye and Face Protection," 29 CFR Part 1910.135, "Head Protection," 29 CFR Part 1910.136, "Foot Protection," 29 CFR Part 1910.139, "Sources of Standards," and 29 CFR Part 1910.140, "Standards Organizations," as published in the Federal Register, Volume 61, Number 46, March 7, 1996, will be incorporated by reference. The revisions add references to another standard and remove two standards.

(c) The necessity and function of the proposed administrative regulation is: Kentucky's Occupational Safety and Health Program is mandated by federal law to be at least as effective as the federal program. Kentucky does not have an effective alternative to these amendments; accordingly, in order to maintain its state program, Kentucky must adopt the federal requirements.

(d) The benefits expected from the proposed administrative regulation are: These proposed amendments will update information on the referenced consensus standards, and remove two standards whose information is found elsewhere in the regulations, eliminating redundancy.

(e) The administrative regulation will be implemented as follows: The proposed administrative regulation will be implemented by the Division of OSH Education and Training through its training sessions and seminars and its voluntary surveys, and by the Division of Compliance through its enforcement investigations.

July 15, 1996

Labor Cabinet

Department of Workplace Standards

Kentucky Occupational Safety and Health

(1) Regulation Number and Title: **803 KAR 2:310**. Adoption of 29 CFR Part 1910.151-.153.

(2) The Kentucky Occupational Safety and Health Standards Board intends to amend the regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 30, 1996, at 2 p.m. (ET), in the Bay 3 Conference Room at 1047 U.S. 127 South, 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 at least 20 days prior to August 30, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, Frankfort, Kentucky 40601.

(b) On a request for public hearing, a persons 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 REGISTER - 277

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 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 occupational safety and health is KRS Chapter

338.

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend 803 KAR 2:310, as follows: The revisions to 29 CFR Part 1910.153, "Sources of Standards," as published in the Federal Register, Volume 61, Number 46, March 7, 1996, will be incorporated by reference. The revision removes this standard.

(c) The necessity and function of the proposed administrative regulation is: Kentucky's Occupational Safety and Health Program is mandated by federal law to be at least as effective as the federal program. Kentucky does not have an effective alternative to these amendments; accordingly, in order to maintain its state program, Kentucky must adopt the federal requirements.

(d) The benefits expected from the proposed administrative regulation are: These proposed amendment remove this standard whose information is found elsewhere in the regulations, eliminating redundancy.

(e) The administrative regulation will be implemented as follows: The proposed administrative regulation will be implemented by the Division of OSH Education and Training through its training sessions and seminars and its voluntary surveys, and by the Division of Compliance through its enforcement investigations.

July 15, 1996

Labor Cabinet

Department of Workplace Standards

Kentucky Occupational Safety and Health

(1) Regulation Number and Title: **803 KAR 2:311**. Adoption of 29 CFR Part 1910.155-165b.

(2) The Kentucky Occupational Safety and Health Standards Board intends to amend the regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 30, 1996, at 2 p.m. (ET), in the Bay 3 Conference Room at 1047 U.S. 127 South, 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 at least 20 days prior to August 30, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, Frankfort, Kentucky 40601.

(b) On a request for public hearing, a persons 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 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 occupational safety and health is KRS Chapter

338.

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend 803 KAR 2:311, as follows: The revisions to 29 CFR Part 1910.156, "Fire Brigades," 29 CFR Part 1910.157, "Portable Fire Extinguishers," 29 CFR Part 1910.158, "Standpipe and Hose Systems," and Appendix D of 29 CFR Part 1910, Subpart L, "Fire Protection," as published in the Federal Register, Volume 61, Number 46, March 7, 1996, will be incorporated by reference. The revisions add references to another standard and remove expired effective dates.

(c) The necessity and function of the proposed administrative regulation is: Kentucky's Occupational Safety and Health Program is mandated by federal law to be at least as effective as the federal program. Kentucky does not have an effective alternative to these amendments; accordingly, in order to maintain its state program, Kentucky must adopt the federal requirements.

(d) The benefits expected from the proposed administrative regulation are: These proposed amendments will update information on the referenced consensus standards, and remove expired effective dates.

(e) The administrative regulation will be implemented as follows: The proposed administrative regulation will be implemented by the Division of OSH Education and Training through its training sessions and seminars and its voluntary surveys, and by the Division of Compliance through its enforcement investigations.

July 15, 1996

Labor Cabinet

Department of Workplace Standards

Kentucky Occupational Safety and Health

(1) Regulation Number and Title: **803 KAR 2:312**. Adoption of 29 CFR Part 1910.166-.171.

(2) The Kentucky Occupational Safety and Health Standards Board intends to amend the regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 30, 1996, at 2 p.m. (ET), in the Bay 3 Conference Room at 1047 U.S. 127 South, 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 at least 20 days prior to August 30,

ADMINISTRATIVE REGISTER - 278

1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, Frankfort, Kentucky 40601.

(b) On a request for public hearing, a persons 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 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 occupational safety and health is KRS Chapter 338.

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend 803 KAR 2:312, as follows: The revisions to 29 CFR Part 1910.169, "Air Receivers," 29 CFR Part 1910.170, "Sources of Standards," and 29 CFR Part 1910.171, "Standards Organizations," as published in the Federal Register, Volume 61, Number 46, March 7, 1996, will be incorporated by reference. The revisions add a reference to another standard and remove two standards.

(c) The necessity and function of the proposed administrative regulation is: Kentucky's Occupational Safety and Health Program is mandated by federal law to be at least as effective as the federal program. Kentucky does not have an effective alternative to these amendments; accordingly, in order to maintain its state program, Kentucky must adopt the federal requirements.

(d) The benefits expected from the proposed administrative regulation are: These proposed amendments will update information on the referenced consensus standard, and remove two standards whose information is elsewhere in the regulations, eliminating redundancy.

(e) The administrative regulation will be implemented as follows: The proposed administrative regulation will be implemented by the Division of OSH Education and Training through its training sessions and seminars and its voluntary surveys, and by the Division of Compliance through its enforcement investigations.

July 15, 1996

Labor Cabinet

Department of Workplace Standards

Kentucky Occupational Safety and Health

(1) Regulation Number and Title: **803 KAR 2:313**. Adoption of 29 CFR Part 1910.176-.190.

(2) The Kentucky Occupational Safety and Health Standards Board intends to amend the regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 30, 1996, at 2 p.m. (ET), in the Bay 3 Conference Room at 1047 U.S. 127 South, 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 at least 20 days prior to August 30, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, Frankfort, Kentucky 40601.

(b) On a request for public hearing, a persons 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 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 occupational safety and health is KRS Chapter 338.

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend 803 KAR 2:313, as follows: The revisions to 29 CFR Part 1910.177, "Servicing Multi-Piece and Single Piece Rim Wheels," 29 CFR Part 1910.178, "Powered Industrial Trucks," 29 CFR Part 1910.179, "Overhead and Gantry Cranes," 29 CFR Part 1910.180, "Crawler, Locomotive, and Truck Cranes," 29 CFR Part 1910.181, "Derricks," 29 CFR Part 1910.182, "Effective Dates," 29 CFR Part 1910.184, "Slings," 29 CFR Part 1910.189, "Sources of Standards," and 29 CFR Part 1910.190, "Standards Organizations," as published in the Federal Register, Volume 61, Number 46, March 7, 1996, will be incorporated by reference. The revisions add references to another standard and remove three standards.

(c) The necessity and function of the proposed administrative regulation is: Kentucky's Occupational Safety and Health Program is mandated by federal law to be at least as effective as the federal program. Kentucky does not have an effective alternative to these amendments; accordingly, in order to maintain its state program, Kentucky must adopt the federal requirements.

(d) The benefits expected from the proposed administrative regulation are: These proposed amendments will update information on the referenced consensus standard, remove expired effective dates, and remove two standards whose information is elsewhere in the regulations, eliminating redundancy.

(e) The administrative regulation will be implemented as follows: The proposed administrative regulation will be implemented by the Division of OSH Education and Training through its training sessions and seminars and its voluntary surveys, and by the Division of Compliance through its enforcement investigations.

ADMINISTRATIVE REGISTER - 279

July 15, 1996
Labor Cabinet
Department of Workplace Standards
Kentucky Occupational Safety and Health

- (1) Regulation Number and Title: **803 KAR 2:314**. Adoption of 29 CFR Part 1910.211-.222.
- (2) The Kentucky Occupational Safety and Health Standards Board intends to amend the regulation cited above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 30, 1996, at 2 p.m. (ET), in the Bay 3 Conference Room at 1047 U.S. 127 South, 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 at least 20 days prior to August 30, 1996, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, Frankfort, Kentucky 40601.
- (b) On a request for public hearing, a persons 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 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 occupational safety and health is KRS Chapter 338.
 - (b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend 803 KAR 2:314, as follows: The revisions to 29 CFR Part 1910.215, "Abrasive Wheel Machinery," 29 CFR Part 1910.216, "Mills and Calendars in the Rubber and Plastics Industries," 29 CFR Part 1910.217, "Mechanical Power Presses," 29 CFR Part 1910.218, "Forging Machines," 29 CFR Part 1910.219, "Mechanical Power-Transmission Apparatus," 29 CFR Part 1910.220, "Additional Delay in Effective Date," 29 CFR Part 1910.221, "Sources of Standards," and 29 CFR Part 1910.222, "Standards Organizations," as published in the Federal Register, Volume 61, Number 46, March 7, 1996, will be incorporated by reference. The revisions add references to another standard and remove three standards.
 - (c) The necessity and function of the proposed administrative regulation is: Kentucky's Occupational Safety and Health Program is mandated by federal law to be at least as effective as the federal program. Kentucky does not have an effective alternative to these amendments; accordingly, in order to maintain its state program, Kentucky must adopt the federal requirements.
 - (d) The benefits expected from the proposed administrative regulation are: These proposed amendments will update information on the referenced consensus standard, remove expired effective dates, and remove two standards whose information is elsewhere in the regulations, eliminating redundancy.
 - (e) The administrative regulation will be implemented as follows: The proposed administrative regulation will be implemented by the Division of OSH Education and Training through its training sessions and seminars and its voluntary surveys, and by the Division of Compliance through its enforcement investigations.

July 15, 1996
Labor Cabinet
Department of Workplace Standards
Kentucky Occupational Safety and Health

- (1) Regulation Number and Title: **803 KAR 2:315**. Adoption of 29 CFR Part 1910.241-.247.
- (2) The Kentucky Occupational Safety and Health Standards Board intends to amend the regulation cited above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 30, 1996, at 2 p.m. (ET), in the Bay 3 Conference Room at 1047 U.S. 127 South, 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 at least 20 days prior to August 30, 1996, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, Frankfort, Kentucky 40601.
- (b) On a request for public hearing, a persons 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 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 occupational safety and health is KRS Chapter 338.
 - (b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend 803 KAR 2:315, as follows: The revisions to 29 CFR Part 1910.243, "Guarding of Portable Power Tools," 29 CFR Part 1910.245, "Additional Delay in Effective Date," 29 CFR Part 1910.246, "Sources of Standards," and 29 CFR Part 1910.247, "Standards Organizations," as published in the

ADMINISTRATIVE REGISTER - 280

Federal Register, Volume 61, Number 46, March 7, 1996, will be incorporated by reference. The revisions add references to another standard and remove three standards.

(c) The necessity and function of the proposed administrative regulation is: Kentucky's Occupational Safety and Health Program is mandated by federal law to be at least as effective as the federal program. Kentucky does not have an effective alternative to these amendments; accordingly, in order to maintain its state program, Kentucky must adopt the federal requirements.

(d) The benefits expected from the proposed administrative regulation are: These proposed amendments will update information on the referenced consensus standard, remove expired effective dates, and remove two standards whose information is elsewhere in the regulations, eliminating redundancy.

(e) The administrative regulation will be implemented as follows: The proposed administrative regulation will be implemented by the Division of OSH Education and Training through its training sessions and seminars and its voluntary surveys, and by the Division of Compliance through its enforcement investigations.

July 15, 1996

Labor Cabinet

Department of Workplace Standards

Kentucky Occupational Safety and Health

(1) Regulation Number and Title: **803 KAR 2:316**. Adoption of 29 CFR Part 1910.251-.257.

(2) The Kentucky Occupational Safety and Health Standards Board intends to amend the regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 30, 1996, at 2 p.m. (ET), in the Bay 3 Conference Room at 1047 U.S. 127 South, 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 at least 20 days prior to August 30, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, Frankfort, Kentucky 40601.

(b) On a request for public hearing, a persons 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 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 occupational safety and health is KRS Chapter 338.

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend 803 KAR 2:316, as follows: The revisions to 29 CFR Part 1910.243, "Definitions," 29 CFR Part 1910.245, "Additional Delay in Effective Date," 29 CFR Part 1910.246, "Sources of Standards," and 29 CFR Part 1910.247, "Standards Organizations," as published in the Federal Register, Volume 61, Number 46, March 7, 1996, will be incorporated by reference. The revisions add references to another standard and remove three standards.

(c) The necessity and function of the proposed administrative regulation is: Kentucky's Occupational Safety and Health Program is mandated by federal law to be at least as effective as the federal program. Kentucky does not have an effective alternative to these amendments; accordingly, in order to maintain its state program, Kentucky must adopt the federal requirements.

(d) The benefits expected from the proposed administrative regulation are: These proposed amendments will update information on the referenced consensus standard, remove expired effective dates, and remove two standards whose information is elsewhere in the regulations, eliminating redundancy.

(e) The administrative regulation will be implemented as follows: The proposed administrative regulation will be implemented by the Division of OSH Education and Training through its training sessions and seminars and its voluntary surveys, and by the Division of Compliance through its enforcement investigations.

July 15, 1996

Labor Cabinet

Department of Workplace Standards

Kentucky Occupational Safety and Health

(1) Regulation Number and Title: **803 KAR 2:317**. Adoption of 29 CFR Part 1910.261-.275.

(2) The Kentucky Occupational Safety and Health Standards Board intends to amend the regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 30, 1996, at 2 p.m. (ET), in the Bay 3 Conference Room at 1047 U.S. 127 South, 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 at least 20 days prior to August 30, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, Frankfort, Kentucky 40601.

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

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

ADMINISTRATIVE REGISTER - 281

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 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 occupational safety and health is KRS Chapter 338.

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend 803 KAR 2:317, as follows: The revisions to 29 CFR Part 1910.261, "Pulp, Paper, and paperboard Mills," 29 CFR Part 1910.262, "Textiles," 29 CFR Part 1910.263, "Bakery Equipment," 29 CFR Part 1910.265, "Sawmills," 29 CFR Part 1910.266, "Logging," 29 CFR Part 1910.268, "Telecommunications," 29 CFR Part 1910.272, "Grain Handling Facilities," 29 CFR Part 1910.274, "Sources of Standards," and 29 CFR Part 1910.275, "Standards Organizations," as published in the Federal Register, Volume 61, Number 46, March 7, 1996, and Volume 61, Number 47, March 8, 1996 will be incorporated by reference. The revisions clarify that the requirements are intended to provide protection to those employees who enter flat structures of grain handling facilities, assures protection against engulfment for those who enter grain handling facilities at any level, adds a definition of "flat structure, add references to another standard, and remove two standards.

(c) The necessity and function of the proposed administrative regulation is: Kentucky's Occupational Safety and Health Program is mandated by federal law to be at least as effective as the federal program. Kentucky does not have an effective alternative to these amendments; accordingly, in order to maintain its state program, Kentucky must adopt the federal requirements.

(d) The benefits expected from the proposed administrative regulation are: These proposed amendments will update information on the referenced consensus standard and remove two standards whose information is elsewhere in the regulations, eliminating redundancy, and clarify the regulations and further protect those working in grain handling facilities.

(e) The administrative regulation will be implemented as follows: The proposed administrative regulation will be implemented by the Division of OSH Education and Training through its training sessions and seminars and its voluntary surveys, and by the Division of Compliance through its enforcement investigations.

July 15, 1996

Labor Cabinet

Department of Workplace Standards

Kentucky Occupational Safety and Health

(1) Regulation Number and Title: **803 KAR 2:318**. Adoption of 29 CFR Part 1910.301-.399.

(2) The Kentucky Occupational Safety and Health Standards Board intends to amend the regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 30, 1996, at 2 p.m. (ET), in the Bay 3 Conference Room at 1047 U.S. 127 South, 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 at least 20 days prior to August 30, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, Frankfort, Kentucky 40601.

(b) On a request for public hearing, a persons 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 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 occupational safety and health is KRS Chapter 338.

(b) The administrative regulation that the Kentucky Occupational Safety and Health Standards Program intends to promulgate will amend 803 KAR 2:318 to correct a typographical error.

(c) The necessity and function of the proposed administrative regulation is: Kentucky's Occupational Safety and Health Program is mandated by federal law to be at least as effective as the federal program. Kentucky does not have an effective alternative to these amendments; accordingly, in order to maintain its state program, Kentucky must adopt the federal requirements.

(d) The benefits expected from the proposed administrative regulation are: This proposed amendment will eliminate confusion due to the typographical error.

(e) The administrative regulation will be implemented as follows: The proposed administrative regulation will be implemented by the Division of OSH Education and Training through its training sessions and seminars and its voluntary surveys, and by the Division of Compliance through its enforcement investigations.

July 15, 1996

Labor Cabinet

Department of Workplace Standards

Kentucky Occupational Safety and Health

(1) Regulation Number and Title: **803 KAR 2:319**. Adoption of 29 CFR Part 1910.401-.441.

(2) The Kentucky Occupational Safety and Health Standards Board intends to amend the regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August

ADMINISTRATIVE REGISTER - 282

30, 1996, at 2 p.m. (ET), in the Bay 3 Conference Room at 1047 U.S. 127 South, 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 at least 20 days prior to August 30, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, Frankfort, Kentucky 40601.

(b) On a request for public hearing, a persons 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 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 occupational safety and health is KRS Chapter 338.

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend 803 KAR 2:319, as follows: The revisions to 29 CFR Part 1910.440, "Recordkeeping Requirements" as published in the Federal Register, Volume 61, Number 46, March 7, 1996, will be incorporated by reference. The revision changes "Health, Education, and Welfare" to "Health and Human Services."

(c) The necessity and function of the proposed administrative regulation is: Kentucky's Occupational Safety and Health Program is mandated by federal law to be at least as effective as the federal program. Kentucky does not have an effective alternative to these amendments; accordingly, in order to maintain its state program, Kentucky must adopt the federal requirements.

(d) The benefits expected from the proposed administrative regulation are: These proposed amendments will update information.

(e) The administrative regulation will be implemented as follows: The proposed administrative regulation will be implemented by the Division of OSH Education and Training through its training sessions and seminars and its voluntary surveys, and by the Division of Compliance through its enforcement investigations.

July 15, 1996

Labor Cabinet

Department of Workplace Standards

Kentucky Occupational Safety and Health

(1) Regulation Number and Title: **803 KAR 2:320**. Toxic and hazardous substances.

(2) The Kentucky Occupational Safety and Health Standards Board intends to amend the regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 30, 1996, at 2 p.m. (ET), in the Bay 3 Conference Room at 1047 U.S. 127 South, 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 at least 20 days prior to August 30, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, Frankfort, Kentucky 40601.

(b) On a request for public hearing, a persons 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 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 occupational safety and health is KRS Chapter 338.

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend 803 KAR 2:320, as follows: The revisions to 29 CFR Part 1910, Subpart Z, as published in the Federal Register, Volume 61, Number 46, March 7, 1996, will be incorporated by reference. The major revisions remove 13 regulations, combining them to one regulation.

(c) The necessity and function of the proposed administrative regulation is: Kentucky's Occupational Safety and Health Program is mandated by federal law to be at least as effective as the federal program. Kentucky does not have an effective alternative to these amendments; accordingly, in order to maintain its state program, Kentucky must adopt the federal requirements.

(d) The benefits expected from the proposed administrative regulation are: These proposed amendments will result in less pages of regulation, but cover the same carcinogens, and will remove two additional standards whose information is found elsewhere in the regulations, eliminating redundancy.

(e) The administrative regulation will be implemented as follows: The proposed administrative regulation will be implemented by the Division of OSH Education and Training through its training sessions and seminars and its voluntary surveys, and by the Division of Compliance through its enforcement investigations.

ADMINISTRATIVE REGISTER - 283

July 15, 1996
Labor Cabinet
Department of Workplace Standards
Kentucky Occupational Safety and Health

- (1) Regulation Number and Title: **803 KAR 2:402**. Adoption of 29 CFR Part 1926.20-.32.
- (2) The Kentucky Occupational Safety and Health Standards Board intends to amend the regulation cited above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 30, 1996, at 2 p.m. (ET), in the Bay 3 Conference Room at 1047 U.S. 127 South, 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 at least 20 days prior to August 30, 1996, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, Frankfort, Kentucky 40601.
- (b) On a request for public hearing, a persons 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 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 occupational safety and health is KRS Chapter 338.
 - (b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend 803 KAR 2:402, as follows: The revisions to 29 CFR Part 1926.30, "Shipbuilding and Ship Repairing," 29 CFR Part 1926.31, "Incorporation by Reference," and 29 CFR Part 1926.33, "Access to Employee Exposure and Medical Records," as published in the Federal Register, Volume 61, Number 46, March 7, 1996, will be incorporated by reference. The revisions update references and corrects current addresses and cross-references.
 - (c) The necessity and function of the proposed administrative regulation is: Kentucky's Occupational Safety and Health Program is mandated by federal law to be at least as effective as the federal program. Kentucky does not have an effective alternative to these amendments; accordingly, in order to maintain its state program, Kentucky must adopt the federal requirements.
 - (d) The benefits expected from the proposed administrative regulation are: The revisions update references and corrects current addresses and cross-references.
 - (e) The administrative regulation will be implemented as follows: The proposed administrative regulation will be implemented by the Division of OSH Education and Training through its training sessions and seminars and its voluntary surveys, and by the Division of Compliance through its enforcement investigations.

July 15, 1996
Labor Cabinet
Department of Workplace Standards
Kentucky Occupational Safety and Health

- (1) Regulation Number and Title: **803 KAR 2:403**. Occupational health and environmental controls.
- (2) The Kentucky Occupational Safety and Health Standards Board intends to amend the regulation cited above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 30, 1996, at 2 p.m. (ET), in the Bay 3 Conference Room at 1047 U.S. 127 South, 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 at least 20 days prior to August 30, 1996, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, Frankfort, Kentucky 40601.
- (b) On a request for public hearing, a persons 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 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 occupational safety and health is KRS Chapter 338.
 - (b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend 803 KAR 2:403, as follows: The revisions to 29 CFR Part 1926.55, "Gases, Vapors, Fumes, Dusts, and Mists," and 29 CFR Part 1926.57, "Ventilation," as published in the Federal Register, Volume 61, Number 46, March 7, 1996, will be incorporated by reference. The revisions make minor changes in these two standards.
 - (c) The necessity and function of the proposed administrative regulation is: Kentucky's Occupational Safety and Health Program is mandated by federal law to be at least as effective as the federal program. Kentucky does not have an effective alternative to these amendments;

ADMINISTRATIVE REGISTER - 284

accordingly, in order to maintain its state program, Kentucky must adopt the federal requirements.

(d) The benefits expected from the proposed administrative regulation are: This proposed amendment updates and makes minor changes in the standards.

(e) The administrative regulation will be implemented as follows: The proposed administrative regulation will be implemented by the Division of OSH Education and Training through its training sessions and seminars and its voluntary surveys, and by the Division of Compliance through its enforcement investigations.

July 15, 1996

Labor Cabinet

Department of Workplace Standards

Kentucky Occupational Safety and Health

- (1) Regulation Number and Title: **803 KAR 2:404**. Personal protective equipment.
- (2) The Kentucky Occupational Safety and Health Standards Board intends to amend the regulation cited above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 30, 1996, at 2 p.m. (ET), in the Bay 3 Conference Room at 1047 U.S. 127 South, 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 at least 20 days prior to August 30, 1996, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, Frankfort, Kentucky 40601.
- (b) On a request for public hearing, a persons 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 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 occupational safety and health is KRS Chapter 338.

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend 803 KAR 2:404, as follows: The revisions to 29 CFR Part 1926.103, "Respiratory Protection," as published in the Federal Register, Volume 61, Number 46, March 7, 1996, will be incorporated by reference. The revision updates reference information.

(c) The necessity and function of the proposed administrative regulation is: Kentucky's Occupational Safety and Health Program is mandated by federal law to be at least as effective as the federal program. Kentucky does not have an effective alternative to these amendments; accordingly, in order to maintain its state program, Kentucky must adopt the federal requirements.

(d) The benefits expected from the proposed administrative regulation are: This proposed amendment updates reference information in the standard.

(e) The administrative regulation will be implemented as follows: The proposed administrative regulation will be implemented by the Division of OSH Education and Training through its training sessions and seminars and its voluntary surveys, and by the Division of Compliance through its enforcement investigations.

July 15, 1996

Labor Cabinet

Department of Workplace Standards

Kentucky Occupational Safety and Health

- (1) Regulation Number and Title: **803 KAR 2:408**. Adoption of 29 CFR Part 1926.300-.305.
- (2) The Kentucky Occupational Safety and Health Standards Board intends to amend the regulation cited above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 30, 1996, at 2 p.m. (ET), in the Bay 3 Conference Room at 1047 U.S. 127 South, 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 at least 20 days prior to August 30, 1996, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, Frankfort, Kentucky 40601.
- (b) On a request for public hearing, a persons 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 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 occupational safety and health is KRS Chapter 338.

ADMINISTRATIVE REGISTER - 285

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend 803 KAR 2:408, as follows: The revisions to 29 CFR Part 1926.300, "General Requirements," and 29 CFR Part 1926.304, "Woodworking Tools," as published in the Federal Register, Volume 61, Number 46, March 7, 1996, will be incorporated by reference. The revision corrects references in the standard.

(c) The necessity and function of the proposed administrative regulation is: Kentucky's Occupational Safety and Health Program is mandated by federal law to be at least as effective as the federal program. Kentucky does not have an effective alternative to these amendments; accordingly, in order to maintain its state program, Kentucky must adopt the federal requirements.

(d) The benefits expected from the proposed administrative regulation are: This proposed amendment corrects references in the standard.

(e) The administrative regulation will be implemented as follows: The proposed administrative regulation will be implemented by the Division of OSH Education and Training through its training sessions and seminars and its voluntary surveys, and by the Division of Compliance through its enforcement investigations.

July 15, 1996

Labor Cabinet

Department of Workplace Standards

Kentucky Occupational Safety and Health

(1) Regulation Number and Title: **803 KAR 2:410**. Adoption of 29 CFR Part 1926.400-.449.

(2) The Kentucky Occupational Safety and Health Standards Board intends to amend the regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 30, 1996, at 2 p.m. (ET), in the Bay 3 Conference Room at 1047 U.S. 127 South, 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 at least 20 days prior to August 30, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, Frankfort, Kentucky 40601.

(b) On a request for public hearing, a persons 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 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 occupational safety and health is KRS Chapter 338.

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend 803 KAR 2:410, as follows: The revisions to 29 CFR Part 1926.416, "General Requirements," and 29 CFR Part 1926.417, "Lockout and Tagging of Circuits," as published in the Federal Register, Volume 61, Number 46, March 7, 1996, will be incorporated by reference. The revisions correct typographical and grammatical errors.

(c) The necessity and function of the proposed administrative regulation is: Kentucky's Occupational Safety and Health Program is mandated by federal law to be at least as effective as the federal program. Kentucky does not have an effective alternative to these amendments; accordingly, in order to maintain its state program, Kentucky must adopt the federal requirements.

(d) The benefits expected from the proposed administrative regulation are: This proposed amendment corrects typographical and grammatical errors.

(e) The administrative regulation will be implemented as follows: The proposed administrative regulation will be implemented by the Division of OSH Education and Training through its training sessions and seminars and its voluntary surveys, and by the Division of Compliance through its enforcement investigations.

July 15, 1996

Labor Cabinet

Department of Workplace Standards

Kentucky Occupational Safety and Health

(1) Regulation Number and Title: **803 KAR 2:422**. Adoption of 29 CFR Part 1926.1000-.1003.

(2) The Kentucky Occupational Safety and Health Standards Board intends to amend the regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 30, 1996, at 2 p.m. (ET), in the Bay 3 Conference Room at 1047 U.S. 127 South, 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 at least 20 days prior to August 30, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, Frankfort, Kentucky 40601.

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

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

ADMINISTRATIVE REGISTER - 286

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 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 occupational safety and health is KRS Chapter 338.

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend 803 KAR 2:422, as follows: The revisions to 29 CFR Part 1926.1002, "Protective Frame (ROPS) Test Procedures and Performance Requirements for Wheel-Type Agricultural and Industrial Tractors Used in Construction," and 29 CFR Part 1926.1003, "Overhead Protection for Operators of Agricultural and Industrial Tractors," as published in the Federal Register, Volume 61, Number 46, March 7, 1996, will be incorporated by reference. The revisions remove design criteria for rollover protective structures, not useful information to users of the equipment.

(c) The necessity and function of the proposed administrative regulation is: Kentucky's Occupational Safety and Health Program is mandated by federal law to be at least as effective as the federal program. Kentucky does not have an effective alternative to these amendments; accordingly, in order to maintain its state program, Kentucky must adopt the federal requirements.

(d) The benefits expected from the proposed administrative regulation are: These proposed amendments will remove unnecessary regulation.

(e) The administrative regulation will be implemented as follows: The proposed administrative regulation will be implemented by the Division of OSH Education and Training through its training sessions and seminars and its voluntary surveys, and by the Division of Compliance through its enforcement investigations.

July 15, 1996

Labor Cabinet

Department of Workplace Standards

Kentucky Occupational Safety and Health

(1) Regulation Number and Title: **803 KAR 2:425**. Toxic and hazardous substances.

(2) The Kentucky Occupational Safety and Health Standards Board intends to amend the regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 30, 1996, at 2 p.m. (ET), in the Bay 3 Conference Room at 1047 U.S. 127 South, 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 at least 20 days prior to August 30, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, Frankfort, Kentucky 40601.

(b) On a request for public hearing, a persons 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 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 occupational safety and health is KRS Chapter 338.

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend 803 KAR 2:320, as follows: The revisions to 29 CFR Part 1926, Subpart Z, as published in the Federal Register, Volume 61, Number 46, March 7, 1996, will be incorporated by reference. The major revisions remove 13 regulations, combining them to one regulation.

(c) The necessity and function of the proposed administrative regulation is: Kentucky's Occupational Safety and Health Program is mandated by federal law to be at least as effective as the federal program. Kentucky does not have an effective alternative to these amendments; accordingly, in order to maintain its state program, Kentucky must adopt the federal requirements.

(d) The benefits expected from the proposed administrative regulation are: These proposed amendments will result in less pages of regulation, but cover the same carcinogens.

(e) The administrative regulation will be implemented as follows: The proposed administrative regulation will be implemented by the Division of OSH Education and Training through its training sessions and seminars and its voluntary surveys, and by the Division of Compliance through its enforcement investigations.

July 15, 1996

Labor Cabinet

Department of Workplace Standards

Kentucky Occupational Safety and Health

(1) Regulation Number and Title: **803 KAR 2:500**. Maritime employment.

(2) The Kentucky Occupational Safety and Health Standards Board intends to amend the regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 30, 1996, at 2 p.m. (ET), in the Bay 3 Conference Room at 1047 U.S. 127 South, 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

ADMINISTRATIVE REGISTER - 287

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

(b) If a request for a public hearing and agreement to attend the public hearing, are not received at least 20 days prior to August 30, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, Frankfort, Kentucky 40601.

(b) On a request for public hearing, a persons 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 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 occupational safety and health is KRS Chapter 338.

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend 803 KAR 2:500, as follows: The revisions to 29 CFR Part 1915, Subpart Z, as published in the Federal Register, Volume 61, Number 46, March 7, 1996, will be incorporated by reference. The major revisions remove 13 regulations, combining them to one regulation.

(c) The necessity and function of the proposed administrative regulation is: Kentucky's Occupational Safety and Health Program is mandated by federal law to be at least as effective as the federal program. Kentucky does not have an effective alternative to these amendments; accordingly, in order to maintain its state program, Kentucky must adopt the federal requirements.

(d) The benefits expected from the proposed administrative regulation are: These proposed amendments will result in less pages of regulation, but cover the same carcinogens.

(e) The administrative regulation will be implemented as follows: The proposed administrative regulation will be implemented by the Division of OSH Education and Training through its training sessions and seminars and its voluntary surveys, and by the Division of Compliance through its enforcement investigations.

July 15, 1996

Labor Cabinet

Department of Workplace Standards

Kentucky Occupational Safety and Health

(1) Regulation Number and Title: **803 KAR 2:600**. Adoption of 29 CFR Part 1928.

(2) The Kentucky Occupational Safety and Health Standards Board intends to amend the regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 30, 1996, at 2 p.m. (ET), in the Bay 3 Conference Room at 1047 U.S. 127 South, 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 at least 20 days prior to August 30, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, Frankfort, Kentucky 40601.

(b) On a request for public hearing, a persons 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 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 occupational safety and health is KRS Chapter 338.

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend 803 KAR 2:600, as follows: The revisions to 29 CFR Part 1928, as published in the Federal Register, Volume 61, Number 46, March 7, 1996, will be incorporated by reference. The major revisions remove design criteria for rollover protective structures, not useful information to users of the equipment and removes text of cadmium regulation, eliminating pages of regulation, but adds cross-reference to 29 CFR Part 1910.

(c) The necessity and function of the proposed administrative regulation is: Kentucky's Occupational Safety and Health Program is mandated by federal law to be at least as effective as the federal program. Kentucky does not have an effective alternative to these amendments; accordingly, in order to maintain its state program, Kentucky must adopt the federal requirements.

(d) The benefits expected from the proposed administrative regulation are: These proposed amendments will result in less pages of regulation, but cover the same subject.

(e) The administrative regulation will be implemented as follows: The proposed administrative regulation will be implemented by the Division of OSH Education and Training through its training sessions and seminars and its voluntary surveys, and by the Division of Compliance through its enforcement investigations.

ADMINISTRATIVE REGISTER - 288

Kentucky Department of Workers' Claims

June 27, 1996

Labor Cabinet

Kentucky Department of Workers' Claims

(1) Regulation and Title No.: **803 KAR 25:089**, Workers' Compensation Medical Fee Schedule for Physicians.

(2) The Commissioner of the Department of Workers' Claims intends to amend 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 August 29, 1996, at 10 a.m. at the Farnham Dudgeon Civic Center, Conference Rooms ABC, 405 Mero Street, Frankfort, Kentucky 40601.

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

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

(c) If a request for a public hearing is not received from the required number of people at least 10 days prior to August 29, 1996, the public hearing will be cancelled.

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to a Workers' Compensation Medical Fee Schedule for Physicians is KRS 342.035.

(b) The administrative regulation that the commissioner intends to promulgate will amend 803 KAR 25:089 as follows: A review and update of CPT codes, unit values and conversion factors is being undertaken by Medicode, Inc., of Salt Lake City, Utah, pursuant to a personal services contract awarded by the Department of Workers' Claims following public advertisement and receipt of proposals. The proposed draft of the revised Workers' Compensation Medical Fee Schedule for Physicians as recommended by Medicode and approved by the Commissioner of the Department of Workers' Claims will be filed with the Legislative Research Commission as part of the proposed amendments to 803 KAR 25:089, following the Notice of Intent hearing and filing of a statement of consideration of comments received. A second public hearing will then be scheduled to receive comments on the schedule as filed for possible further amendment.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 342.035(1) requires workers' compensation fee schedules to be reviewed and updated, if appropriate, every two years.

(d) The benefits expected from administrative regulation are: Update of the Workers' Compensation Medical Fee Schedule for Physicians to assure that charges are fair, current, and reasonable pursuant to KRS 342.035, and addition of relative unit values for some services not having a relative unit value listed in the current fee schedule.

(e) The administrative regulation will be implemented as follows: The updated Workers' Compensation Medical Fee Schedule for Physicians will establish the maximum fee amount for medical services and procedures to which the fee schedule applies. The fee for each procedure is calculated by multiplying the listed unit value for the medical procedure by the applicable conversion factor.

PUBLIC PROTECTION AND REGULATION CABINET Department of Alcoholic Beverage Control

July 10, 1996

Public Protection and Regulation Cabinet

Department of Alcoholic Beverage Control

(1) The subject matter of this administrative regulation, **804 KAR 11:010**, Equipment and supplies, is what specific items can be furnished to a retailer by a brewer or distributor, and designates those items which cannot be furnished to a retailer.

(2) The Department of Alcoholic Beverage Control intends to amend an existing administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation amendment has been scheduled for Thursday, August 29, 1996, at 1 p.m., in the Hearing Room of the Department of Alcoholic Beverage Control, 123 Walnut, 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 10 days prior to Thursday, August 29, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Contact person Pamela Carroll Farmer, Kentucky Department of Alcoholic Beverage Control, 123 Walnut, Frankfort, Kentucky 40601, phone 502-573-4850, FAX 502-573-5672.

ADMINISTRATIVE REGISTER - 289

(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 desires 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 Department of Alcoholic Beverage Control at the address listed above.

(7) Information relating to the proposed administrative regulation amendment:

(a) The statutory authority for the promulgation of the administrative regulation amendment relating to the subject matter of the administrative regulation is KRS 241.060 and 243.030(7)(16) and (28).

(b) The Department of Alcoholic Beverage Control intends to amend an existing administrative regulation. The proposed administrative regulation amendment will permit a brewer or distributor to supply coil-cleaning service to a retailer either directly or indirectly.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation outlines specific items which can be furnished to a retailer by a brewer or distributor, and designates those items which cannot be furnished to a retailer.

(d) The benefits expected from the administrative regulation amendment are: Benefit to a retail licensee to obtain needed coil-cleaning service.

(e) The administrative regulation will be implemented as follows: It shall be implemented by permitting brewers or distributors to supply coil-cleaning services to retailers.

Date: June 26, 1996

Department of Alcoholic Beverage Control

(1) The subject matter of this administrative regulation, **804 KAR 13:010**, is the implementation of Senate Bill 137 and Executive Order 96-619.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Thursday, August 29, 1996, at 10 a.m., in the Hearing Room of the Department of Alcoholic Beverage Control, 123 Walnut, 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 Thursday, August 29, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Contact person Pamela Carroll Farmer, Kentucky Department of Alcoholic Beverage Control, 123 Walnut, 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 desires 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 Department of Alcoholic Beverage Control at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of the administrative regulation relating to the subject matter of the administrative regulation is Executive Order 96-619.

(b) The administrative regulation that the Department of Alcoholic Beverage Control intends to promulgate will not amend an existing administrative regulation. The proposed administrative regulation will implement Senate Bill 137, enacted by the 1996 General Assembly, and Executive Order 96-619.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation provides for administrative proceedings in the enforcement of Senate Bill 137, and the collection of statistics relating to the illegal sale to minors of tobacco products and enforcement of Senate Bill 137.

(d) The benefits expected from the administrative regulation are: The enforcement of Senate Bill 137 and Executive Order 96-619.

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

Department of Mines and Minerals

July 12, 1996

Public Protection and Regulation Cabinet

Department of Mines and Minerals

Division of Explosives and Blasting

(1) Regulation Number and Title: **805 KAR 4:085**, Dealer registration; record requirements.

(2) The Public Protection and Regulation Cabinet, Department of Mines and Minerals 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 amendment of the administrative regulation has been scheduled for August 27, 1996, at 10 a.m., prevailing local time, in the first floor conference room of the Department of Mines and Minerals, 3572 Iron Works Pike, Lexington, Kentucky 40511.

ADMINISTRATIVE REGISTER - 290

(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 10 days prior to August 27, 1996, 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 Mines and Minerals, P. O. Box 14080, Lexington, Kentucky 40512-4080, Attn: Eugene Attkisson.

(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 Mines and Minerals 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 explosive permit fees is KRS 351.335.

(b) The administrative regulation that the Department of Mines and Minerals intends to promulgate will amend 805 KAR 4:085, as follows: Section 1 will be amended to reflect a change in the registration form (EC-12) required of all explosives manufacturers and distributors. Section 2 will be amended to specify the method of recording information from a permit to purchase explosives during the transfer or sale of explosives. Section 3 will be amended to delete the requirement that permanent, fixed magazines be registered with the department annually. In lieu of registration, all magazines shall have identification tags containing certain information designating ownership.

(c) The necessity and function of the proposed administrative regulation is as follows: The form (EC-12) has not been revised since 1979 and the information necessary to establish an entity as a legitimate explosive manufacturer or dealer has changed with the passage of House Bill 580 in the most recent legislative session. Likewise, the explosive permitting system enacted by House Bill 580 requires certain recordkeeping information. This regulation will specify a uniform method of maintaining this data. In view of the information supplied during the permitting process, the need to register the location of permanent explosive magazines is no longer necessary. All magazines, permanent and portable, should be treated the same requiring only an identification tag specifying ownership.

(d) The benefits expected from the amended administrative regulation are: The amendment of Section 1 will provide additional security by ensuring that only legitimate explosives manufacturers and distributors are permitted to operate in the Commonwealth. The amendment of Section 2 will provide a uniform method of tracking information required by law. The amendment of Section 3 eliminates the duplication of paperwork in registering explosive magazines, since the same information is provided in the permit to purchase explosives.

(e) The administrative regulation will be implemented as follows: The requirements for registering as manufacturers or distributors, for record keeping during explosives transactions and attaching identification tags to explosive magazines will be imposed on all companies and persons engaged in the explosives and blasting industry. The requirement for annual registration of magazines will be dropped for all owners of such facilities.

July 12, 1996

Public Protection and Regulation Cabinet

Department of Mines and Minerals

Division of Explosives and Blasting

(1) Regulation Number and Title: **805 KAR 4:093**, Permit to purchase explosives.

(2) The Public Protection and Regulation Cabinet, Department of Mines and Minerals 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 amendment of the administrative regulation has been scheduled for August 27, 1996, at 10 a.m., prevailing local time, in the first floor conference room of the Department of Mines and Minerals, 3572 Iron Works Pike, 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 10 days prior to August 27, 1996, 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 Mines and Minerals, P. O. Box 14080, Lexington, Kentucky 40512-4080, Attn: Eugene Attkisson.

(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 Mines and Minerals 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 explosive permit fees is KRS 351.335.

(b) The administrative regulation that the Department of Mines and Minerals intends to promulgate will not amend an existing administrative regulation. It will prescribe the application form to be used in the process of applying for a permit to purchase or possess explosives. It will also list the procedures and time schedule for the companies or individuals applying for this permit. Furthermore, it shall prescribe the identification, and duties of the person representing a corporation or company obtaining such a permit.

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

ADMINISTRATIVE REGISTER - 291

implement the requirements of House Bill 580, which set up a permitting system for those entities purchasing explosives. The regulation shall specify the form, procedures, and person responsible for complying with the terms of this permit.

(d) The benefits expected from the administrative regulation are: The added security and control of explosive materials in the Commonwealth, which in turn increases the safety of all citizens. Furthermore, the regulation clarifies the forms and procedures the applicant must complete, and in what time frame.

(e) The administrative regulation will be implemented as follows: The requirements listing the terms and methods of applying for a permit and the designation of a person responsible shall be imposed upon all companies, corporations, associations, or individuals who wish to purchase or obtain explosives in the Commonwealth.

July 12, 1996

Public Protection and Regulation Cabinet
Department of Mines and Minerals
Division of Explosives and Blasting

(1) Regulation Number and Title: **805 KAR 4:140**, Misfires.

(2) The Public Protection and Regulation Cabinet, Department of Mines and Minerals 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 amendment of the administrative regulation has been scheduled for August 27, 1996, at 10 a.m., prevailing local time, in the first floor conference room of the Department of Mines and Minerals, 3572 Iron Works Pike, 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 10 days prior to August 27, 1996, 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 Mines and Minerals, P. O. Box 14080, Lexington, Kentucky 40512-4080, Attn: Eugene Attkisson.

(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 Mines and Minerals 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 use of explosives is KRS 351.335.

(b) The administrative regulation that the Department of Mines and Minerals intends to promulgate will amend 805 KAR 4:140, as follows: Paragraph (9) requiring that all misfires and premature detonations be reported to the department shall be deleted.

(c) The necessity and function of the proposed administrative regulation is as follows: This reporting requirement was adopted in 1991 as a method to gather data on the causes and frequency of hazardous misfires and premature detonations. The data collected since that time has been analyzed thoroughly, and the likelihood of new information surfacing is minimal.

(d) The benefits expected from administrative regulation are: The benefit of deleting this reporting requirement will be to eliminate a small amount of paperwork that a blaster must complete when a misfire or premature detonation occurs.

(e) The administrative regulation will be implemented as follows: This reporting requirement will no longer be imposed upon the blasters in the Commonwealth.

Department of Insurance

July 15, 1996

Department of Insurance

(1) **806 KAR 5:060**, Associations offering group health insurance.

(2) The 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 August 21, 1996, at 10 a.m., at the Department of Insurance, 215 West Main Street, 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 ten (10) days prior to August 21, 1996, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Department of Insurance, Attn: Carla H. Montgomery, P.O. Box 517, Frankfort, Kentucky 40602, (502) 564-6032, fax number (502) 564-1456.

(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.

ADMINISTRATIVE REGISTER - 292

(b) Persons who wish to file this request may obtain a request form from 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 304.2-110(1) and 1996 Ky. Acts ch. 291.

(b) The administrative regulation that the Department of Insurance intends to promulgate will not amend an existing administrative regulation. It will implement the requirements for service contracts for consumer products as found in 1996 Ky. Acts ch. 291.

(c) The necessity and function of the proposed administrative regulation is as follows: Service contracts to repair, replace, and maintain consumer products shall not be considered insurance if the company registers with the commissioner and demonstrates sufficient net worth or an insurance policy or performance bond. This administrative regulation is needed to obtain necessary information from the makers of service contracts to determine if they have sufficient net worth or an insurance policy or performance bond to cover their contractual obligations.

(d) The benefits expected from the administrative regulation are: The Department will have all of the necessary information to determine if service contracts should be exempt pursuant to 1996 Ky. Acts ch. 291.

(e) The administrative regulation will be implemented as follows: Makers of service contracts to repair, replace, or maintain consumer products shall file the required information with the commissioner. The department will review the information to determine if they have sufficient net worth, or an insurance policy or performance bond to cover all of its contractual obligations. The department will send notice to the maker of the service contract for approval or disapproval.

July 15, 1996

Department of Insurance

(1) **806 KAR 17:100**, Certificate of filing for provider-sponsored networks.

(2) The 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 August 21, 1996, at 10 a.m., at the Department of Insurance, 215 West Main Street, 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 ten (10) days prior to August 21, 1996, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Department of Insurance, Attn: Carla H. Montgomery, P.O. Box 517, Frankfort, Kentucky 40602.

(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 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 304.2-110 and 1996 Ky. Acts ch. 371 § 18 and 19.

(b) The administrative regulation that the department intends to promulgate will not amend an existing administrative regulation. It will implement the requirements for provider-sponsored networks as found in 1996 Ky. Acts ch. 371 §7(6), §18, and §19.

(c) The necessity and function of the proposed administrative regulation is as follows: Provider-sponsored networks are required to obtain a certificate of filing from the department. This administrative regulation sets forth the filing requirements necessary for the department to make an informed decision to issue a certificate of filing.

(d) The benefits expected from the administrative regulation are: The department will have all of the necessary information to determine if a provider-sponsored network is eligible for a certificate of filing pursuant to 1996 Ky. Acts ch. 371 §7(6), §18, and §19.

(e) The administrative regulation will be implemented as follows: An applicant for a provider-sponsored network certificate of filing shall file all of the appropriate information with the department. The department's financial division will review the information. If it is sufficient and the requirements of 1996 Ky. Acts ch. 371 §7(6), §18, and §19 have been met, the department will issue the certificate of filing. Then the applicant can begin to operate as a provider-sponsored network.

July 15, 1996

Kentucky Department of Insurance

(1) Subject matter of new administrative regulation: **806 KAR 17:120**, Accountable health plan certification.

(2) The 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 August 21, 1996, at 10 a.m., at the Department of Insurance, 215 West Main Street, 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 ten (10) days prior to August 21, 1996, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Department of Insurance, Attn: Carla H. Montgomery, P.O. Box 517, Frankfort, Kentucky 40602, (502) 564-6032, fax number (502) 564-1456.

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

ADMINISTRATIVE REGISTER - 293

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 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 1996 Ky. Acts ch. 371 §6.

(b) The administrative regulation that the Department of Insurance intends to promulgate will not amend an existing administrative regulation. It will implement the procedures for certification and revocation of an accountable health plan ("AHP") as found in 1996 Ky. Acts ch. 371 §6.

(c) The necessity and function of the proposed administrative regulation is as follows: 1996 Ky. Acts ch. 371 §6 requires that each AHP seeking to offer services to members of the Kentucky Health Purchasing Alliance ("Alliance") shall first be certified by the Alliance. The proposed administrative regulation sets forth the procedures and requirements for such certification. The proposed administrative regulation also sets forth conditions for the revocation of the certification of an AHP.

(d) The benefits expected from the administrative regulation are: The proposed administrative regulation will set forth specific procedures and application criteria which will assist the Alliance and the Department of Insurance in the certification decision.

(e) The administrative regulation will be implemented as follows: An officer of an AHP will be required to submit an application for certification. These applications will be evaluated in order of their receipt. Criteria will be set forth to aid the Alliance in making uniform evaluations. Within thirty (30) days of receiving an application, the Kentucky Health Purchasing Alliance is required to provide the applicant with written notice of its findings. Revocation criteria will also be set forth. The Alliance is required to give written notice of its intent to revoke based on the revocation criteria. The AHP is given an opportunity to respond to the notice. After reviewing the response, the Alliance is required to issue an Order either directing a remedy for specific defects, revoking certification, or setting a hearing on the matter.

July 15, 1996

Department of Insurance

(1) **806 KAR 17:130**, Twenty-four (24) Hour Pilot Insurance Program.

(2) The 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 August 21, 1996, at 10 a.m., at the Department of Insurance, 215 West Main Street, 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 ten (10) days prior to August 21, 1996, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Department of Insurance, Attn: Carla H. Montgomery, P.O. Box 517, Frankfort, Kentucky 40602, (502) 564-6032, fax number (502) 564-1456.

(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 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 1996 Ky. Acts ch. 371 §21.

(b) The administrative regulation that the administrative body intends to promulgate will not amend an existing administrative regulation, but establishes under the authority of the Department of Insurance those provisions of 909 KAR 1:200 which is repealed with the abolishment of the Kentucky Health Policy Board. It will implement the requirements for a pilot project as found in 1996 Ky. Acts ch. 371 §21.

(c) The necessity and function of the proposed administrative regulation is as follows: The administrative regulation establishes requirements for a twenty-four (24) hour pilot project insurance program for workers' compensation and nonoccupational medical benefits. The department is required to promulgate an administrative regulation pursuant to 1996 Ky. Acts ch. 371 §21 on this subject which was previously governed by the Health Policy Board.

(d) The benefits expected from the administrative regulation are: Department will continue the pilot project with the Department of Worker's Claims without interruption.

(e) The administrative regulation will be implemented as follows: The Department will continue the same application process, with some minor revisions in the application, as was being done by the Health Policy Board. The department will continue to work with the Department of Workers' Claims on the pilot project.

July 15, 1996

Department of Insurance

(1) **806 KAR 18:060**, Associations offering group health insurance.

(2) The 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 August 21, 1996, at 10 a.m., at the Department of Insurance, 215 West Main Street, Frankfort, Kentucky.

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

ADMINISTRATIVE REGISTER - 294

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 ten (10) days prior to August 21, 1996, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Department of Insurance, Attn: Carla H. Montgomery, P.O. Box 517, Frankfort, Kentucky 40602, (502) 564-6032, fax number (502) 564-1456.
- (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 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 304.2-110 and 1996 Ky. Acts ch. 371 §13.
- (b) The administrative regulation that the administrative body intends to promulgate will not amend an existing administrative regulation. It will implement the requirements for associations as found in KRS 304.18-020 and 1996 Ky. Acts ch. 371 §13.
- (c) The necessity and function of the proposed administrative regulation is as follows: The administrative regulation sets forth requirements for associations to offer group health insurance. The administrative regulation establishes what information should be given to the department to make a determination that an association is eligible to offer group health insurance and be exempt from using community rating methodology or modified community rating methodology.
- (d) The benefits expected from the administrative regulation are: The department will have all of the necessary information to determine if associations meet the criteria in KRS 304.18-020 and 1996 Ky. Acts ch. 371 §13.
- (e) The administrative regulation will be implemented as follows: Associations existing prior to January 30, 1996, but not offering group health insurance prior to January 30, 1996, will file information on or before September 1, 1996, to demonstrate that they are eligible pursuant to KRS 304.18-020 and 1996 Ky. Acts ch. 371 §13. The department will review this information and give approval for the association to offer group health insurance if it satisfies KRS 304.18-020 and 1996 Ky. Acts ch. §13.

Department of Financial Institutions

July 12, 1996

Public Protection and Regulation Cabinet

Department of Financial Institutions

- (1) Regulation Number and Title; or subject matter if new: **808 KAR 10:015**; Required books and records for broker-dealers and investment advisors.
- Subject Matter: KRS 292.330(11)(a), (11)(b), Required books and records for broker-dealers and investment advisors.
- (2) The Department of Financial Institutions of the Cabinet for Public Protection and Regulation of the Commonwealth of Kentucky intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Thursday, August 29, 1996, at 10 a.m., local prevailing time, at The Department of Financial Institutions, 477 Versailles Road, 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 ten (10) days prior to August 29, 1996, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: The Department of Financial Institutions of the, Commonwealth of Kentucky, 477 Versailles Road, Frankfort, Kentucky 40601.
- (b) On a request for public hearing, a person shall state:
1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Department of Financial Institutions 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 this administrative regulation is KRS 292.330 (11)(a) and (11)(b) and 292.500(3).
- (b) The administrative regulation that the Department of Financial Institutions will promulgate, 808 KAR 10:015; Required books and records for broker-dealers and investment advisors, will not amend an existing administrative regulations. It will codify books and record keeping requirements for broker-dealers, investment advisors and agents.
- (c) The necessity and function of the proposed administrative regulation is as follows: This regulation will define the requirements of the department on broker-dealers and investment advisors for maintaining books and records pursuant to KRS 292.330(11)(a). The regulation is necessary because, presently no regulation is in place to address this matter.
- (d) The benefits expected from administrative regulation are: This regulation will give the industry a clear and easy reference for the

ADMINISTRATIVE REGISTER - 295

requirements of the department and facilitate any examinations by giving the industry advance notice of those records the department wishes to have maintained. This will enable accounting procedures to be tailored accordingly to meet these requirements.

(e) The administrative regulation will be implemented as follows: The new set of procedural rules will be implemented by making its availability publicly known through Securities Law Publications. They will be utilized and applied to all matters before the Department of Financial Institutions immediately after becoming effective.

July 12, 1996

Public Protection and Regulation Cabinet
Department of Financial Institutions

(1) Regulation Number and Title; or subject matter if new: **808 KAR 10:225**; Exemption for securities in employee benefit, pension and other similar plans.

Subject Matter: KRS 292.400(11), Expansion of exemption for employee benefit plans.

(2) The Department of Financial Institutions of the Cabinet for Public Protection and Regulation of the Commonwealth of Kentucky intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Thursday, August 29, 1996, at 10 a.m., local prevailing time, at The Department of Financial Institutions, 477 Versailles Road, 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 persons at least ten (10) days prior to August 29, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: The Department of Financial Institutions of the Commonwealth of Kentucky, 477 Versailles Road, Frankfort, Kentucky 40601.

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

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Department of Financial Institutions 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 292.410 (1)(q) and 292.500(3).

(b) The administrative regulation that the Department of Financial Institutions will promulgate will not amend an existing administrative regulation. The new administrative regulation, 808 KAR 10:225; Exemption for securities in employee benefit, pension and other similar plans, will grant an exemption from registration for the underlying securities in an employee pension or benefit or similar type plan, which plan presently is exempted from registration pursuant to KRS 292.400(11).

(c) The necessity and function of the proposed administrative regulation is as follows: The present practice of the department is to routinely grant an exemption from registration for the underlying securities in an employee pension or benefit or similar type plan upon request. Such exemption shall now be available without the need of a request or an order from the commissioner of the department. Presently a request must be made and an Order must be issued to grant this exemption.

(d) The benefits expected from administrative regulation are: This administrative regulation will enable issuers to utilize a registration exemption which is routinely granted upon request without having to first request same. Additionally, it will save the department the staff time and clerical efforts necessary to issue the numerous orders which are presently required each year to grant this exemption. No protection of the public will be compromised as the administrative regulation expressly will allow the department to deny the exemption if an artifice to avoid a registration where one should be required is attempted through this registration exemption.

(e) The administrative regulation will be implemented as follows: This will be a self-executing exemption available without filing or making a request of the department. Any issuer desiring to use the exemption and meeting its requirements will already have the exemption with no need to make a prior request. The exemption will be implemented by making its availability publicly known through securities law publications.

July 12, 1996

Public Protection and Regulation Cabinet
Department of Financial Institutions

(1) Regulation Number and Title; or subject matter if new: **808 KAR 10:291**; Repeal of 808 KAR 10:290--Assistant representative-order processing.

Subject matter: Repeal of 808 KAR 10:290--Assistant representative-order processing.

(2) The Department of Financial Institutions of the Cabinet for Public Protection and Regulation of the Commonwealth of Kentucky intends to repeal administrative regulations governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Thursday, August 29, 1996, at 10 a.m., local prevailing time, at The Department of Financial Institutions, 477 Versailles Road, 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 persons

ADMINISTRATIVE REGISTER - 296

at least ten (10) days prior to August 29, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: The Department of Financial Institutions of the Commonwealth of Kentucky, 477 Versailles Road, Frankfort, Kentucky 40601.

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Department of Financial Institutions 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 292.330 and KRS 292.500(3).

(b) The administrative regulation that the Department of Financial Institutions will repeal is 808 KAR 10:290. 808 KAR 10:291, Repeal of 808 KAR 10:290, will repeal an existing administrative regulation, namely 808 KAR 10:290. It will dispense with the separate category of registrant referred to as a person who engages in Assistant representative-order processing and the separate registration requirements for same.

(c) The necessity and function of the proposed administrative regulation is as follows: There is no need for this separate category of registrant. All persons making offers or sales of securities in or into the Commonwealth of Kentucky need to be registered as agents pursuant to KRS 292.330(1). The repeal of 808 KAR 10:290 will eliminate the separate category.

(d) The benefits expected from administrative regulation are: A greater measure of protection for the investing public will be gained by enforcing the existing registration laws pertaining to agents. Duplicative regulation, to the extent it may exist will be eliminated. Industry confusion will be eliminated.

(e) The administrative regulation will be implemented as follows: This administrative regulation will remove a layer of regulation. It will be implemented through publishing in securities law publications and reporters. The department will then cease to enforce this administrative regulation.

July 12, 1996

Public Protection and Regulation Cabinet

Department of Financial Institutions

(1) Regulation Number and Title; or subject matter if new: **808 KAR 10:300; Procedural rules for matters before the Department of Financial Institutions.**

Subject matter: Procedural rules for matters before the Department of Financial Institutions.

(2) The Department of Financial Institutions of the Cabinet for Public Protection and Regulation of the Commonwealth of Kentucky intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Thursday, August 29, 1996, at 10 a.m., local prevailing time, at The Department of Financial Institutions, 477 Versailles Road, 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 persons at least ten (10) days prior to August 29, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail a written request to the following address: The Department of Financial Institutions of the Commonwealth of Kentucky, 477 Versailles Road, Frankfort, Kentucky 40601.

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Department of Financial Institutions 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 292.500(3) and KRS 292.460.

(b) The administrative regulation that the Department of Financial Institutions will promulgate will not amend an existing administrative regulation. The new administrative regulation, 808 KAR 10:300; Procedural rules for matters before the Department of Financial Institutions will generally codify existing procedures for matters before the Department of Financial Institutions but also add some additional procedures and eliminate some past practices.

(c) The necessity and function of the proposed administrative regulation is as follows: The present procedures of the department are not reduced to a comprehensive writing for use by the public and members of the department's staff. This administrative regulation is intended to correct this situation by codifying a set of rules in one comprehensive written document.

(d) The benefits expected from administrative regulation are: This administrative regulation will enable all parties dealing with the Department of Financial Institutions to know the rules or be able to learn the rules and ensure uniformity in procedures employed by the department.

(e) The administrative regulation will be implemented as follows: The new set of procedural rules will be implemented by making its availability publicly known through Securities Law Publications. They will be utilized and applied to all matters before the Department of Financial Institutions immediately after becoming effective.

ADMINISTRATIVE REGISTER - 297

July 12, 1996

Public Protection and Regulation Cabinet
Department of Financial Institutions

(1) Regulation Number and Title; or subject matter if new: regulations to be amended: **808 KAR 10:010**, Forms for application, registration; reporting and compliance; **808 KAR 10:020**, Net capital of broker-dealers; **808 KAR 10:030**, Conduct of broker-dealers and employees; **808 KAR 10:040**, Dishonest or unethical practice defined; **808 KAR 10:050**, Application withdrawal; **808 KAR 10:060**, Abandoned applications; **808 KAR 10:080**, Guidelines for issuers; **808 KAR 10:090**, Issuers' reports; **808 KAR 10:110**, Records of investment advisers; **808 KAR 10:120**, Registration files; **808 KAR 10:130**, Amendments to registration statement; **808 KAR 10:140**, Registration statements to be current; **808 KAR 10:150**, Registration exemptions; **808 KAR 10:160**, Definitions; **808 KAR 10:170**, Exemption claims from securities registration, form; **808 KAR 10:190**, Securities registration exemptions for certain business transactions; **808 KAR 10:200**, Investment advisers' minimum liquid capitalization; **808 KAR 10:210**, Registration exemptions - Federal Regulation D; **808 KAR 10:220**, Registration exemptions - NASDAQ/NMS exemption; **808 KAR 10:230**, Fee payment - KRS 292.380(5); **808 KAR 10:240**, Registration exemptions - sale of business; **808 KAR 10:260**, Examination requirement for individuals advising the public on securities; **808 KAR 10:270**, Registration exemption for securities listed on the Chicago Board Options Exchange; **808 KAR 10:280**, Qualifications, eligibility, and restrictions on the use of Form U-7, small corporate offering registration; **808 KAR 10:290**, Assistant representative.

(2) The Department of Financial Institutions of the Cabinet for Public Protection and Regulation of the Commonwealth of Kentucky intends to promulgate administrative regulations governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Thursday, August 29, 1996, at 10 a.m., local prevailing time, at The Department of Financial Institutions, 477 Versailles Road, 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 persons at least ten (10) days prior to August 29, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail a written request to the following address: The Department of Financial Institutions of the Commonwealth of Kentucky, 477 Versailles Road, Frankfort, Kentucky 40601.

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

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Department of Financial Institutions 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 292.330 (11)(a) and (11)(b) and KRS 292.410 (1)(q).

(b) The Department of Financial Institutions will amend the following administrative regulations: **808 KAR 10:010**, Forms for application, registration; reporting and compliance; **808 KAR 10:020**, Net capital of broker-dealers; **808 KAR 10:030**, Conduct of broker-dealers and employees; **808 KAR 10:040**, Dishonest or unethical practice defined; **808 KAR 10:050**, Application withdrawal; **808 KAR 10:060**, Abandoned applications; **808 KAR 10:080**, Guidelines for issuers; **808 KAR 10:090**, Issuers' reports; **808 KAR 10:110**, Records of investment advisers; **808 KAR 10:120**, Registration files; **808 KAR 10:130**, Amendments to registration statement; **808 KAR 10:140**, Registration statements to be current; **808 KAR 10:150**, Registration exemptions; **808 KAR 10:160**, Definitions; **808 KAR 10:170**, Exemption claims from securities registration, form; **808 KAR 10:190**, Securities registration exemptions for certain business transactions; **808 KAR 10:200**, Investment advisers' minimum liquid capitalization; **808 KAR 10:210**, Registration exemptions - Federal Regulation D; **808 KAR 10:220**, Registration exemptions - NASDAQ/NMS exemption; **808 KAR 10:230**, Fee payment - KRS 292.380(5); **808 KAR 10:240**, Registration exemptions - sale of business; **808 KAR 10:260**, Examination requirement for individuals advising the public on securities; **808 KAR 10:270**, Registration exemption for securities listed on the Chicago Board Options Exchange; **808 KAR 10:280**, Qualifications, eligibility, and restrictions on the use of Form U-7, Small corporate offering registration; **808 KAR 10:290**, Assistant representative.

The amendments will bring all of the regulations of the department up to date and correct numerous typographical errors discovered over the years in the text of the regulations. Additionally, the amendments will update the regulations for changes which have occurred in the industry over time.

(c) The necessity and function of the proposed administrative regulation is as follows: These amendments will eliminate, in one effort, numerous typographical errors discovered over time and modernize the administrative regulations to reflect current times. This maintenance function has not been done in some time and is long overdue.

(d) The benefits expected from administrative regulation are: This series of amendments will bring all of the securities regulations of the department up to date and correct numerous typographical errors discovered over the years in the text of the regulations. Such updates and corrections will make the department's administrative regulations more understandable to the public and more useful through the purging of outdated material and the incorporation of current terms and practices of the industry.

(e) The administrative regulations will be implemented as follows: The new set of amended regulations will be implemented by making the regulations publicly known through securities law publications. Substantial compliance should be achieved from the mere fact that the regulations are available to the general public through securities law publications. The amended regulations will be utilized and applied to all matters before the Department of Financial Institutions immediately after becoming effective.

ADMINISTRATIVE REGISTER - 298

Kentucky Racing Commission

June 29, 1996

Public Protection and Regulation

Kentucky Racing Commission

(1) Regulation Number and Title: **811 KAR 1:020**, Registration and identification of horses.

(2) The Kentucky Racing Commission intends to promulgate 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 August 27, 1996, 9 a.m. at the commission offices at 4063 Iron Works Pike, Building B, Lexington, Kentucky 40511.

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

(b) If a request for a public hearing is not received from the required number of people at least 20 days prior to August 27, 1996 the public hearing will be canceled.

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The Racing Commission has the authority to regulate racing associations through KRS 230.260(1), (3) and 230.215(1), (2).

(b) The administrative regulation that the commission intends to promulgate will possibly amend 811 KAR 1:020 by allowing a "freeze brand" in lieu of a tattoo. A final determination on any amendment or specific language will only be made after two public hearings.

(c) The necessity and function of the proposed administrative regulation is: To conform to national practice for harness horses.

(d) The benefits expected from the amendment to the administrative regulation are: The United States Trotting Association allows freeze brands and changing Kentucky's regulation will allow these horses to race in Kentucky.

(e) The administrative regulation will be implemented as follows: Changes will be applied as soon as administratively permitted.

June 29, 1996

Public Protection and Regulation

Kentucky Racing Commission

(1) Regulation Number and Title: **811 KAR 1:035**, Claiming races.

(2) The Kentucky Racing Commission intends to promulgate 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 August 27, 1996, 9 a.m. at the commission offices at 4063 Iron Works Pike, Building B, Lexington, Kentucky 40511.

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

(b) If a request for a public hearing is not received from the required number of people at least 20 days prior to August 27, 1996 the public hearing will be canceled.

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The Racing Commission has the authority to regulate racing associations through KRS 230.260(1), (3) and 230.215(1), (2).

(b) The administrative regulation that the commission intends to promulgate will possibly amend 811 KAR 1:035 by providing a procedure to reverse a claim in the event a horse proves to be pregnant.

(c) The necessity and function of the proposed administrative regulation is: Trainers who claim horses normally expect to get a "racing" horse, not a "breeding" horse. The commission would like to provide relief if this happens.

(d) The benefits expected from the amendment to the administrative regulation are: Unsuspecting trainers who claim horses will be protected from an unwanted pregnant horse.

(e) The administrative regulation will be implemented as follows: Changes will be applied as soon as administratively permitted.

June 29, 1996

Public Protection and Regulation

Kentucky Racing Commission

(1) Regulation Number and Title: **811 KAR 1:120**, Licensing of race meetings.

(2) The Kentucky Racing Commission intends to promulgate 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 August

ADMINISTRATIVE REGISTER - 299

27, 1996, 9 a.m. at the commission offices at 4063 Iron Works Pike, Building B, Lexington, Kentucky 40511.

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

(b) If a request for a public hearing is not received from the required number of people at least 20 days prior to August 27, 1996 the public hearing will be cancelled.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The Racing Commission has the authority to regulate racing associations through KRS 230.260(1), (3) and 230.215(1), (2).

(b) The administrative regulation that the commission intends to promulgate will possibly amend 811 KAR 1:120 by limiting or precluding the use of exculpatory clauses in agreements between tracks and horsemen. A final determination on any amendment or specific language will only be made after two public hearings.

(c) The necessity and function of the proposed administrative regulation is: The use of exculpatory clauses may cause damages to the Kentucky racing industry.

(d) The benefits expected from the amendment to the administrative regulation are: If it is determined that exculpatory clauses harm Kentucky racing, limiting or excluding them will prevent owners and trainers from leaving the Kentucky circuit.

(e) The administrative regulation will be implemented as follows: Changes will be applied as soon as administratively permitted.

Department of Housing, Buildings and Construction

July 8, 1996

Public Protection and Regulation Cabinet

Department of Housing, Buildings and Construction

(1) Regulation Number and Title: **815 KAR 20:020**; Parts or materials list.

(2) The Department of Housing, Buildings and Construction 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 10 a.m., local time, on Thursday, August 29, 1996, in the department'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 August 29, 1996, the public hearing will be cancelled.

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

(b) On a request for public hearing, a persons 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 Section 5 of this administrative regulation by including new products approved by the State Plumbing Code Committee, i.e., Electric Drain System as manufactured by Myers for light commercial and household usage and Flood-Gate Automatic Backwater valve as manufactured by Bibby-Ste-Croix.

(c) The necessity and function of the proposed administrative regulation is as follows: The function of this administrative regulation is to allow the department to promptly permit the use of new parts or materials.

(d) The benefits expected from this administrative regulation are: To allow the use of newly approved products.

(e) This administrative regulation will be implemented by State Plumbing Inspectors.

July 8, 1996

Public Protection and Regulation Cabinet

Department of Housing, Buildings and Construction

(1) Regulation Number and Title: **815 KAR 20:120**; Water supply and distribution.

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

ADMINISTRATIVE REGISTER - 300

(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, August 29, 1996, 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 August 29, 1996, the public hearing will be cancelled.

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of this administrative regulation is KRS 318.130.

(b) The department intends to amend 815 KAR 20:120, Water supply and distribution by amending Section 10 to allow the use of 2 new products for water supply pipes and allow the use of previously approved pipe (CPVC) to be used with connections underground beneath a building.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation relates to the types of piping, pipe sizes for a potable water supply system and the methods to be used to protect and control it as well as identify and publish the manufacturer's specification number of the material accepted in those installations.

(d) The benefits expected from this administrative regulation are: Approving new products for use in plumbing projects allows flexibility and the use of CPVC pipe with connections underground will realize savings on plumbing projects.

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

July 8, 1996

Public Protection and Regulation Cabinet

Department of Housing, Buildings and Construction

(1) Regulation Number and Title: **815 KAR 20:191**, Minimum fixture requirements.

(2) The Department of Housing, Buildings and Construction 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 10 a.m., local time, on Thursday, August 29, 1996, in the department'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 August 29, 1996, the public hearing will be cancelled.

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

(b) On a request for public hearing, a persons 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 20:191, Minimum fixture requirements, by amending Section 5 to increase the number of water closets for women in places of assembly from 1/100 to 1/50 and amending Section 14 (Swimming pool bathhouses) to bring swimming pool fixture requirements closer to other places of assembly and more realistic requirements for larger pools.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation sets forth the minimum number of plumbing fixtures to be provided in places of assembly and other public areas. This administrative regulation also includes the requirements of the Department for Natural Resources and Environmental Protection as well as the Department for Human Resources and the Department of Justice.

(d) The benefits expected from this administrative regulation are: The benefits expected from increasing the number of sanitary fixtures for women is one of convenience and public demand and will cause no more than a slight increase in the initial installation cost. The amendment to the swimming pool bathhouse requirements, will not impact smaller pools but the fixtures are more realistic for larger pools.

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

ADMINISTRATIVE REGISTER - 301

July 12, 1995

Public Protection and Regulation Cabinet

Department of Housing, Buildings and Construction

(1) Regulation Number and Title: **815 KAR 25:040**, Fire safety requirements in manufactured and mobile homes.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for 10 a.m., local time, on Thursday, August 29, 1996, in the Department'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 August 29, 1996, the public hearing will be cancelled.

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

(b) On a request for public hearing, a persons 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 227.550 to KRS 227.660 pursuant to House Bill 306 of the 1996 General Assembly.

(b) The department intends to promulgate an administrative regulation which provides for the installation of one smoke detector and two means of egress in each manufactured or mobile home. Further, the regulation will require the placement of a notice of compliance with these regulations at the entrance of a mobile home park and in the county clerk's office.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation is necessary to conform to the intent of House Bill 306.

(d) The benefits expected from this administrative regulation are: To better protect the health and safety of the occupants who reside in manufactured or mobile homes in the event of fire or other emergency, as provided in House Bill 306.

(e) This administrative regulation will be implemented by the Manufactured Housing Section of the State Fire Marshal's Office and its inspectors.

July 8, 1996

Public Protection and Regulation Cabinet

Department of Housing, Buildings and Construction

(1) Regulation Number and Title: **815 KAR 30:060**, Certification of underground petroleum storage tank contractors.

(2) The department 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 Thursday, August 29, 1996 at 10 a.m., local time, in the department'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 August 29, 1996, the public hearing will be canceled.

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

(b) On a request for public hearing, a persons 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 224.60-135.

(b) The department intends to amend various sections of this administrative regulation to form a new category of the certification program to include tank liners. Also, a provision has been added to revoke certification for failure to renew within one year.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation is necessary to set the minimum requirements for determining technical competency and proficiency of companies who are responsible for the installation of these systems by qualifying individuals. The amendments are necessary to meet the 1998 federal regulation deadline to upgrade tanks and the use of tank lining is less costly than replacing tanks.

(d) The benefits expected from this administrative regulation are: That the public will be better protected by certifying the competency

ADMINISTRATIVE REGISTER - 302

of the contractors.

(e) This administrative regulation will be implemented by State Fire Marshal's Office; Division of Hazardous Materials.

CABINET FOR HEALTH SERVICES Office of Inspector General

July 8, 1996

Cabinet for Health Services

Office of Inspector General

(1) **900 KAR 2:060** - Hearings concerning transfer and discharge rights.

(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 August 29, 1996, at 9 a.m. in the Cabinet 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 August 29, 1996, 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., Acting General Counsel, Cabinet for Health Services, 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 Health Services' 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 decision making process for appeals related to involuntary transfer and discharge is KRS 216.515, 216.525, 216.557, 216.560, 216.567 and 42 CFR 483.12.

(b) The administrative regulation that the Office of Inspector General intends to promulgate will amend the hearing provisions of 900 KAR 2:060 to conform with the requirements of KRS Chapter 13B governing administrative hearings.

(c) The necessity and function of the proposed administrative regulation is as follows: To set forth the hearing process for appeals related to residents' transfer and discharge rights under Kentucky's Nursing Home Reform statutes and regulations.

(d) The benefits expected from this proposed administrative regulation are that the cabinet will be in compliance with the requirements of KRS Chapter 13B for administrative hearings.

(e) The administrative regulation will be implemented as follows: By the Division of Licensing and Regulation in the Office of Inspector General, Cabinet for Health Services, in accordance with KRS 13B, 216.515, 216.525, 216.557, 216.560, 216.567 and 42 CFR 483.12.

Department for Health Services Office of Certificate of Need

June 25, 1996

Cabinet for Health Services

Department for Health Services

Office of Certificate of Need

(1) **900 KAR 6:010**. Certificate of need process.

(2) Cabinet for Health Services, 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 August 29, 1996 at 9 a.m., in the Cabinet 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 August 29, 1996, 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., Acting General Counsel, Cabinet for Health Services, 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 REGISTER - 303

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 Health Services 275 East Main Street, Frankfort, Kentucky 40601.

(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 Families and Children 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 Certificate of need process is KRS 13A.350, 216B.040, 216B.075 and 1996 Ky. Acts ch. 371.

(b) The administrative regulation that the Department for Health Services intends to promulgate is 900 KAR 6:010. It will transfer the authority of the Certificate of Need process from the Kentucky Health Policy Board to the Cabinet for Health Services.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation will enable the Cabinet for Health Services to outline the certification of need review procedures and to establish criteria for the issuance of certificates of need.

(d) The benefits expected from administrative regulation are: This administrative regulation will enable the Cabinet for Health Services to carry out certificate of need mandates.

June 25, 1996

Cabinet for Health Services

Department for Health Services

Office of Certificate of Need

(1) **900 KAR 6:020.** Certificate of need application fee schedule.

(2) Cabinet for Health Services, 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 August 29, 1996 at 9 a.m., in the Cabinet 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 August 29, 1996, 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., Acting General Counsel, Cabinet for Health Services, 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 Health Services 275 East Main Street, Frankfort, Kentucky 40601.

(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 Families and Children 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 certificate of need application for fee schedule is KRS 13A.350, 216B.040 and 1996 Ky. Acts ch. 371.

(b) The administrative regulation that the Department for Health Services intends to promulgate is 900 KAR 6:020. It will transfer the authority of the certificate of need application fee schedule from the Kentucky Health Policy Board to the Cabinet for Health Services.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation will enable the Cabinet for Health Services to establish, by this administrative regulation, and collect reasonable application fees for certificates of need.

(d) The benefits expected from administrative regulation are: This administrative regulation will enable the Cabinet for Health Services to provide a fee schedule for certificate of need applications.

June 25, 1996

Cabinet for Health Services

Department for Health Services

Office of Certificate of Need

(1) **900 KAR 6:030.** Certificate of need expenditure minimums.

(2) Cabinet for Health Services, 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 August 29, 1996 at 9 a.m., in the Cabinet 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 August 29, 1996, 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.,

ADMINISTRATIVE REGISTER - 304

Acting General Counsel, Cabinet for Health Services, 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 Health Services 275 East Main Street, Frankfort, Kentucky 40601.

(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 Families and Children 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 certificate of need expenditure minimums is KRS 216B.040, 216B.130 and 1996 Ky. Acts ch. 371.

(b) The administrative regulation that the Department for Health Services intends to promulgate is 900 KAR 6:030. It will transfer the authority of the annual adjustment of expenditure minimums provided in KRS Chapter 216B from the Kentucky Health Policy Board to the Cabinet for Health Services.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation will enable the Cabinet for Health Services to adjust expenditure minimums for capital expenditures and major medical equipment.

(d) The benefits expected from administrative regulation are: This administrative regulation will enable the Cabinet for Health Services to adjust expenditure minimums.

June 25, 1996

Cabinet for Health Services

Department for Health Services

Office of Certificate of Need

(1) **900 KAR 6:040**. Licensure hearings.

(2) Cabinet for Health Services, 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 August 29, 1996 at 9 a.m., in the Cabinet 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 August 29, 1996, 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., Acting General Counsel, Cabinet for Health Services, 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 Health Services 275 East Main Street, Frankfort, Kentucky 40601.

(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 Families and Children 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 licensure hearings is KRS 13A.350, 216B.040 and 1996 Ky. Acts ch. 371.

(b) The administrative regulation that the Department for Health Services intends to promulgate is 900 KAR 6:040. It will transfer the authority of providing due process hearings and issuing a final determination on all actions to deny, revoke, modify or suspend a license. from the Kentucky Health Policy Board to the Cabinet for Health Services.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation will enable the Cabinet for Health Services to set forth the hearing procedures for licensure actions.

(d) The benefits expected from administrative regulation are: This administrative regulation will enable the Cabinet for Health Services to provide due process hearings regarding denial, revocation, modification, or suspensions of a license to operate a health facility or health service.

ADMINISTRATIVE REGISTER - 305

Commissioner's Office

June 25, 1996
Cabinet for Health Services
Department for Health Services
Commissioner's Office

(1) **902 KAR 17:030**. State Health Plan.

(2) Cabinet for Health Services, 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 August 29, 1996 at 9 a.m., in the Cabinet 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 August 29, 1996, 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., Acting General Counsel, Cabinet for Health Services, 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 Health Services 275 East Main Street, Frankfort, Kentucky 40601.

(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 Families and Children 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 Health Plan is KRS 216B.015 and 1996 Ky. Acts ch. 371.

(b) The administrative regulation that the Department for Health Services intends to promulgate is 902 KAR 17:030E. It will transfer the authority to oversee development and annually update the State Health Plan to the Cabinet for Health Services from the Kentucky Health Policy Board.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation will enable the Cabinet for Health Services to carry out its health planning mandates.

(d) The benefits expected from administrative regulation are: This administrative regulation will ensure that policy concerns relating to statewide public and environmental health are addressed.

June 25, 1996
Cabinet for Health Services
Department for Health Services
Commissioner's Office

(1) **902 KAR 17:040**. Data reporting by health care providers.

(2) Cabinet for Health Services, 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 August 29, 1996 at 9 a.m., in the Cabinet 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 August 29, 1996, 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., Acting General Counsel, Cabinet for Health Services, 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 Health Services 275 East Main Street, Frankfort, Kentucky 40601.

(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 Families and Children 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 data reporting by health care providers

ADMINISTRATIVE REGISTER - 306

is KRS 216.2925 and 1996 Ky. Acts ch. 371.

(b) The administrative regulation that the Department for Health Services intends to promulgate is 902 KAR 17:040E. It will transfer the authority to require specified health care providers to provide data on cost, quality and outcomes of health care services provided in the Commonwealth from the Kentucky Health Policy Board to the Cabinet for Health Services.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation will enable the Cabinet for Health Services to collect and publish health data that should improve affordability of access to health care.

(d) The benefits expected from administrative regulation are: This administrative regulation should improve the public health status of citizens of Kentucky by collecting and reporting health data.

Office of Inspector General

July 5, 1996

Cabinet for Health Services

Office of Inspector General

(1) **902 KAR 20:016** - Hospitals; operation and services

902 KAR 20:026 - Operations and services; skilled nursing facilities

902 KAR 20:036 - Operation and services; personal care homes

902 KAR 20:041 - Operation and services; family care homes

902 KAR 20:048 - Operation and services; nursing homes

902 KAR 20:051 - Operation and services; intermediate care

902 KAR 20:078 - Operations and services; group homes

902 KAR 20:081 - Operations and services; home health agencies

902 KAR 20:160 - Chemical dependency treatment services and facility specifications

902 KAR 20:240 - Comprehensive physical rehabilitation hospital services

902 KAR 20:291 - Alzheimer's nursing home

902 KAR 20:300 - Operation and services; nursing facilities

(2) The Office of Inspector General intends to amend the administrative regulations cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulations has been scheduled for August 29, 1996, at 9 a.m. in the Cabinet 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 August 29, 1996, 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., Acting General Counsel, Cabinet for Health Services, 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 Health Services' regulations may call toll free 1-800-372-2973 (V/TDD).

(7) Information relating to the proposed administrative regulations.

(a) The statutory authority for the promulgation of all of the administrative regulations relating to health facilities and health services is KRS 216B.042. The prescription of drugs and medicine by advanced registered nurse practitioners is pursuant to 1996 Ky. Acts ch. 342. The prescription of drugs by therapeutically-certified optometrists is pursuant to 1996 Ky. Acts ch. 376.

(b) The administrative regulations that the Office of Inspector General intends to promulgate will amend the regulations listed in item (1) of this Notice of Intent to address the prescriptive authority of advanced registered nurse practitioners and therapeutically-certified optometrists.

(c) The necessity and function of the proposed administrative regulations is as follows: These regulations currently implement and conform to the statutory requirements listed in 7(a) of this Notice of Intent to Promulgate and Administrative Regulation. Specifically, KRS Chapter 216B.042 empowers the Cabinet for Health Services to establish minimum licensure standards to ensure safe, adequate and efficient health facilities and health services.

(d) The benefits expected from these proposed administrative regulations are that the amendments will permit other categories of health professionals to perform tasks presently restricted to physicians and dentists by the existing regulations.

(e) The administrative regulations will be implemented as follows: By the Division of Licensing and Regulation in the Office of Inspector General, Cabinet for Health Services.

ADMINISTRATIVE REGISTER - 307

June 17, 1996
Cabinet for Health Services
Office of Inspector General

- (1) **902 KAR 20:180** - Psychiatric hospitals; operation and 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 August 29, 1996, at 9 a.m. in the Cabinet 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 August 29, 1996, 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., Acting General Counsel, Cabinet for Health Services, 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 Health Services' 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 psychiatric residential treatment facilities is KRS 216B.042. The prescription of drugs and medicine by advanced registered nurse practitioners is pursuant to 1996 Ky. Acts ch. 342. The prescription of drugs by therapeutically-certified optometrists is pursuant to 1996 Ky. Acts ch. 376.
 - (b) The administrative regulation that the Office of Inspector General intends to promulgate will amend 902 KAR 20:180 - Psychiatric Hospitals; Operation and Services. Section 4(2)(b)1 will be deleted and Section 5(1)(b) will be amended to conform with the proposed Section 6(1)(b)1 and 2 which will clarify that while a physician is responsible for the patient, other personnel may perform duties within their scope of practice and the hospital's protocols and bylaws. Section 4(2)(b)2 will be amended to permit the hospital to extend clinical privileges to allied health professionals. Section 6(5)(b) will be amended to address the prescriptive authority of advanced registered nurse practitioners and therapeutically-certified optometrists.
 - (c) The necessity and function of the proposed administrative regulation is as follows: This regulation currently implements and conforms to the statutory requirements listed in 7(a) of this Notice of Intent to promulgate and administrative regulation. Specifically, KRS Chapter 216B.042 empowers the Cabinet for Health Services to establish minimum licensure standards to ensure safe, adequate and efficient health facilities and health services.
 - (d) The benefits expected from this proposed administrative regulation are that the amendments will permit other categories of health professionals to perform tasks presently restricted to physicians and dentists by the existing regulation.
 - (e) The administrative regulation will be implemented as follows: By the Division of Licensing and Regulation in the Office of Inspector General, Cabinet for Health Services.

May 22, 1996
Cabinet for Health Services
Office of Inspector General

- (1) **902 KAR 20:320** - Psychiatric residential treatment facility operation and 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 August 29, 1996, at 9 a.m. in the Cabinet 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 August 29, 1996, 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., Acting General Counsel, Cabinet for Health Services, 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,

ADMINISTRATIVE REGISTER - 308

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 psychiatric residential treatment facilities is KRS 216B.042, and 216B.450-459.

(b) The administrative regulation that the Office of Inspector General intends to promulgate will amend 902 KAR 20:320 - Psychiatric residential treatment facility operation and services. Proposed amendments to Section 1 will amend the definitions of "freestanding" and "psychiatric residential treatment facility", and will add a definition of "living unit". Proposed amendments to Section 2 will permit two freestanding PRTFs to be located on a common campus. Other proposed changes will amend personnel requirements for PRTFs.

(c) The necessity and function of the proposed administrative regulation is as follows: This regulation currently implements and conforms to the statutory requirements listed in 7(a) of this Notice of Intent to promulgate and administrative regulation. Specifically, KRS Chapter 216B.042 empowers the Cabinet for Human Resources to establish minimum licensure standards to ensure safe, adequate and efficient health facilities and health services. KRS Chapter 216B.450 to 216B.459 sets forth statutory provisions for psychiatric residential treatment facilities.

(d) The benefits expected from this proposed administrative regulation are that the amendments should make it easier for psychiatric residential treatment services to be provided in a cost effective manner. This should increase the accessibility of these services to the adolescent population of the Commonwealth.

(e) The administrative regulation will be implemented as follows: By the Division of Licensing and Regulation in the Office of Inspector General, Cabinet for Health Services.

CABINET FOR FAMILIES AND CHILDREN Department for Social Insurance Division of Management and Development

July 15, 1996

Cabinet for Families and Children

Department for Social Insurance

Division of Management and Development

(1) **904 KAR 2:001**. Definitions.

(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 August 29, 1996 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 August 29, 1996, 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., Acting General Counsel, Cabinet for Families and Children, 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, Cabinet for Families and Children, 3 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 Families and Children 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 Definitions is KRS 194.050, 205.710-205.800; 405.520; 1996 Ky. Acts ch. 365.

(b) The administrative regulation that the Department for Social Insurance intends to promulgate will amend 904 KAR 2:001, Definitions. It will clarify and define terminology relating to Child Support Enforcement Program activities.

(c) The necessity and function of the proposed administrative regulation is as follows: The Cabinet for Families and Children is required to administer the Child Support Enforcement Program. KRS 194.050 provides that the secretary shall, by regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This administrative regulation amendment sets the definitions of terms used by the cabinet in administrative regulation pertaining to the Child Support Enforcement Program and identified terms resulting from the 1996 Kentucky statutory amendments.

(d) The benefits expected from administrative regulation are: This administrative regulation amendment will clarify the intent of state statutory requirements, and language contained within.

ADMINISTRATIVE REGISTER - 309

July 15, 1996

Cabinet for Families and Children

Department for Social Insurance

Division of Management and Development

- (1) **904 KAR 2:380.** Child Support Enforcement Program application process.
- (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 August 29, 1996 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 August 29, 1996, 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., Acting General Counsel, Cabinet for Families and Children, 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, Cabinet for Families and Children, 3 West, 275 East Main St., Frankfort, Kentucky 40621.
- (c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Families and Children 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 application process for child support enforcement services is KRS 194.050; 205.710-205.800; 405.520, and 1996 Ky. Acts. ch. 365.
 - (b) The administrative regulation that the Department for Social Insurance intends to promulgate will amend 904 KAR 2:380, Child Support Enforcement Program application process. It will provide additional information about expanded child support enforcement services as provided by 1996 Ky. Acts ch. 365.
 - (c) The necessity and function of the proposed administrative regulation is as follows: The Cabinet for Families and Children shall administer the Child Support Enforcement Program (CSEP) in accordance with KRS 205.520 to 205.800. KRS 205.795 and 405.520 provide that the secretary shall develop administrative regulations to operate the CSEP in accordance with federal law and regulations. This regulation specifies the process by which an individual may apply for child support services, the scope of services available, and will provide directions for application of additional services and service parameters as provided by 1996 Ky. Acts ch. 365.
 - (d) The benefits expected from administrative regulation are: The amendment will provide information about expanded available service parameters. These expanded services are the collection and distribution of child support through wage withholding and the allocation process as mandated by federal regulations and Kentucky Revised Statutes.

July 15, 1996

Cabinet for Families and Children

Department for Social Insurance

Division of Management and Development

- (1) **904 KAR 2:390.** Child Support Enforcement Program paternity establishment.
- (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 August 29, 1996, 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 August 29, 1996, 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., Acting General Counsel, Cabinet for Families and Children, 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, Cabinet for Families and Children, 3 West, 275 East Main St., Frankfort, Kentucky 40621.
- (c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Families and Children may call toll free 1-800-372-2973 (V/TDD).

ADMINISTRATIVE REGISTER - 310

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to Child Support Enforcement Program paternity establishment is KRS 194.050; 205.710-205.800; 405.520, and 1996 Ky. Acts ch. 365.

(b) The administrative regulation that the Department for Social Insurance intends to promulgate will amend 904 KAR 2:390, Child Support Enforcement Program paternity establishment. It will provide for additional requirements for the establishment of paternity by legal entities and the agency charged with the administration of child support enforcement program.

(c) The necessity and function of the proposed administrative regulation is as follows: The Cabinet for Families and Children shall administer the Child Support Enforcement Program (CSEP) in accordance with KRS 205.710 to 205.800. The agency shall establish paternity when necessary to secure support for a child. This administrative regulations specifies the requirement of the agency in the establishment of paternity.

(d) The benefits expected from administrative regulation are: The amendment will provide additional information and direction to legal entities and the agency charged with administering the child support enforcement program for establishment of paternity and delineates information enacted into KRS 205.730, 405.991, 406.021, and 407.410, 1996 Ky. Acts ch. 365.

July 15, 1996

Cabinet for Families and Children

Department for Social Insurance

Division of Management and Development

(1) **904 KAR 2:400.** Establishment, review and modification of child support and medical support orders.

(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 August 29, 1996 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 August 29, 1996, 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., Acting General Counsel, Cabinet for Families and Children, 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, Cabinet for Families and Children, 3 West, 275 East Main St., Frankfort, Kentucky 40621.

(c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Families and Children 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 establishment, review, and modification of child support and medical support orders is KRS 194.050, 205.710-205.800; 405.520.

(b) The administrative regulation that the Department for Social Insurance intends to promulgate will amend 904 KAR 2:400, Establishment, review and modification of child support and medical support orders. This amendment will incorporate those changes mandated by House Bill 300 and enacted by the 1996 Ky. Acts ch. 365.

(c) The necessity and function of the proposed administrative regulation is as follows: The Cabinet for Families and Children shall administer the Child Support Enforcement Program (CSEP) in accordance with the provisions of KRS 205.710 to 205.800. This administrative regulation specifies the requirements for the establishment and modification of child support and medical support orders.

(d) The benefits expected from administrative regulation are: This regulation will provide additional information concerning federal mandates and state requirements concerning the establishment, review, and modification of child support orders by incorporating the Kentucky Revised Statute, 1996 Ky. Acts ch. 365.

July 15, 1996

Cabinet for Families and Children

Department for Social Insurance

Division of Management and Development.

(1) **904 KAR 2:410.** Child support collection and distribution.

(2) The Cabinet for Families and Children, 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 August 29, 1996 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

ADMINISTRATIVE REGISTER - 311

at least 20 days prior to August 29, 1996, 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., Acting General Counsel, Cabinet for Families and Children, 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, Cabinet for Families and Children, 3 West, 275 East Main St., Frankfort, Kentucky 40621.

(c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Families and Children 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 collection and distribution of child support collection amounts is KRS 194.050; 205.710-205.800; 405.520; 405.465-405.467; 186.570 and 1996 Ky. Acts ch. 365.

(b) The administrative regulation that the Department for Social Insurance intends to promulgate shall amend 904 KAR 2:410, Child Support collection and distribution. It will provide guidance for the collection of child support and medical support obligation amounts and the process of distribution of these collections as required by the Omnibus Reconciliation Act of 1993 and the resulting 1996 Kentucky statutory changes. Additional enforcement remedies include amended procedures for the revocation or suspension of driver's license when a child support arrearage of one year's amount has accumulated.

(c) The necessity and function of the proposed administrative regulation is as follows: The Cabinet for Families and Children shall administer the Child Support Enforcement Program (CSEP) in accordance with KRS 205.710 to 205.800. KRS 205.712 provides for the child support agency to receive and process all child support payments. This administrative regulation sets forth the procedures for collection and distribution of child support payments in accordance with 1996 Ky. Acts ch. 365.

(d) The benefits expected from administrative regulation are: This regulation shall provide information concerning federal mandates and state requirements concerning the collection of child support and medical support obligation amounts, and the process for the distribution of these collections. This administrative regulation shall also provide amended policies for the implementation of the denial or suspension of a driver's license.

July 12, 1996

Cabinet for Families and Children

Department for Social Insurance

Division of Management and Development

(1) **904 KAR 2:470**, Disabilities Determinations Program.

(2) Cabinet for Families and Children, 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 August 29, 1996, 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 August 29, 1996, 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 Families and Children, 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 Families and Children's 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 Disabilities Determinations Program is Executive Order 96-862. This Executive Order transfers the Disabilities Determinations Program from the Cabinet for Health Services to the Cabinet for Families and Children. The Department for Social Insurance is now required to administer a program under 20 CFR 404.1503 for determinations of disability and blindness under the provisions of 42 USC 401-433 and 42 USC 1381-1383d.

(b) The administrative regulation that the Department for Social Insurance intends to promulgate is a new administrative regulation, 904 KAR 2:470. The proposed administrative regulation implements the Disability Determinations Program.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation is necessary to transfer the Disabilities Determinations Program to the Department for Social Insurance as required by Executive Order 96-862. The Department

ADMINISTRATIVE REGISTER - 312

for Social Insurance now has responsibility to administer the Disabilities Determinations Program. Material found in 902 KAR 16:010 will be transferred to 904 KAR 2:470.

(d) The benefits expected from administrative regulation are: This administrative regulation will implement the Disabilities Determinations Program in the Department for Social Insurance. This regulation incorporates into regulatory form, by reference, materials used in determinations of disability and blindness under 42 USC 401-422, 42 USC 1381-1383d and KRS 205.245.

July 12, 1996

Cabinet for Families and Children

Department for Social Insurance

Division of Management and Development

(1) **904 KAR 3:020**, Financial requirements.

(2) Cabinet for Families and Children, 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 August 29, 1996, 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 10 days prior to August 29, 1996 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., Acting General Counsel, Cabinet for Families and Children, 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 financial requirements of the Food Stamp Program is KRS 194.050 and 7 CFR 271.4.

(b) The administrative regulation that the Department for Social Insurance intends to promulgate will amend an existing administrative regulation. The cabinet intends to expand the current prohibition on increases in food stamp benefits to include all situations in which a decrease (reduction, suspension or termination) in assistance income occurs as a result of a penalty being imposed for an intentional failure to comply with a federal, state, or local welfare or public assistance program requirement. The state is mandated to calculate food stamp benefits using the benefit amount which would have been issued by the other program if no penalty had been applied against that program's benefit amount.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation sets forth provisions for financial requirements of the Food Stamp Program. The cabinet will amend the countable income provisions of this administrative regulation to comply with the requirements of 7 CFR 272.1 applicable to applicants and recipients of the Food Stamp Program.

(d) The benefits expected from administrative regulation are: This amendment is needed to comply with 7 CFR Parts 272 and 273 regarding provisions of the Food Stamp Program. 7 CFR 272.1 mandates implementation no later than November 27, 1996, for the provisions of 7 CFR 273.9 regarding decrease in the household's benefits from another program which occurs on or after implementation of this amendment. In order to implement this mandate, the cabinet intends to amend the administrative regulation in order to prohibit an increase in food stamp benefits when a household's benefit from another federal, state or local means-tested assistance program decreases as a result of a penalty imposed on the household for intentionally failing to comply with a requirement of the other program.

Department for Social Services Division of Family Services

July 15, 1996

Cabinet for Families and Children

Department for Social Services

Division of Family Services

(1) **905 KAR 1:170**, Child abuse self-help groups.

(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 August 29, 1996 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

ADMINISTRATIVE REGISTER - 313

at least 20 days prior to August 29, 1996, 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 Families and Children, 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 Families and Children, 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 Families and Children's 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 abuse self-help groups is KRS 194.050. This statute authorized the cabinet to adopt administrative regulations necessary to operate programs vested in the cabinet.

(b) The administrative regulation that the Department for Social Services intends to promulgate amends 905 KAR 1:170, Child abuse self-help groups. The amendment to this regulation shall revise the amount of fees the department receives from the fees for certified birth certificates from \$1 to \$3 pursuant to HB 755 enacted by the 1996 General Assembly.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 213.141 requires the cabinet to use funds received from the cost of birth certificates to contract with private and public nonprofit organizations for the operation of self-help groups for abuse parents. This administrative regulation amends the amount of funds received from the cost of birth certificates from \$1 to \$3 as governed by 1996 Ky. Acts ch. 312.

(d) The benefits expected from this administrative regulation are: An increase in funding for self-help groups for parents who want to prevent or cease physical, sexual or mental abuse of children across the Commonwealth.

July 15, 1996

Cabinet for Families and Children

Department for Social Services

Division of Family Services

(1) **905 KAR 1:310.** Standards for child-placing agencies.

(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 August 29, 1996 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 August 29, 1996, 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 Families and Children, 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 Families and Children, 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 Families and Children's 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 standards of care and services for child-placing agencies is KRS 199.640(3).

(b) The administrative regulation that the Department for Social Services intends to promulgate amends 905 KAR 1:310, Standards for child-placing agencies.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 199.640 requires the cabinet to issue administrative regulations relating to standards of care and service for child-placing agencies. This administrative regulation implements new provisions relating to grandparent visitation rights, release of medical information and independent living placements.

(d) The benefits expected from this administrative regulation are: The amendment to this administrative regulation shall include provisions relating to grandparent visitation rights and obtaining and releasing medical information which implements provisions of 1996 Ky. Acts ch. 325 and 1996 Ky. Acts ch. 302. Additional provisions relating to independent living placement may be included in the child placing regulations. Additional revisions may be included to improve and clarify the existing administrative regulation.

ADMINISTRATIVE REGISTER - 314

July 12, 1996

Cabinet for Families and Children
Department for Social Services
Division of Program Management

(1) **905 KAR 1:320**, Fair hearings.

(2) Cabinet for Families and Children, Department for Social 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 August 29, 1996 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 August 29, 1996, 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 Families and Children, 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 Families and Children, 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 Families and Children's 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 905 KAR 1:320 is KRS 194.050; 45 CFR 205.10; 29 USC 794; 42 USC 12101 et seq.; 2000a et seq.; Executive Order 96-862 effective 7-2-96.

(b) The administrative regulation that the Department for Social Services intends to promulgate will amend 905 KAR 1:320. It will conform with the requirements of KRS Chapter 13B governing administrative hearings.

(c) The necessity and function of the proposed administrative regulation is as follows: The department was granted a limited waiver on hearing procedures as outlined in KRS Chapter 13B, based on requirements of the federal regulations for the Child Welfare Services Programs.

(d) The benefits expected from this administrative regulation are: The benefits expected are that the department will be in compliance with KRS Chapter 13B by amending its hearing provisions in the administrative regulation.

July 15, 1996

Cabinet for Families and Children
Department for Social Services
Division of Family Services

(1) **905 KAR 1:330**, Child protective services.

(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 August 29, 1996 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 August 29, 1996, 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 Families and Children, 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 Families and Children, 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 families and Children's 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 regarding KRS 605.150 and 620.180.

(b) The administrative regulation that the Department for Social Services intends to promulgate will amend 905 KAR 1:330, CPS. The

ADMINISTRATIVE REGISTER - 315

amendment to this administrative regulation will implement provision of 1996 Ky. Acts ch. 347, which requires the department, if providing services to the child or child's family, to provide the coroner with cooperation, assistance and information necessary to complete a child fatality review.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 194.050 requires the Secretary of the Cabinet for Families and Children to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet. This administrative regulation sets forth the procedures for child protection investigations of abuse, neglect or dependency by the DSS in compliance with KRS 605.150 and 620.180. It further requires the department to cooperate and provide information to the coroner's office in completing child fatality reviews.

(d) The benefits expected from this administrative regulation are: This regulation implements provisions of HB 94 enacted by the 1996 General Assembly that created child fatality review teams whose purpose is to gather information in order to reduce the number of child fatalities in Kentucky. This regulation will require the department, if providing services to a child or child's family, to provide cooperation, assistance and information to the coroner's child fatality review team. Additional reviews may be included to improve and clarify the existing administrative regulations.

July 15, 1996

Cabinet for Families and Children

Department for Social Services

Division of Family Services

(1) **905 KAR 2:001**, Definitions for 905 KAR Chapter 2.

(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 August 29, 1996 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 August 29, 1996, 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 Families and Children, 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 Families and Children, 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 Families and Children's 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 regarding the licensure and standards for day care of children is KRS 199.896(2).

(b) The administrative regulation that the Department for Social Services intends to promulgate will amend the definition of facility to exclude from licensure youth development center as defined in 1996 Ky. Acts ch. 81.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 199.896(2) grants authority to the cabinet to establish administrative regulations and standards for day care of children. The function of this administration regulation is to define terms for child day care facilities. This revision will implement provisions of SB 147 enacted by the 1996 General Assembly which excluded youth development centers from licensure as a child day care facility.

(d) The benefits expected from this administrative regulation are: The exclusion of youth development centers as defined in 1996 Ky. Acts ch. 81 from licensure as a child day care facility.

July 12, 1996

Cabinet for Families and Children

Department for Social Services

Division of Family Services

(1) **905 KAR 2:090**, Child care facility licensure.

(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 August 29, 1996 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 August 29, 1996, 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 Families and Children, 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 Families and Children, 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 Families and Children's 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 905 KAR 2:090 is KRS 194.050; KRS 199.896; Executive Order 96-862 effective 7-2-96.

(b) The administrative regulation that the Department for Social Services intends to promulgate will amend 905 KAR 2:090. The amendments will bring conformity with the requirements of KRS Chapter 13B governing administrative hearings. Amendments to this regulation will clarify the applicability of the five year waiting period before reapplication for a license to operate a child care facility by inserting in Section 2(1) prior to the words "shall not apply" for reasons set forth in Section 6(1)(b) or (c) of this administrative regulation. Additionally, we are recommending that an eighteen (18) month waiting period be created for licensees or applicants who have had their day care license denied, suspended or revoked for reasons other than abuse, neglect or exploitation of children or adults. Other revisions may be promulgated in order to clarify the existing administrative regulation.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 199.896(2) grants authority to the Cabinet for Families and Children to establish administrative regulations relating to the day care centers. The function of this administrative regulation is to establish licensure requirements for child day care centers including provisions for the application process, renewal process, basis for denial, suspension or revocation and the right of appeal.

(d) The benefits expected from this administrative regulation are: The amendment to this regulation will clarify that the five year waiting period will only be imposed if the licensee, an adult living in the facility or person under the supervision of the licensee had been convicted of a crime related to abuse, neglect or exploitation of a child or an adult or if the licensee or an adult living in the facility has abused, neglected or exploited a child or an adult or is listed on the Nurse's Aid Abuse Registry by the Inspector General's Office. Another benefit will be the creation of a waiting period of eighteen months for licensees or applicants who have had their day care license denied, suspended or revoked. This provision will ensure that the applicants for licensure are complying with the provisions of the child day care licensure regulations. An additional benefit will be compliance with KRS Chapter 13B by amending the hearing provisions in the administrative regulation. Other revisions may be promulgated in order to clarify the existing regulation for both the licensing agency and the public.

July 12, 1996

Cabinet for Families and Children

Department for Social Services

Division of Program Management

(1) **905 KAR 2:100**, Certification of family child care homes.

(2) Cabinet for Families and Children, Department for Social 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 August 29, 1996 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 August 29, 1996, 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 Families and Children, 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 Families and Children, 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 Families and Children's 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 905 KAR 2:100 is KRS 194.050; KRS 199.898; KRS 199.8982; 42 USC 602; Executive Order 96-862 effective 7-2-96.

(b) The administrative regulation that the Department for Social Services intends to promulgate will amend 905 KAR 2:100. It will conform with the requirements of KRS Chapter 13B governing administrative hearings.

(c) The necessity and function of the proposed administrative regulation is as follows: The department was granted a limited waiver on hearing procedures as outlined in KRS Chapter 13B, based on requirements of the federal regulations for the certification of family child care

ADMINISTRATIVE REGISTER - 317

homes.

(d) The benefits expected from this administrative regulation are: The benefits expected are that the department will be in compliance with KRS Chapter 13B by amending its hearing provisions in the administrative regulation.

July 15, 1996

Cabinet for Families and Children

Department for Social Services

Division of Family Services

(1) **905 KAR 5:040**, Standards for state-funded spouse abuse shelters.

(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 August 29, 1996 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 August 29, 1996, 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, 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 Families and Children, 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 (VTDD).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to procedures, guidelines and policies to provide for the protection of adults who have experienced abuse, or neglect, inflicted or caused by a spouse is KRS 209.030(1).

(b) The administrative regulation that the Department for Social Services intends to promulgate amends 905 KAR 5:040, Standards for state-funded spouse abuse shelters. The amendment to this administrative regulation shall implement provisions of 1996 Ky. Acts ch. 54, which requires the Department for Social Services to establish training requirements for staff of agencies providing protective shelter services for victims of domestic violence.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 209.030(1) authorizes the cabinet to adopt administrative regulations, procedures, guidelines and policies to provide for the protection of adults. KRS 209.160 authorizes additional funds from marriage licenses to be used for spouse abuse shelters. This administrative regulation establishes reasonable performance standards for qualifying applicants for state funds related to spouse abuse shelters. These standards will include training requirements for staff of agencies providing protective shelter services for victims of domestic violence. Additional revisions may be inserted to improve and clarify the existing administrative regulation

(d) The benefits expected from this administrative regulation are: This administrative regulation will establish specific training requirements for staff providing protective shelter services for victims of domestic violence that include dynamics of domestic violence, effects of domestic violence on adult and child victims, legal remedies for protection, liability, and risk issue, model protocols for addressing domestic violence, available community resources and victims services. This training shall result in consistent training statewide for spouse abuse shelters.

July 12, 1996

Cabinet for Families and Children

Department for Social Services

Division of Family Services

(1) **905 KAR 5:080**, Certification of assisted living residence.

(2) The Department for Social 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 August 29, 1996 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 August 29, 1996, 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 Families and Children, 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."

ADMINISTRATIVE REGISTER - 318

(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 Families and Children, 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 Families and Children's 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 905 KAR 5:080 is KRS 194.050; 1996 Ky. Acts ch. 351; Executive Order 96-862 effective 7-2-96.

(b) The administrative regulation that the Department for Social Services intends to promulgate is 905 KAR 5:080. This regulation will implement provisions of SB 162 enacted by the 1996 General Assembly.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation will establish the requirements for the voluntary certification of an assisted living residence and establish procedures for the conduct of hearings upon appeals as governed by KRS Chapter 13B.

(d) The benefits expected from this administrative regulation are: The expected benefits from this regulation is the development of additional residential resources for adults in the Commonwealth. Additionally, with the voluntary certification provisions the Kentucky Housing Authority may be able to obtain additional federal funds.

CABINET FOR HEALTH SERVICES Office of Inspector General

July 5, 1996

Cabinet for Health Services

Office of Inspector General

(1) **906 KAR 1:040** - Blood establishment licensure.

(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 August 29, 1996, at 9 a.m. in the Cabinet 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 August 29, 1996, 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., Acting General Counsel, Cabinet for Health Services, 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 Health Services' 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 blood establishments is KRS 214.452.

(b) The administrative regulation that the Office of Inspector General intends to promulgate will amend 906 KAR 1:040 - Blood establishment licensure; to establish fees for the cost of regular inspections of blood establishments to determine their compliance with KRS 214.450 to 214.464 and 214.468. The regulation will require the Office of Inspector General to inform the Office of Attorney General of potential violations of KRS 214.452 to 214.464.

(c) The necessity and function of the proposed administrative regulation is as follows: This regulation will implement the mandate of KRS 214.452 that the cabinet establish fees for the cost of regular inspections of all blood establishments to determine their compliance with KRS 214.450 to 214.464 and 214.468.

(d) The benefits expected from this proposed administrative regulation are that the cabinet's regular inspections will help ensure safe, adequate and efficient blood establishments.

(e) The administrative regulation will be implemented as follows: By the Division of Licensing and Regulation in the Office of Inspector General, Cabinet for Health Services.

ADMINISTRATIVE REGISTER - 319

Department for Medicaid Services

June 26, 1996

Cabinet for Health Services

Department for Medicaid Services

(1) **907 KAR 3:020**, Coverage and payments for targeted case management and rehabilitative services provided through an agreement with the state Title V agency.

(2) Cabinet for Health Services, 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 August 29, 1996 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 August 29, 1996, 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., Acting General Counsel, Cabinet for Health Services, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, Phone: (502) 564-7900, Fax Number: (502) 564-7573.

(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 Health Services' 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 provision of services provided through the Title V agency is KRS 194.050, 42 CFR 431.615, 440.130, 447 Subpart B, 42 USC 1396 a-d, and 1396s.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will provide for coverage and payments for targeted case management and rehabilitative services provided through an agreement with the state Title V agency, the Department of Health Services, for Medicaid eligible recipients.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation provides for coverage and payments for targeted case management and rehabilitative services provided through an agreement with the state Title V agency, the Department of Health Services.

(d) The benefits expected from administrative regulation are: This administrative regulation will provide for coverage and payments for targeted case management and rehabilitative services provided through an agreement with the state Title V agency, the Department of Health Services, for Medicaid eligible recipients.

ADMINISTRATIVE REGISTER - 320

EMERGENCY ADMINISTRATIVE REGULATIONS NOW IN EFFECT

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

STATEMENT OF EMERGENCY 20 KAR 1:081E

This emergency administrative regulation repeals administrative regulation 20 KAR 1:080. This administrative regulation applies to the Linked Deposit Investment Program which is currently administered in the Office of the State Treasurer. During the 1996 Regular Session, House Bill 872 transferred the administrative duties of this program to the Cabinet for Economic Development and the Agriculture Department therefore requiring a repeal of the current regulation. In order to avoid a conflict with the sitting administrative regulation and the new administrative regulations being filed by the Cabinet for Economic Development and the Agriculture Department, it is necessary to promulgate this emergency administrative regulation. An ordinary administrative regulation will not be filed with the Regulations Compiler because this emergency administrative regulation repeals an existing regulation and does not need to be replaced by an ordinary regulation.

PAUL E. PATTON, Governor
JOHN KENNEDY HAMILTON, State Treasurer

STATE TREASURER'S OFFICE

20 KAR 1:081E. Repeal of 20 KAR 1:080.

RELATES TO: HB 872

STATUTORY AUTHORITY: HB 872

EFFECTIVE: July 15, 1996

NECESSITY, FUNCTION, AND CONFORMITY: 20 KAR 1:080 is no longer required because HB 872 transfers the authority to administer the Linked Deposit Investment Program from the Treasury Department to the Cabinet for Economic Development and the Department of Agriculture. HB 872 is effective on July 15, 1996, and thus this emergency administrative regulation is necessary to prevent a conflict between the new statutes, 20 KAR 1:080 and the new administrative regulations the Cabinet for Economic Development and the Department of Agriculture are required to file.

Section 1. 20 KAR 1:080, Linked deposit, is hereby repealed.

JOHN KENNEDY HAMILTON, State Treasurer

APPROVED BY AGENCY: July 12, 1996

FILED WITH LRC: July 15, 1996 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 30, 1996, at 9 a.m. in Room G-2 of the Capital Plaza Tower. Persons interested in attending this hearing shall notify, by August 25, 1996, the following person: Lori H. Flanery, General Counsel, 500 Mero Street, Capital Plaza Tower, 24th Floor, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact Person: Sarah B. Hite

(1) Type and number of entities affected: None, this regulation repeals an existing regulation.

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

(c) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, 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 on 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: No monetary savings can be quantified.

2. Continuing costs or savings: Same as above.

3. Additional factors increasing or decreasing costs: None

(d) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues:

There is no anticipated effect on state and local revenue.

(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 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: There are no practical alternatives. This regulation merely changes the administering agency for the program.

(8) Assessment of expected benefits:

(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 environmental and public health would result if implemented: No

(c) If detrimental effects would result, explain detrimental effect: Not applicable.

(9) Identify and statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: 307 KAR 5:010E, promulgated by the Cabinet for Economic Development, which is expected to be repealed by emergency on July 15, 1996.

(a) Necessity of proposed regulation if in conflict: The proposed regulation will not be in conflict with the Economic Development's regulation as long as it is repealed as expected on July 15, 1996.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflict provisions: Not applicable.

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering is not applicable to this administrative regulation because it is merely repealing current regulations.

STATEMENT OF EMERGENCY 200 KAR 5:011E

This emergency administrative regulation is required by HB 568, which amends KRS 44.045. Specifically, HB 568 amended KRS 44.045(6) to transfer the promulgation authority for administrative regulations relating to the use of state vehicles to the Transportation Cabinet. An ordinary administrative regulation would not be effective before July 15, 1996, the date that HB 568 is effective. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with

ADMINISTRATIVE REGISTER - 321

the Regulations Compiler on July 12, 1996.

PAUL E. PATTON, Governor
JOHN P. MCCARTY, Secretary

FINANCE AND ADMINISTRATION CABINET Office of the Secretary

200 KAR 5:011E. State vehicles.

RELATES TO: KRS 44.045

STATUTORY AUTHORITY: KRS 44.045(6) as amended by HB 568

EFFECTIVE: July 12, 1996

NECESSITY AND FUNCTION: 200 KAR 5:010 is no longer required because the authority for promulgating administrative regulations relating to the use of state vehicles has been transferred to the Transportation Cabinet by HB 568 as passed by the 1996 General Assembly. HB 568 amends KRS 44.045(6) to substitute the Transportation Cabinet for the Finance and Administration Cabinet as the agency to promulgate such administrative regulation.

Section 1. 200 KAR 5:010, Motor vehicles, is hereby repealed.

JOHN P. MCCARTY, Secretary
APPROVED BY AGENCY: July 12, 1996
FILED WITH LRC: July 12, 1996 at 9 a.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Karen A. Powell, General Counsel

1. Type and number of entities Affected: All state agencies that use state vehicles.

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 expected. However, no public comments have yet 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. None expected. However, no public comments have yet been received.

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: Expect no change since only the agency authorized to promulgate regulations relating to the use of state vehicles has changed.

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: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

b. Reporting and paperwork requirements: No change.

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 expected. However, no public comments have yet been received.

b. Kentucky: None expected. However, no public comments have yet been received.

7. Assessment of alternative methods; reasons why alternatives were rejected: HB 568 of the 1996 General Assembly revoked the promulgation authority of the Finance and Administration Cabinet relating to use of state vehicles and transferred it to the Transportation Cabinet. No alternatives but repeal of the existing Finance and Administration Cabinet regulation relating to the use of state vehicles were available.

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 detrimental effect on the environment and public health would result.

c. If detrimental effect would result, explain detrimental effect: Not applicable.

9. Identify any statute, rule, administrative regulation or government policy which may be in conflict, overlapping, or duplication: KRS 44.045(6) as amended by HB 568; 200 KAR 5:010 - To be repealed; 600 KAR 1:120.

a. Necessity of proposed regulation if in conflict: Existing regulation to be repealed.

b. If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No

10. Any additional information or comments: None

11. TIERING: Is tiering applied? Tiering was not applied. The regulation applies equally to all state agencies or other entities.

STATEMENT OF EMERGENCY 201 KAR 12:082E

This emergency administrative regulation is amended to increase the number of hours required for completion of a nail technician course in a school of cosmetology, amend the curriculum to expand the nail technician course to 600 hours, and upgrade the terminology and practice of "manicuring" to "nail technology". It is necessary to promulgate this emergency administrative regulation to comply with the provisions of KRS 317A.050(3) that were enacted during the 1996 Session of the General Assembly. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The notice of intent is being filed on the same date with the Regulations Compiler.

PAUL E. PATTON, Governor
SHIRLEY MEDLEY, Chairman

GENERAL GOVERNMENT CABINET Board of Hairdressers and Cosmetologists

201 KAR 12:082E. School's course of instruction.

RELATES TO: KRS 317A.060(1), 317A.090

STATUTORY AUTHORITY: KRS 317A.060(1), 317A.090

EFFECTIVE: July 1, 1996

NECESSITY AND FUNCTION: KRS 317A.060(1) authorizes the board to promulgate administrative regulations governing schools of cosmetology. KRS 317A.090 establishes the requirements for schools of cosmetology. KRS 317A.050(7)(d) provides that a license to operate a school of cosmetology may be granted if the applicant has complied with applicable statutes and administrative regulations governing schools of cosmetology. This administrative regulation establishes requirements for the course of instruction of schools of cosmetology pursuant to the cited sections of KRS Chapter 317A.

Section 1. The regular courses of instruction for cosmetology students shall contain the following:

(1) Professional practices.

ADMINISTRATIVE REGISTER - 322

(a) The cosmetology profession.

1. Cosmetology vocabulary.
2. Brief history: how it began, and changes.
3. Ethics: ethics in a beauty salon; and salon conduct.

(b) Salon procedures.

1. Hygiene and good grooming: personal and public; personal characteristics; and responsibilities of the cosmetologists.

2. Professional attitudes and salesmanship; personality development; salesmanship and business management; customer relationship; and telephone personality.

3. Public relations and psychology: behavior; and proper image.

(c) Specialty services.

1. Facial treatments and make-up: facial treatment/make-up preparation; implements and supplies; procedure in giving a plain facial; purpose and effect of message movements; facial cosmetics; special problems; eyebrow arching; and lash and brow dye.

2. Nail technology (Manicuring): purpose and effect; preparation; equipment; and procedures, including the following: plain manicure, oil manicure, removal of stains, repair work, hand and arm massage, buffing, application of lacquer, and application of artificial nails.

(2) Life sciences (general anatomy).

(a) Osteology: definition; and functions.

(b) Myology: definition; functions; and types.

(c) Neurology: definition; functions; types (motor and sensory); and principal nerves of the head, face and neck.

(d) Angiology: definition; composition of blood; and function of blood.

(e) Dermatology: structure of skin; functions of skin; appendages of skin; conditions of the skin; and lesions of the skin.

(f) Trichology: structure of hair; composition; blood and nerve supply; growth and regeneration; color, texture, elasticity, porosity; and conditions to be recognized.

(g) Nails: structure and composition; growth and regeneration; and irregularities.

(3) Physical sciences (chemistry and treatment).

(a) Chemistry.

1. Elements, compounds, and mixtures: properties of; acid and alkali; and chemistry of water.

2. Composition and uses of cosmetics: for the body; for the skin and face; and for the scalp and hair.

3. Chemistry of hair lightening.

4. Chemistry of hair coloring.

5. Chemical hair relaxing.

6. Chemistry of make-up.

7. Chemistry of facial treatments.

8. Chemistry of rinses: soaps and shampoos; and detergents.

9. Chemistry of cold waving.

(b) Scalp and hair treatments: purpose and effects; preparation and procedure; use of cap; electricity and therapeutic ray; and safety rules.

(c) Shampoos and rinses: importance of good shampoo; purpose of effects; required materials and implements; brushing and drying; types of shampoos; rinses (not colored); and composition.

(d) Hair coloring: principal reasons for coloring; advantages of coloring; classifications of hair coloring; variation of products; procedures; and safety measures.

(e) Hair lightening: types of lighteners; implements and supplies; procedure; special problems in hair lightening; fillers and toners; removal of aniline derivative tints; and tint back to natural coloring.

(f) Cold waving: basic requirements; scalp and hair analysis; hair porosity; hair texture; hair elasticity; hair density; curling rods and chemicals; variation of permanent wave products; procedures; problems; and safety measures.

(g) Sterilization and sanitation: definitions; importance; sterilization rules; and methods of sterilization.

(4) Hair designing or sculpturing.

(a) Hair shaping: fundamentals of hair shaping; correct use of

tools; designing and planning the hair cut; sectioning and thinning; razor and shear shaping; wig shaping; and safety precautions.

(b) Hair styling: finger waving; pin curls; hair partings; artistry hair styling; dressing of the coiffure; special consideration in hair styling; chemical hair relaxing and styling; facial types; and hair pressing and types of hot-iron curling.

(c) Care and styling of wigs: purpose; quality; types of wigs; ordering wigs; cleaning; shaping; tinting and color rinsing; setting; and safety precautions.

Section 2. Schools shall teach the students of the various supplies and equipment used in the usual salon practices.

Section 3. Schools shall have the following charts or visual aids available for students' use:

(1) Charts or visual aids showing anatomy of muscles of face and neck with special reference to the direction of muscle fibers and function of muscle or groups of muscles;

(2) Charts or visual aids showing anatomy of nails.

Section 4. A student shall receive not less than 1,800 hours in clinical class work and scientific lectures with 450 minimum lecture hours for science and theory and 1,305 minimum clinic and practice hours; and forty-five (45) hours of applicable Kentucky statutes and administrative regulations.

Section 5. One (1) hour per week shall be devoted to the teaching and explanation of the Kentucky law as set forth in KRS Chapter 317A and the administrative regulations of the board.

Section 6. A school of cosmetology shall not be granted a license to operate a school of cosmetology or annual renewal of license unless the following curriculum is maintained and taught.

(1) Curriculum for freshmen students.

(a) Theory and related theory class, 100 hours.

1. General theory, including Kentucky cosmetology law and applicable administrative regulations.

2. Clinical theory.

3. Lecturing theory.

(b) Clinical and related theory class (freshman practice class on students or mannequins), 200 hours.

1. Cold waves.

2. Facials and make-up.

3. Complete "S" formations or complete finger waves.

4. Pin curl technique.

5. Hair shaping.

6. Hair styling techniques.

7. Lash and brow tint.

8. Eyebrow arches.

9. Nail technology (Manicuring).

10. Scalp treatments.

11. Shampooing.

12. Hair coloring, bleaching, and rinsing (mixing and formulas).

13. Heat permanent.

14. Safety measures.

(2) Curriculum for junior and senior students.

(a) Theory and related theory class, 500 hours.

(b) Professional practices, life sciences (general anatomy), physical sciences (chemistry and treatment), hair designing safety measures, Kentucky cosmetology laws and applicable administrative regulations.

(c) Clinical class, 1,000 hours.

1. Hair conditioning treatments.

2. Scalp treatments.

3. Hair shaping.

4. Shampoos.

5. Cold waves.

ADMINISTRATIVE REGISTER - 323

6. Chemical hair relaxing (permanent wave).
7. Complete "S" formation and complete finger waves.
8. Pin curl techniques.
9. Hair styles.
10. Iron curling.
11. Hair coloring and toning.
12. Bleaches and frostings.
13. Facials and make-up.
14. Nail technology [Manicuring].
15. Lash and brow tints.
16. Eyebrow arches.
17. Color rinses (certified color).
18. Wiggery.
19. Professional ethics and good grooming.
20. Salesmanship.
21. Reception desk and telephone answering.
22. Recordkeeping.
23. Dispensary (procedures for ordering supplies and retail merchandise).
24. Personality development.
25. Salon management.
26. Public relations.

Section 7. In addition to the regular course of instruction, cosmetology schools may have two (2) related lectures and demonstrations per month.

Section 8. Time not utilized in theory or clinic work shall be used for study periods or library work.

Section 9. A school shall furnish students text books that have been approved by the board.

Section 10. Students of cosmetology shall not be permitted to work on the public until they have completed 300 hours of instruction.

Section 11. Students of cosmetology may be allowed eight (8) hours per day for two (2) out-of-school activities per 1,800 hours pertaining to the profession of cosmetology if reported to the board office on "Certification of Cosmetology Field Trip * Hours (95)" form, or "Certification of Cosmetology Student Education Show * Hours (95)" form, as appropriate.

Section 12. Students of cosmetology may be permitted to attend two (2) educational programs within their 1,800-hour course for eight (8) hours credit per day, if reported to the board office on "Certification of Cosmetology Field Trip * Hours" form, or "Certification of Cosmetology Student Education Show * Hours" form, as appropriate.

Section 13. Copies of the Kentucky State Board of Hairdressers and Cosmetologists' statutes and administrative regulations shall be made available to all students.

Section 14. Nail technician [Manicurist] curriculum shall include the following:

- (1) Science and theory; 200 [400] hours.
 - (a) Equipment, sterilization, sanitation, chemistry and types of artificial nails, public and personal hygiene safety measures, statutes and administrative regulations governing cosmetology and nail technology.
 - (b) Nail condition and manicure techniques.
 - (c) Hand and arm message.
 - (d) Science pertaining to areas of hands and arms.
 - (e) Personality, grooming, salon management, professional ethics, and cosmetic theory laws;
 - (f) Nails: structure and composition, growth and regeneration, and irregularities.

- (2) Clinical; 400 [200] hours.
 - (a) Oil and plain manicure.
 - (b) Nail polish changes, moons, half-moons, and tips.
 - (c) Hand and arm message.
 - (d) Safety measures.
 - (e) Care of equipment.
 - (f) Removal of stains.
 - (g) Repair work including wraps and tips.
 - (h) Buffing.
 - (i) Application of lacquer.
 - (j) Application of artificial nails.

Section 15. The course of study and curriculum for an apprentice instructor shall include as minimums, with a total of 1,000 hours, the following:

- (1) Orientation, fifteen (15) hours.
- (2) Psychology of student training, fifty (50) hours.
- (3) Introduction to teaching, thirty (30) hours.
- (4) Good grooming and personality development, fifty (50) hours.
- (5) Course outlining and development, forty (40) hours.
- (6) Lesson planning, forty-five (45) hours.
- (7) Teaching techniques (methods), eighty (80) hours.
- (8) Teaching aids, audio-visual techniques, eight (80) hours.
- (9) Demonstration techniques, fifty-five (55) hours.
- (10) Examinations and analysis, sixty (60) hours.
- (11) Classroom management, forty-five (45) hours.
- (12) Recordkeeping, twenty-five (25) hours.
- (13) Teaching observation, sixty-five (65) hours.
- (14) Teacher assistant, ninety (90) hours.
- (15) Pupil teaching (practice teaching), 270 hours.

Section 16. A student instructor shall be under the immediate supervision and instruction of a licensed instructor during the school day. A student instructor shall not assume any of the duties and responsibilities of a licensed supervising instructor.

Section 17. All records of apprentice instructors' hours earned shall be recorded on a standard form supplied by the board office on or before the tenth day of each month.

Section 18. If the board permits a student to enroll in a school for a special brush-up course in any of the following subjects, the student shall be required to have a course of training of the following number of hours in the course or courses he desires to take:

- (1) Permanent waving, and all chemical control, 150 hours.
- (2) Nail technology [Manicuring], hand and arm message, and application of artificial nails [bleach], 100 hours.
- (3) All iron curls, 100 hours.
- (4) Facials, 125 hours.
- (5) Hair coloring and bleaching, 150 hours.
- (6) Scalp message, 25 hours.
- (7) Hair shaping, trimming, and thinning, 125 hours.
- (8) Science, 100 hours.
- (9) Hair dressing and styling, 150 hours.

Section 19. Incorporation by Reference. (1) The following forms are incorporated by reference:

- (a) "Certification Of Cosmetology Field Trip * Hours (1995)"; and
- (b) "Certification Of Cosmetology Student Education Show * Hours (1995)".

(2) These forms may be inspected, copied, or obtained at Kentucky State Board of Hairdressers and Cosmetologists, 314 West Second Street, Frankfort Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

SHIRLEY MEDLEY, Chairman

APPROVED BY AGENCY: May 6, 1996

FILED WITH LRC: July 1, 1996 at 1 p.m.

STATEMENT OF EMERGENCY

201 KAR 12:200E

REGULATORY IMPACT ANALYSIS

Contact person: Carroll Roberts

(1) Type and number of entities affected: Unknown - the number will depend on future enrollees.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: There will be no changes.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: There will be no increase in cost of doing business by the promulgation of this administrative regulation.

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

1. First year following implementation: There may be an increase in the cost of the course offered by schools of cosmetology.

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: There will be no additional reporting and paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: None needed.

(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: Alternative methods are not available.

(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 health and welfare of the public will be protected by assuring that the proper procedures, products and chemicals are used when applying artificial nails; the necessary and appropriate methods of sanitation and sterilization are used in the cleansing of implements to prohibit the spread of infection or disease.

(b) State whether a detrimental effect on environment and public health would result if not implemented: A detrimental effect on public health would result, as evidenced in other states, if not implemented.

(c) If detrimental effect would result, explain detrimental effect: Detrimental effects include: staph infections, fungus, spreading of other skin diseases, chemical burns and reactions.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, administrative regulations or government policies which may be in conflict, overlapping, or duplicating.

(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:

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? No. Tiering was not necessary as only one type of license was affected.

This emergency administrative regulation sets forth the requirements for continuing education for the renewal of license for cosmetology instructors, cosmetologists, and nail technicians, and the requirements for the providers of continuing education classes. It is necessary to promulgate this emergency administrative regulation to comply with the provisions of KRS 317A.050(8) that were enacted during the 1996 Session of the General Assembly. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The notice of intent is being filed on the same date with the Regulations Compiler.

PAUL E. PATTON, Governor
SHIRLEY MEDLEY, Chairman

**GENERAL GOVERNMENT CABINET
Board of Hairdressers and Cosmetologists**

201 KAR 12:200E. Requirements for continuing education for renewal of license.

RELATES TO: KRS 317A.050

STATUTORY AUTHORITY: KRS 317A.050(8)

EFFECTIVE: July 1, 1996

NECESSITY AND FUNCTION: Beginning on July 1, 1997, KRS 317A.050(8) requires cosmetologists, cosmetology instructors and nail technicians to provide proof of continuing education for renewal of license as determined by the board by promulgation of an administrative regulation.

Section 1. Sponsors of continuing education programs shall request approval of the board on an "Application for Approval of Continuing Education Program" form. The application shall state the dates, subjects offered, total hours of instruction, names and qualifications of speakers, fees to be charged, evaluation form and other pertinent information.

Section 2. Applications for approval of a continuing education program shall be submitted to the office of the board at least ninety (90) days prior to the starting date of the program. The board shall approve or deny the request in writing within sixty (60) days of receipt of the application.

Section 3. The program shall consist of an organized program of learning which:

(1) Contributes directly to the competency of the licensee;

(2) Pertains to subjects related to the theory, management and practice of cosmetology and nail technology; and

(3) Pertains to the health, safety, welfare and protection of the public including but not limited to sanitation, sterilization, chemical waste disposal, safety in the work place, first aid, bloodborne pathogens, airborne pathogens and HIV/AIDS education.

Section 4. All programs shall specify the course objectives, content, prerequisites, requirements and the number of continuing education hours to be earned. The information shall also be specified in all promotional materials.

Section 5. All programs shall be generic product related and shall not be used to promote, sell or advertise any product.

Section 6. Sponsors shall include, but not be limited to:

(1) Private and vocational technical schools of cosmetology offering cosmetology and nail technician courses.

(2) Associations and organizations whose membership consists

ADMINISTRATIVE REGISTER - 325

of licensees of the board.

(3) Colleges, universities and other institutions of higher education recognized by the Kentucky Council on Higher Education.

(4) Individuals who hold an active cosmetologist license, instructor of cosmetology license or nail technicians license and have special education, training and experience in cosmetology.

(5) Other persons who have a license, degree, special education, training and experience relating to the subject matter of the program.

(6) State agency programs.

(7) Manufacturers and distributor product shows shall not be approved.

Section 7. The board may monitor or review any continuing education program approved by the board. Upon evidence of significant variation in the program presented from the program approved, the board may withdraw approval of the hours granted to the program.

Section 8. The licensee shall have completed a "Record of Attendance for Continuing Education Credit" form. The form shall indicate the program title, name of sponsoring organization or individual, date of the program, number of hours of program, attendees name, address and license number. The record of attendance form must accompany the applicant's renewal application.

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

(a) "Application for Approval of Continuing Education Program"; and

(b) "Record of Attendance".

(2) These forms may be inspected, copied, or obtained at Kentucky State Board of Hairdressers and Cosmetologists, 314 West Second Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

SHIRLEY MEDLEY, Chairman

APPROVED BY AGENCY: June 3, 1996

FILED WITH LRC: July 1, 1996 at 1 p.m.

REGULATORY IMPACT ANALYSIS

Contact person: Carroll Roberts

(1) Type and number of entities affected: 18,000 licensed cosmetologists; 450 cosmetology instructors; and 1,500 nail technicians.

(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 at this time. However, the board does not anticipate any changes in the cost of living and employment in any area of the state.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: There will be no impact on the cost of doing business by the promulgation of this administrative regulation.

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

1. First year following implementation: There will be an increase in reporting and paperwork requirements, increasing costs to the agency the first year. There may be a cost for compliance to the licensee depending on the choice of sponsor. There will not be any effects upon competition.

2. Second and subsequent years: Cost factors will stabilize after the second year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Approximate cost of \$6,000.

2. Continuing costs or savings: Approximate cost of \$3,000.

3. Additional factors increasing or decreasing costs: There would be no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: Listing of licensees participating in sponsored groups. Paperwork requirements - completion of a continuing education report form to be attached to the application for renewal.

(4) Assessment of anticipated effect on state and local revenues: There is no anticipated effect on state or local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: License fees.

(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: There would be no economic impact arising from the administrative regulation in the geographical area on which the administrative regulation will be implemented.

(b) Kentucky:

(7) Assessment of alternative methods; reasons why alternatives were rejected: There are no alternatives to provide the necessary information for the protection of the public.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Continuing education would be beneficial to the licensee as well as the citizens of the Commonwealth of Kentucky to assure the licensee stays abreast of the ever changing industry as it relates directly to the competency of the licensee; pertains to subjects related to the theory, management and practice of cosmetology and nail technology; and pertains to the health, safety, welfare and protection of the public including but not limited to sanitation, sterilization, chemical waste disposal, safety in the work place, first aid, bloodborne pathogens, airborne pathogens and HIV/AIDs education.

(b) State whether a detrimental effect on environment and public health would result if not implemented: There would not be a detrimental effect on the environment. A detrimental effect on public health would be avoided.

(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: There are no statutes, administrative regulations or government policies which may be in conflict, overlapping, or duplicating.

(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. Tiering was not applied as all instructors of cosmetology must meet the same requirements; all cosmetologists must meet the same requirements appropriate to a cosmetologist; and all nail technicians must meet the same requirements appropriate to a nail technician.

STATEMENT OF EMERGENCY 302 KAR 3:010E

This emergency administrative regulation is necessary because HB 872, passed by the 1996 General Assembly, transfers authority from the Treasury Department to the Department of Agriculture for the administration of loans to Kentucky agribusinesses under the Linked Deposit Investment Program. (HB 872 also transfers authority from the Treasury Department to the Cabinet for Economic Development for the administration of loans to Kentucky small businesses under

the Linked Deposit Investment Program and the Cabinet for Economic Development is filing a similar emergency administrative regulation to implement its program). If this emergency administrative regulation is not filed on the date this transfer of authority takes place, July 15, 1996, there will be a conflict between the new law and an existing administrative regulation promulgated by the Treasury Department. The Treasury Department is filing concurrently an emergency repeal of its existing administrative regulation pertaining to the administration of loans under the Linked Deposit Investment Program (20 KAR 1:080). KRS 13A.190(1)(a)(3) permits an emergency administrative regulation to be filed in these circumstances. An ordinary administrative regulation would not be sufficient because it would permit an overlap of the implementation of HB 872 and the administration of the Linked Deposit Investment Program under conflicting administrative regulations. The statutory law will prevail over the existing Treasury administrative regulations. However, if we are not able to promulgate the Department's administrative regulation by emergency, there will be no mechanism for agribusiness applicants to acquire loans under the Linked Deposit Investment Program. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for the ordinary administrative regulation (302 KAR 3:010) was filed with the Regulations Compiler on July 15, 1996.

PAUL E. PATTON, Governor
BILLY RAY SMITH, Commissioner

DEPARTMENT OF AGRICULTURE

302 KAR 3:010E. Linked Deposit Investment Program for agribusiness.

RELATES TO: KRS 41.600 - 41.625

STATUTORY AUTHORITY: KRS 41.600 - 41.625

EFFECTIVE: July 15, 1996

NECESSITY, FUNCTION AND CONFORMITY: This administrative regulation establishes the conditions for which agribusinesses are eligible for loans made available through the Linked Deposit Investment Program and monitored by the Department of Agriculture. This administrative regulation also incorporates the form which must be completed to apply for a Linked Deposit Investment Program loan. This administrative regulation is in conformity with HB 872 and KRS Chapter 13A. An ordinary administrative regulation would not be sufficient because it would permit an overlap of the implementation of HB 872 and the administration of the Linked Deposit Investment Program under conflicting administrative regulations. The statutory law will prevail over the existing Treasury regulations. If we are not able to promulgate the Department's administrative regulation by emergency, there will be no mechanism for agribusiness applicants to acquire loans under the Linked Deposit Investment Program. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

Section 1. (1) The Department of Agriculture shall forward to the agribusiness, upon written request, the Agribusiness Linked Deposit Loan Application.

(2) The loan applicant shall complete and return to the Department of Agriculture four (4) copies of the Agribusiness Linked Deposit Loan Application which includes the Certification of Financial Institution which must be completed by the financial institution prior to being submitted to the Department of Agriculture.

(3) The Agribusiness Linked Deposit Loan Application (7/96) is incorporated herein by reference. This form may be inspected, copied, or obtained from the Department of Agriculture, 500 Mero Street, Capital Plaza Tower, Frankfort, Kentucky 40601, (502) 564-4696, hours 8 a.m. to 4:30 p.m. Monday through Friday, excluding state holidays.

(4) The Department of Agriculture shall notify the agribusiness applicant, in writing, if the agribusiness is eligible for participation in the Linked Deposit Investment Program.

BILLY RAY SMITH, Commissioner

APPROVED BY AGENCY: July 15, 1996

FILED WITH LRC: July 15, 1996 at noon

REGULATORY IMPACT ANALYSIS

Contact Person: Mark Farrow, General Counsel

(1) Type and number of entities affected: All Kentucky small businesses and agribusinesses which apply for a loan under the Linked Deposit Investment Program.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, 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: No monetary savings can be quantified.

2. Continuing costs or savings: Same as above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Applicants for loans under the Linked Deposit Investment Program will be required to complete and submit "Agribusiness Linked Deposit Loan Application (7/96)" which is incorporated by reference by this regulation.

(4) Assessment of anticipated effect on state and local revenues: There is no anticipated effect on state and local revenue.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: General fund of the Department of Agriculture.

(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: There are no practical alternatives. This regulation merely incorporates by reference the application required to be submitted to the Department of Agriculture by the Kentucky agribusiness wishing to apply for a loan under the Linked Deposit Loan Program.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

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

(c) If detrimental effect would result, explain detrimental effect: Not applicable.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: 20 KAR 1:080, promulgated by the Treasury Department, which is expected to be repealed by emergency on July 15, 1996.

(a) Necessity of proposed regulation if in conflict: The proposed regulation will not be in conflict with the Treasury's regulation as long as it is repealed as expected on July 15, 1996.

(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. Tiering is not applicable to this administrative regulation. All agribusinesses which fall into the category of agribusinesses eligible to apply for loans under the Linked Deposit Investment Program are required to apply for such loans by completing the "Agribusiness Linked Deposit Loan Application (7/96)" incorporated by reference in this regulation.

**STATEMENT OF EMERGENCY
307 KAR 5:010E**

This emergency administrative regulation is necessary because HB 872, passed by the 1996 General Assembly, transfers authority from the Treasury Department to the Cabinet for Economic Development for the administration of loans to small Kentucky businesses under the Linked Deposit Investment Program. (HB 872 also transfers authority from the Treasury Department to the Agriculture Department for the administration of loans to Kentucky agribusinesses under the Linked Deposit Investment Program and the Agriculture Department is filing a similar emergency administrative regulation to implement its program.) If this emergency administrative regulation is not filed on the date this transfer of authority takes place, July 15, 1996, there will be a conflict between the new law and an existing regulation promulgated by the Treasury Department. The Treasury Department is filing concurrently an emergency repeal of its existing regulation pertaining to the administration of loans under the Linked Deposit Investment Program (20 KAR 1:080.) KRS 13A.190(1)(a)(3) permits an emergency administrative regulation be filed in these circumstances. An ordinary administrative regulation would not be sufficient in this situation because it would permit an overlap of the implementation of HB 872 and the administration of the Linked Deposit Investment Program under conflicting regulations. The statutory law will prevail over the existing Treasury regulations. However, if we are not able to promulgate the Cabinet's regulation by emergency, there will be no mechanism for small business applicants to acquire loans under the Linked Deposit Investment Program. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for the ordinary administrative regulation (307 KAR 5:010) was filed with the Regulations Compiler on July 15, 1996.

PAUL E. PATTON, Governor
MARVIN E. STRONG, JR., Secretary

CABINET FOR ECONOMIC DEVELOPMENT

307 KAR 5:010E. Linked Deposit Investment Program.

RELATES TO: KRS 41.600 - 41.625

STATUTORY AUTHORITY: KRS 41.600 - 41.625

EFFECTIVE: July 15, 1996

NECESSITY, FUNCTION AND CONFORMITY: This administrative regulation establishes the conditions for which small businesses are eligible for loans made available through the Linked Deposit Investment Program and monitored by the Cabinet for Economic Development. This administrative regulation also incorporates the form which must be completed to apply for a Linked Deposit Investment Program loan. This administrative regulation is in conformity with HB 872 and KRS Chapter 13A.

Section 1. (1) The Cabinet for Economic Development shall forward to the small business, upon written request, the Small Business Linked Deposit Loan Application.

(2) The loan applicant shall complete and return to the Cabinet for Economic Development four (4) copies of the Small Business Linked Deposit Loan Application which includes the Certification of Financial

Institution which must be completed by the financial institution prior to being submitted to the Cabinet for Economic Development.

(3) The "Small Business Linked Deposit Loan Application (7/96)" is incorporated herein by reference. This form may be inspected, copied, or obtained from the Cabinet for Economic Development, 500 Mero Street, Capitol Plaza Tower, Frankfort, Kentucky 40601, (502) 564-7670, hours 8 a.m. to 4:30 p.m. Monday through Friday, excluding state holidays.

(4) The Cabinet for Economic Development shall notify the small business applicant, in writing, if the small business is eligible for participation in the Linked Deposit Investment Program.

MARVIN E. STRONG, JR., Secretary
APPROVED BY AGENCY: July 12, 1996
FILED WITH LRC: July 15, 1996 at noon

REGULATORY IMPACT ANALYSIS

Contact Person: Lori H. Flanery

(1) Type and number of entities affected: All Kentucky small businesses and agribusinesses which apply for a loan under the Linked Deposit Investment Program.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, 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 on 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: No monetary savings can be quantified.

2. Continuing costs or savings: Same as above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Applicants for loans under the Linked Deposit Investment Program will be required to complete and submit the "Small Business Linked Deposit Loan Application (7/96)" which is incorporated by reference by this regulation.

(4) Assessment of anticipated effect on state and local revenues: There is no anticipated effect on state and local revenue.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: General fund of the Cabinet for Economic Development.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities 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: There are no practical alternatives. This regulation merely incorporates by reference the application required to be submitted to the Cabinet for Economic Development by the small Kentucky business wishing to apply for a loan under the Linked Deposit Loan Program.

(8) Assessment of expected benefits:

(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: No

(c) If detrimental effect would result, explain detrimental effect:

Not applicable.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: 20 KAR 1:080, promulgated by the Treasury Department, which is expected to be repealed by emergency on July 15, 1996.

(a) Necessity of proposed regulation if in conflict: The proposed regulation will not be in conflict with the Treasury's regulation as long as it is repealed as expected on July 15, 1996.

(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 applicable to this administrative regulation. All small businesses which fall into the category of businesses eligible to apply for loans under the Linked Deposit Investment Program are required to apply for such loans by completing the "Small Business Linked Deposit Loan Application (7/96)" incorporated by reference in this regulation.

STATEMENT OF EMERGENCY
415 KAR 1:050E

WHEREAS, the Petroleum Storage Tank Environmental Assurance Fund Commission was abolished and the Office of the Petroleum Storage Tank Environmental Assurance Fund was created in the Public Protection and Regulation Cabinet by Executive Orders 96-485 and 96-591; and

WHEREAS, the Office of the Petroleum Storage Tank Environmental Assurance Fund has the same authority as the commission but a new appointing authority, it is necessary to amend this administrative regulation to conform to the Executive Orders and ease confusion in the public's mind; and

WHEREAS, HB 167, amending the statutory authorization for the fund, was passed by the General Assembly during the 1996 Regular Session and the statute now requires this administrative regulation to be amended; and

WHEREAS, an ordinary administrative regulation would not be sufficient as the provisions of HB 167 become effective on July 15, 1996, and the delay in promulgating ordinary administrative regulations would cause the fund to have inconsistency between its statute and the administrative regulations. An ordinary administrative regulation would also be insufficient as the administrative regulations no longer reflect the correct appointing authority for the fund. Allowing these factors to continue would endanger the fund's ability to assist in the protection of human health and the environment.

IT IS HEREBY DECLARED, that an emergency exist and this administrative regulation may be filed, pursuant to KRS 13A.190, as an emergency administrative regulation, to expire in 170 days from the date of its publication. This administrative regulation will be replaced by an ordinary administrative regulation.

PAUL E. PATTON, Governor
LAURA M. DOUGLAS, Secretary
ROBERT E. NICKEL, Executive Director

PUBLIC PROTECTION AND REGULATION CABINET
Office of the Petroleum Storage Tank
Environmental Assurance Fund

415 KAR 1:050E. Definitions.

RELATES TO: KRS 224.60-120, 224.60-130, 224.60-140, 40 CFR Part 280

STATUTORY AUTHORITY: KRS 224.60-120, 224.60-130

EFFECTIVE: July 3, 1996

NECESSITY AND FUNCTION: KRS 224.60-120 and 224.60-130 require the Office of the Petroleum Storage Tank Environmental

Assurance Fund ~~[Commission]~~ to adopt administrative regulations to establish the policy guidelines and procedures to administer the Petroleum Storage Tank Environmental Assurance Fund. This administrative regulation defines essential terms used in connection with the administrative regulations ~~[of the commission]~~ in this chapter. ~~[1992 Kentucky Acts Chapter 450 amended the statutory provisions for the fund.]~~

Section 1. Definitions. (1) "Abandoned" means a prior owner of the tank, has relinquished all connections with or concern in ownership with no intention to return or claim again and that the current owner seeking assistance from the fund acquired the property where the tank is located without knowledge of the tank's existence. Physical acts by the owner or operator, such as applying for assistance, will be considered in determining the applicants knowledge of the tank's existence.

(2) "Assets" shall have the meaning in KRS 224.60-120(3);

(3) "Bodily injury and property damage" shall have the meaning in KRS 224.60-115;

(4) "Cabinet" shall have the same meaning as in KRS 224.60-115(2);

(5) "Cathodic protection" means a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrical chemical cell;

(6) "Claim" shall have the meaning in KRS 224.60-115(4);

(7) "Closed" means a tank which ceased to operate prior to December 22, 1988;

(8) ~~["Commission" means the Petroleum Storage Tank Environmental Assurance Fund Commission;~~

~~(9)~~ "Contract" means the legally binding, written agreement for performance of corrective action entered into by an owner or operator and a contractor certified pursuant to 415 KAR 1:114;

~~(9)~~ ~~(14)~~ "Corrective action" shall have the meaning in KRS 224.60-115(5);

~~(10)~~ ~~(14)~~ "Corrective action plan" means a remediation proposal employing corrective action technologies to obtain site closure, as required, in writing, by the cabinet;

~~(11)~~ ~~(12)~~ "Corrosion protection" means a method of corrosion protection that complies with the requirements of 401 KAR 42:030;

~~(12)~~ ~~(13)~~ "Currently exist" means an existing petroleum storage tank that has or does contain petroleum, and includes a petroleum storage tank that has been permanently closed by filling with an inert solid material;

~~(13)~~ ~~(14)~~ "Currently in use" means a petroleum storage tank which contains petroleum or petroleum products and is in use for commercial purposes, storage of petroleum, or is in compliance when temporarily closed under the requirements of cabinet administrative regulations;

~~(14)~~ ~~(15)~~ "Drinking water supply" means a groundwater source or a surface water source of a private water supply, a public water system, or a semipublic water system as defined in 401 KAR 8:010;

~~(15)~~ ~~(16)~~ "Eligibility" means compliance with the criteria for eligibility established in this chapter;

~~(16)~~ ~~(17)~~ "Entry level" means the amount of financial responsibility determined by the Office of the Petroleum Storage Tank Environmental Assurance Fund ~~[commission]~~ to be paid by the owner or operator of a petroleum storage tank prior to being eligible for participation in the fund;

~~(17)~~ ~~(18)~~ "Extent of environmental harm" means the extent of horizontal and vertical contamination due to a release from a petroleum storage tank, including contamination of a surface or underground drinking water supply, the potential for exposure posing a threat to human health or the environment, and the amount of contamination released;

~~(18)~~ ~~(19)~~ "Facility" shall have the meaning in KRS 224.60-115(7);

~~(19)~~ ~~(20)~~ "Federal regulation" shall have the meaning in KRS

224.60-115(8);

(20) [(24)] "Financial ability" means the ability of a petroleum storage tank owner or operator to pay the entry level to the fund based upon a consideration of the assets and income of the owner or operator;

(21) "Fund" means the Office of the Petroleum Storage Tank Environmental Assurance Fund;

(22) "Guarantor" shall have the meaning in KRS 224.120(4);

(23) "Maintenance" means the normal operational upkeep to prevent a petroleum storage tank system from releasing petroleum or petroleum products;

(24) "Maximum contaminant level" means the maximum permissible level of a contaminant in water established pursuant to the administrative regulations of the cabinet or applicable federal regulations;

(25) "Motor fuel" shall have the meaning in KRS 224.60-115(12).

(26) "Net worth" shall have the meaning in KRS 224.60-120(3);

(27) [(26)] "Newly discovered tanks" mean petroleum storage tanks at a facility that would not have been discovered by the owner or operator by the exercise of ordinary diligence;

(28) [(27)] "Occurrence" shall have the meaning in KRS 224.115(13) [(42)];

(29) [(28)] "Operation" with respect to a UST or UST system means a UST or UST system currently being used for the storage and dispensing of petroleum or petroleum products;

(30) [(29)] "Original invoice" means the original or a duplicate original of an invoice;

(31) [(30)] "Permanently closed" means a UST or UST system that was closed after December 22, 1988 pursuant to the requirements of cabinet administrative regulations;

(32) [(31)] "Petroleum storage tank" shall have the meaning in KRS 224.60-115(16) [(46)];

(33) [(32)] "Petroleum storage tank operator" or "operator" shall have the meaning in KRS 224.60-115(17) [(46)];

(34) [(33)] "Petroleum storage tank owner" or "owner" shall have the meaning in KRS 224.60-115(18) [(47)];

(35) [(34)] "Ranking system" means the system for determining financial ability and extent of environmental harm established by these administrative regulations;

(36) [(35)] "Release" shall have the meaning in KRS 224.60-115(20) [(49)];

(37) [(36)] "Release detection" means a method of determining whether a release of petroleum has occurred from a petroleum storage tank system into the environment or into the interstitial space between the petroleum storage tank system and a secondary barrier or secondary containment around it that complies with the requirements of 401 KAR 42:040;

(38) [(37)] "Retail facility" means a facility that sells petroleum products to the general public from petroleum storage tanks;

(39) [(38)] "Repair" means to restore a petroleum storage tank or system component that has caused a release of petroleum to comply with the administrative regulations of the cabinet;

(40) "Secretary" means the Secretary of the Public Protection and Regulation Cabinet;

(41) [(39)] "Statistically significant increase" means that use of a statistical procedure approved by the cabinet demonstrates that a level of a petroleum constituent in a drinking water supply significantly exceeds background;

(42) [(40)] "Temporary closure" means taking a UST or UST system out of operation pursuant to the requirements of 401 KAR 42:070;

(43) "Third party" shall have the meaning in KRS 224.60-115(22);

(44) [(41)] "Upgrade" means the addition or retrofit of some system such as cathodic protection, lining, or spill and overflow controls to improve the ability of a petroleum storage tank system to prevent the release of product, or the replacement of tanks with new tanks.

LAURA M. DOUGLAS, Secretary

APPROVED BY AGENCY: July 3, 1996

FILED WITH LRC: July 3, 1996 at 10 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact: David B. Wicker

(1) Type and number of entities affected: The proposed regulation will affect approximately 15,000 facilities with underground storage tanks containing petroleum products.

(a) Direct and indirect costs or savings to those affected:

1. First year: The tank owners or operators are financially responsible for \$1000, \$5,000 or \$25,000 depending on the number of tanks, rather than \$1,000,000 of financial responsibility for clean up of leaks from underground petroleum storage tanks.

2. Continuing costs or savings: Tank owners or operators will continue to experience savings associated with payment of corrective action, and third party liability expenses.

3. Additional factors increasing or decreasing costs: (Note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paper requirements: Tank owners or operators will be required to complete, file, maintain and process application and claim forms.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The Office of the Petroleum Storage Tank Environmental Assurance Fund receives operating expenses from the Petroleum Storage Tank Environmental Assurance Fund. The FY 96 administrative budget was 1.3 million dollars.

2. Continuing costs or savings: The fund anticipates continuing costs associated with staff and general operation of the program.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs. The fund believes that it has adequate staff at this time to administer this program.

(b) Reporting and paperwork requirements: The fund is required to collect, review, maintain, and process claim forms. The fund will provide eligible entities with state certification of financial assistance.

(3) Assessment of anticipated effect on state and local revenues: See fiscal note on local government.

(4) Assessment of alternative methods: reasons why alternatives were rejected:

(a) House Bill 167, amending KRS 224.60-115, required the addition of these definitions. A recent reorganization moving this agency to the Public Protection and Regulation Cabinet also required the addition of definitions to this section.

Alternative:

1. Less stringent: The fund cannot be less stringent than statute allows.

2. More stringent: The fund cannot be more stringent than statute allows.

3. Present proposal: The amended regulation contains definitions for terms used in 415 KAR Chapter 1.

(5) Geographical and environmental impact:

(a) Geographical: The effect of this regulation will be equal though all geographic regions of the state, as all areas have petroleum storage tanks. More populated areas will most likely contain more tanks.

(b) Environmental: The effect of this regulation is to provide reimbursement up to one million dollars for corrective action and one million dollars for third party liability for releases from petroleum storage tanks. A positive effect on the environment is expected as tank owners who were not financially able to remediate their sites will have assistance.

(6) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplication: There are no statutes, administrative regulations or government policies in

ADMINISTRATIVE REGISTER - 330

conflict with the proposed amendments of this regulation.

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was report made to harmonize the proposed regulation with conflicting provisions: There is no conflict.

(7) Source of revenue: The funds expended by the fund will come from the Petroleum Storage Tank Environmental Assurance Fee, pursuant to KRS 224.60-145.

(8) Benefits of the regulation: The amended regulation conforms to the executive order and avoids confusion in the regulated public. The additional definitions were required by HB 167.

(9) Any additional information or comments: There is no additional information.

(10) Tiering statement: Was tiering applied? No. This regulation is definitional in nature so tiering was not necessary.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 CFR 280 Subpart H requires the owner or operator of petroleum storage tanks to demonstrate financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by a petroleum release to the environment. 40 CFR 280.101 allows for a state fund to be created and administered which will fulfill the liability requirements.

2. State compliance standards. No standards in addition to the federal standards.

3. Minimum or uniform standards contained in the federal mandate. 40 CFR 280 subpart H details the standards and compliance dates.

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.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This regulation will affect a local government or a division of local government that owns or operates underground petroleum storage tanks.

3. State the aspect or service of local government to which this administrative regulation relates. Any service provided by the local government which involves the storage of motor fuel in underground storage tanks.

4. How does this administrative regulation affect the local government or any service it provides? Local governments, like any owner or operator of an underground petroleum storage tank, will be required to demonstrate financial responsibility for taking corrective action and for compensating third party damages. Excepting the required entry level imposed on the local government extensive savings will be realized by the local government.

STATEMENT OF EMERGENCY

415 KAR 1:060E

WHEREAS, the Petroleum Storage Tank Environmental Assurance Fund Commission was abolished and the Office of the Petroleum Storage Tank Environmental Assurance Fund was created in the Public Protection and Regulation Cabinet by Executive Orders 96-485 and 96-591; and

WHEREAS, the Office of the Petroleum Storage Tank Environmental Assurance Fund has the same authority as the commission but a new appointing authority, it is necessary to amend this administrative regulation to conform to the Executive Orders and ease confusion in the public's mind; and

WHEREAS, HB 167, amending the statutory authorization for the fund, was passed by the General Assembly during the 1996 Regular Session and the statute now requires this administrative regulation to be amended; and

WHEREAS, an ordinary administrative regulation would not be sufficient as the provisions of HB 167 become effective on July 15, 1996, and the delay in promulgating ordinary administrative regulations would cause the fund to have inconsistency between its statute and the administrative regulations. An ordinary administrative regulation would also be insufficient as the administrative regulations no longer reflect the correct appointing authority for the fund. Allowing these factors to continue would endanger the fund's ability to assist in the protection of human health and the environment.

IT IS HEREBY DECLARED, that an emergency exist and this administrative regulation may be filed, pursuant to KRS 13A.190, as an emergency administrative regulation, to expire in 170 days from the date of its publication. This administrative regulation will be replaced by an ordinary administrative regulation.

PAUL E. PATTON, Governor

LAURA M. DOUGLAS, Secretary

ROBERT E. NICKEL, Executive Director

PUBLIC PROTECTION AND REGULATION CABINET

Office of the Petroleum Storage Tank Environmental Assurance Fund

415 KAR 1:060E. Financial responsibility account.

RELATES TO: KRS 224.60-120, 224.60-130, 224.60-140, 40 CFR Part 280

STATUTORY AUTHORITY: KRS 224.60-120, 224.60-130

EFFECTIVE: July 3, 1996

NECESSITY AND FUNCTION: The 1992 Kentucky General Assembly amended KRS 224.60-130 to direct the Office of the Petroleum Storage Tank Environmental Assurance Fund [commission] to establish a financial responsibility account within the fund which may be used by petroleum storage tank owners and operators to demonstrate financial responsibility as required by state and federal administrative regulations for the payment of the costs of corrective action and third-party liability. This administrative regulation establishes the eligibility requirements for the financial responsibility account, and establishes the procedure for eligible storage tank owners and operators to receive a certification of eligibility for this account.

Section 1. Applicability. An owner or operator of a facility with petroleum storage tanks containing motor fuels in operation meeting the following requirements shall be eligible to participate in the financial responsibility account.

(1) The owner or operator of a facility for which a certification of eligibility was issued by this agency [the commission], pursuant to 415 KAR 1:020 (1991), ~~415 KAR 1:060 (1992)~~ or 415 KAR 1:060 (1993), prior to the effective date of this administrative regulation may be eligible to participate in the financial responsibility account for costs of corrective action or third-party liability incurred at that facility if the requirements of subsection (2) of this section and Section 5 of this administrative regulation are met.

(2) The owner or operator of a facility that was not issued a certificate of eligibility, prior to the effective date of this administrative regulation shall:

(a) Register the tanks with the cabinet as required by KRS 224.60-105;

(b) Have release detection as required by 401 KAR 42:040, or be permanently closed in compliance with 401 KAR 42:070 or temporarily closed in compliance with 401 KAR 42:070;

(c) Not have a release for which corrective action is required at the time of certification;

(d) Have corrosion protection as required by 401 KAR 42:030;

(e) Have paid all annual fees required to be paid pursuant to KRS 224.60-150;

(f) Have tanks "in operation" on or after the compliance dates set forth in 401 KAR 42:090 and be mandated by 401 KAR 42:090 to demonstrate financial responsibility as specified under 401 KAR 42:090; and

(g) Have demonstrated financial responsibility, as required, in the amount of entry level to the fund established in Section 6 of this administrative regulation.

Section 2. Eligibility for Payment. (1) An owner or operator may be eligible for payment from the financial responsibility account if:

(a) A certificate of eligibility for the facility is issued to the owner or operator pursuant to Section 3(2) of this administrative regulation; and

(b) The owner or operator has maintained compliance with the provisions of 401 KAR 42:030 and 42:040; and

(c) The owner or operator performs corrective action consistent with the requirements of 401 KAR 42:050, 42:060 and 42:070, or as directed by the cabinet.

(2) An owner or operator issued a certificate of eligibility pursuant to 415 KAR 1:020 (1991), 415 KAR 1:060 (1992) or 415 KAR 1:060 (1993) may be eligible for payment of costs of corrective action and third-party liability for bodily injury or property damage incurred on or after April 9, 1990 upon reissuance of a certificate of eligibility pursuant to this administrative regulation. An owner or operator performing ongoing corrective action and participating in the financial responsibility account under a previously issued certificate of eligibility shall not be denied a certificate of eligibility, pursuant to this administrative regulation, if the requirements of Sections 1(2)(a), (b), (d), (e), (f), (g) and 5 of this administrative regulation are met;

(3) An owner or operator issued a certificate of eligibility pursuant to Section 3(2) of this administrative regulation may be eligible for payment of costs of corrective action and third-party liability for bodily injury or property damage incurred after the date of issuance of the certificate.

Section 3. Certificate of Eligibility. (1) Compliance with the requirements of Section 1(2) of this administrative regulation shall be demonstrated by an owner or operator by filing with the Office of the Petroleum Storage Tank Environmental Assurance Fund [commission] a copy of the Eligibility and State Financial Responsibility Affidavit form dated June 1996 [July 1994], hereby incorporated by reference. Copies of this form may be obtained and inspected at the Office of the Petroleum Storage Tank Environmental Assurance Fund [Commission], 911 Leewood Drive, Frankfort, Kentucky 40601, (502) 564-5981. The business hours of the fund [commission] are from 8 a.m. to 4:30 p.m. eastern time Monday through Friday. The owner or operator shall certify under oath that all of the requirements of Section 1(2) of this administrative regulation have been met.

(2) If an owner or operator demonstrates compliance with Section 1(2) of this administrative regulation, a certificate of eligibility for participation in the financial responsibility account shall be issued by the fund [commission].

(3) A certificate of eligibility is valid for sixty (60) days after the transfer of the covered facility, provided the new owner of the facility has applied for and not yet received, a certificate of eligibility for that facility.

Section 4. Maintenance of Eligibility. To maintain eligibility for participation in and reimbursement from the financial responsibility

account, the owner or operator shall maintain compliance with the eligibility requirements established in Sections 2 and 5 of this administrative regulation.

Section 5. Degree of Compliance After a Release is Detected. If a release is detected at a facility determined to be eligible for participation in the financial responsibility account, the owner or operator shall:

(1) Report the release to the cabinet immediately after the discovery of the release as required by KRS 224.01-400. For the purpose of potential eligibility for participation in the financial responsibility account, in no event shall the report of the release be made to the cabinet more than seven (7) days after discovery; and

(2) Implement initial abatement procedures required by 401 KAR 42:060 within twenty (20) days after detection of the release, or as directed in writing by the cabinet; and

(3) Comply with the requirements of 401 KAR 42:060 as directed in writing by the cabinet.

Section 6. Entry Level to the Financial Responsibility Account. (1) The entry level for participation in the financial responsibility account for an owner or operator of five (5) or less tanks shall be established and maintained at \$1,000 per occurrence for taking corrective action and compensating third parties for bodily injury and property damage.

(2) The entry level for participation in the financial responsibility account for an owner or operator of six (6) to ten (10) tanks shall be established and maintained at \$5,000 per occurrence for taking corrective action and \$5,000 per occurrence for compensating third parties for bodily injury and property damage.

(3) The entry level for participation in the financial responsibility account for an owner or operator of eleven (11) or more tanks shall be established and maintained at \$25,000 per occurrence for taking corrective action and \$25,000 per occurrence for compensating third parties for bodily injury and property damage.

Section 7. Financial Responsibility for the Entry Level Amount. (1) The owner or operator shall certify financial responsibility in an amount equal to the required entry level amount by using one (1) or any combination of the options listed in subsection (2) of this section. This certification shall be provided to the fund [commission] on the Eligibility and State Financial Responsibility Affidavit form.

(2) Financial responsibility for the amount of the entry level may be demonstrated by:

(a) Commercial or private insurance from a carrier within A.M. best rating of B+, or better, authorized to contract business in the Commonwealth of Kentucky;

(b) Participation in a risk retention group qualified to do business in the Commonwealth and who shall furnish any financial reports as may be required by the fund [commission];

(c) A guarantor with a controlling interest in the owner or operator. The guarantor shall furnish proof as may be required by the fund [commission] in order to demonstrate state financial responsibility;

(d) A surety bond from a surety company that is listed with the U.S. Treasury Department or the Kentucky Department of Insurance. Under the terms of the bond, the surety shall become liable under the bond when the owner or operator fails to perform;

(e) An irrevocable standby letter of credit by an entity that has authority to issue letters of credit in Kentucky, and whose letter of credit operation is regularly examined by a federal or Kentucky agency. The letter of credit shall be drawn to cover "taking corrective action" and indemnification of third parties for liability arising from owning or operating petroleum storage tanks; and

(f) Qualification as a self-insurer with prior approval of the fund [commission] if the owner or operator has certified to the fund [commission] the following:

1. The owner or operators' annual year-end financial statements; and

2. The owner or operators' net worth is in excess of the entry level amount required for participation in the financial responsibility account.

Section 8. Change of Eligibility. An owner or operator shall report any change in the eligibility requirements contained in this administrative regulation to the fund [commission] within ten (10) days of the change.

Section 9. Newly Discovered Tanks. (1) The discovery of unregistered tanks at a facility during the performance of corrective action due to a release from a registered tank shall not affect eligibility to participate in the financial responsibility account.

(2) The costs of corrective action for releases from newly discovered tanks found during the performance of corrective action for registered tanks shall be paid from the financial responsibility account if the other eligibility requirements of this administrative regulation are met.

(3) The number of newly discovered tanks shall not increase the entry level to the financial responsibility account.

Section 10. Loss of Eligibility. (1) If at any time, prior to a release, the fund [commission] determines that an owner or operator has not maintained compliance with the eligibility requirements of this administrative regulation, the fund [commission] shall notify the owner or operator of the noncompliance.

(2)(a) A facility shall be deemed ineligible to receive payment from the financial responsibility account under a certificate of eligibility issued pursuant to this administrative regulation, if the owner or operator failed to maintain compliance with the eligibility requirements of this administrative regulation and a release occurs during the period of noncompliance.

(b) [(a)] An owner or operator may be determined eligible for payment of the costs of corrective action, from the petroleum storage tank account, 415 KAR 1:070, if the actions necessary to bring the facility into compliance with cabinet administrative regulations. The owner or operator shall not be eligible for payment of the costs of third party liability. The owner or operator will be responsible for the payment of the entry level, notwithstanding 401 KAR 1:070, Section 5(4).

[(b) If the commission places the facility in the petroleum storage tank account then the commission shall deny eligibility of reimbursable remediation costs in the following amounts:

1. ~~Failure to maintain compliance with release detection as required by 401 KAR 42:040, five (5) percent of their average adjusted gross income not to exceed \$25,000;~~

2. ~~If a final determination is made by the cabinet that the facility has failed to report a release as required by KRS 224.01-400, five (5) percent of their average gross income for the past five (5) years not to exceed \$25,000;~~

3. ~~If a final determination is made by the cabinet that the facility failed to comply with cabinet direction for corrective action as required by 401 KAR 42:060, five (5) percent of their average adjusted gross income for the past five (5) years not to exceed \$25,000;~~

4. ~~The owner or operator shall not be eligible for payment of the costs of third party liability.]~~

(3)(a) A facility shall be deemed ineligible to receive payment from the financial responsibility account, pursuant to a previously approved application for assistance [agreement] or a certificate of eligibility issued pursuant to this administrative regulation, if the owner or operator failed to maintain compliance with the eligibility requirements of this administrative regulation during the ongoing corrective action and a release occurs during the period of noncompliance.

(b) [(a)] An owner or operator may be determined eligible for payment of the costs of corrective action, from the petroleum storage tank account, 415 KAR 1:070, if the facility is brought into compliance with cabinet administrative regulations. The owner or operator shall

not be eligible for payment of the costs of third party liability.

[(b) If the commission places the facility in the petroleum storage tank account then the commission shall deny eligibility of a percentage of the reimbursable remediation costs in the following amounts:

1. ~~Failure to maintain compliance with release detection as required by 401 KAR 42:040, ten (10) percent;~~

2. ~~If a final determination is made by the cabinet that the facility has failed to report a release as required by KRS 224.01-400, ten (10) percent;~~

3. ~~If a final determination is made by the cabinet that the facility failed to comply with cabinet direction for corrective action as required by 401 KAR 42:060, ten (10) percent;~~

4. ~~The owner or operator shall not be eligible for payment of the costs of third party liability.]~~

(4) An owner or operator may be determined ineligible to receive payment from the financial responsibility account if the owner or operator has intentionally submitted false or inaccurate information to the fund [commission], and shall be required to repay any monies falsely received.

(5) The fund [commission] shall have the right to recover the money paid to an owner or operator, or a contractor when:

(a) The amount was paid due to an error of the fund [commission]; or

(b) The amount was paid due to a mistake, error, or inaccurate information in the claim submitted by the owner or operator or in an invoice submitted by a contractor; or

(c) A person has obtained payment from the fund [commission] by fraud or intentional misrepresentation.

(6) An owner or operator issued or reissued a certificate of eligibility for the financial responsibility account pursuant to this administrative regulation may be eligible to participate in the petroleum storage tank account.

(7) Costs of corrective action incurred prior to April 9, 1990 shall not be paid from the financial responsibility account.

Section 11. Account Balance. (1) The unobligated balance of the financial responsibility account shall not be less than \$1,500,000 to ensure a \$1,000,000 reserve balance adequate to meet federal financial responsibility requirements for participants in the account and a \$500,000 reserve balance for emergency abatement action by the cabinet pursuant to KRS 224.60-135. When funds are withdrawn for emergency abatement actions by the cabinet, the fund [commission] shall replace the amount immediately.

(2) If the unobligated balance of the financial responsibility account is \$1,500,000, or less, or the obligation of a claim shall cause the unobligated balance of the fund to be less than \$1,500,000, the fund [commission] shall immediately suspend the obligation of claims until the unobligated balance is greater than \$1,500,000. Obligations submitted for approval by the fund [commission] at the time of suspension shall be obligated in accordance with the date of initial submission of the obligation when the suspension is lifted.

LAURA M. DOUGLAS, Secretary

APPROVED BY AGENCY: July 3, 1996

FILED WITH LRC: July 3, 1996 at 10 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact: David B. Wicker

(1) Type and number of entities affected: The proposed regulation will affect approximately 15,000 facilities with underground storage tanks containing motor fuels.

(a) Direct and indirect costs or savings to those affected:

1. First year: The tank owners or operators are financially responsible for \$1000, \$5,000 or \$25,000 depending on the number of tanks, rather than \$1,000,000 of financial responsibility for clean up of leaks from underground petroleum storage tanks.

ADMINISTRATIVE REGISTER - 333

2. Continuing costs or savings: Tank owners or operators will continue to experience savings associated with payment of corrective action, and third party liability expenses.

3. Additional factors increasing or decreasing costs: (Note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paper requirements: Tank owners or operators will be required to complete, file, maintain and process application and claim forms.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The Office of the Petroleum Storage Tank Environmental Assurance Fund receives operating expenses from the Petroleum Storage Tank Environmental Assurance Fund. The FY 96 administrative budget was 1.3 million dollars.

2. Continuing costs or savings: The fund anticipates continuing costs associated with staff and general operation of the program.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs. The fund believes that it has adequate staff at this time to administer this program.

(b) Reporting and paperwork requirements: The fund will be required to collect, review, maintain, and process claim forms. The fund will provide eligible entities with a certification of financial assistance that satisfies federal requirements.

(3) Assessment of anticipated effect on state and local revenues: See fiscal note on local government.

(4) Assessment of alternative methods: reasons why alternatives were rejected: House Bill 167, amending KRS 224.60-115, required these amendments. A recent reorganization moving this agency to the Public Protection and Regulation Cabinet also required the amending of this section.

Alternatives:

1. Less stringent: The fund cannot be less stringent than the statute allows.

2. More stringent: The fund cannot be more stringent than the statute allows.

3. Present proposal: The amended regulation contains the eligibility requirements for this fund account which provides for reimbursement to facilities that are required by 40 CFR 280 Subpart H to demonstrate financial responsibility for corrective action and third party compensation resulting from petroleum contamination. The proposed amended regulation meets the requirements of 40 CFR 280 Subpart H.

(5) Geographical and environmental impact:

(a) Geographical: The effect of this regulation will be equal though all geographic regions of the state, as all areas have petroleum storage tanks. More populated areas will most likely contain more tanks.

(b) Environmental: The effect of this regulation is to provide reimbursement up to one million dollars for corrective action and one million dollars for third party liability for releases from petroleum storage tanks. A positive effect on the environment is expected as tank owners who were not financially able to remediate their sites will have assistance.

(6) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplication: There are no statutes, administrative regulations or government policies in conflict with the proposed amendments of this regulation.

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was report made to harmonize the proposed regulation with conflicting provisions: There is no conflict.

(7) Source of revenue: The funds expended by the fund will come from the Petroleum Storage Tank Environmental Assurance Fee, pursuant to KRS 224.60-145.

(8) Benefits of the regulation: The amended regulation conforms to the executive order and avoids confusion in the regulated public.

The amendments should speed the process of determining fund placement and obligation.

(9) Any additional information or comments: There is no additional information.

(10) Tiering statement: Was tiering applied: Yes. This regulation applies to all owners or operators of underground petroleum storage tank systems. The amended regulation is tiered dependant on the number of tanks owned or operated, the level of financial responsibility required, and the financial ability of the applicant.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 CFR 280 Subpart H requires the owner or operator of petroleum storage tanks to demonstrate financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by a petroleum release to the environment. 40 CFR 280.101 allows for a state fund to be created and administered which will fulfill the liability requirements.

2. State compliance standards. No standards in addition to the federal standards.

3. Minimum or uniform standards contained in the federal mandate. 40 CFR 280 subpart H details the standards and compliance dates.

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.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This regulation will affect a local government or a division of local government that owns or operates underground petroleum storage tanks.

3. State the aspect or service of local government to which this administrative regulation relates. Any entity that owns or operates a underground petroleum storage tank.

4. How does this administrative regulation affect the local government or any service it provides? Local governments, like any owner or operator of an underground petroleum storage tank, will be required to demonstrate financial responsibility for taking corrective action and for compensating third party damages. Excepting the required entry level imposed on the local government extensive savings will be realized by the local government.

STATEMENT OF EMERGENCY

415 KAR 1:070E

WHEREAS, the Petroleum Storage Tank Environmental Assurance Fund Commission was abolished and the Office of the Petroleum Storage Tank Environmental Assurance Fund was created in the Public Protection and Regulation Cabinet by Executive Orders 96-485 and 96-591; and

WHEREAS, the Office of the Petroleum Storage Tank Environmental Assurance Fund has the same authority as the commission but a new appointing authority, it is necessary to amend this administrative regulation to conform to the Executive Orders and ease confusion in the public's mind; and

WHEREAS, HB 167, amending the statutory authorization for the fund, was passed by the General Assembly during the 1996 Regular

Session and the statute now requires this administrative regulation to be amended; and

WHEREAS, an ordinary administrative regulation would not be sufficient as the provisions of HB 167 become effective on July 15, 1996, and the delay in promulgating ordinary administrative regulations would cause the fund to have inconsistency between its statute and the administrative regulations. An ordinary administrative regulation would also be insufficient as the administrative regulations no longer reflect the correct appointing authority for the fund. Allowing these factors to continue would endanger the fund's ability to assist in the protection of human health and the environment.

IT IS HEREBY DECLARED, that an emergency exist and this administrative regulation may be filed, pursuant to KRS 13A.190, as an emergency administrative regulation, to expire in 170 days from the date of its publication. This administrative regulation will be replaced by an ordinary administrative regulation.

PAUL E. PATTON, Governor
LAURA M. DOUGLAS, Secretary
ROBERT E. NICKEL, Executive Director

PUBLIC PROTECTION AND REGULATION CABINET
Office of the Petroleum Storage Tank
Environmental Assurance Fund

415 KAR 1:070E. Petroleum storage tank account.

RELATES TO: KRS 224.60-120, 224.60-130, 224.60-140, 40 CFR Part 280

STATUTORY AUTHORITY: KRS 224.60-120, 224.60-130

EFFECTIVE: July 3, 1996

NECESSITY AND FUNCTION: The 1992 Kentucky General Assembly amended KRS 224.60-130 to direct this agency ~~the commission~~ to establish a petroleum storage tank account within the fund which may be used to pay the costs of corrective action due to a release of contamination from a petroleum storage tank. This administrative regulation establishes the eligibility requirements for the petroleum storage tank account.

Section 1. Applicability. (1)(a) This administrative regulation does not apply to releases from petroleum storage tanks removed from the ground before January 1, 1974;

(b) Costs of corrective action for releases from petroleum storage tanks removed from the ground after January 1, 1974 or tanks closed in place may be eligible for payment by the petroleum storage tank account if the eligibility requirements of Section 2 of this administrative regulation are met;

(c) Costs of corrective action for releases from petroleum storage tanks currently existing and ~~temporarily~~ closed after December 22, 1988 may be eligible for payment by the petroleum storage tank account if the eligibility requirements of Section 3 of this administrative regulation are met; and

(d) Costs of corrective action for releases from petroleum storage tanks currently in use which are not eligible for participation in the financial responsibility account may be eligible for payment by the petroleum storage tank account if the eligibility requirements of Section 4 of this administrative regulation are met.

(2) Prior to applying for payment from the petroleum storage tank account for corrective action costs incurred at a facility the owner or operator shall have:

(a) Registered the tanks at the facility with the cabinet as required by KRS 224.60-105;

(b) Paid all annual fees as required by KRS 224.60-150;

(c) Submitted the Eligibility and State Financial Responsibility Affidavit form to the fund ~~commission~~ to certify eligibility for the petroleum storage tank account;

(d) Filed a notice of intent with the cabinet to permanently close

the petroleum storage tanks at the facility or to make a change-in-service to comply with the requirement of 401 KAR 42:020.

(3) Payment from the petroleum storage tank account shall only be made for the costs of corrective action and shall not be made for costs to upgrade the facility.

Section 2. Eligibility Requirements for the Classes of Tanks Described in Section 1(1)(b) of this Administrative Regulation. An owner or operator of a facility of the class described in Section 1(1)(b) of this administrative regulation may be eligible for participation in the petroleum storage tank account if the following eligibility requirements are met:

(1)(a) A release of petroleum is detected at the facility after April 9, 1990; or

(b) Corrective action costs associated with a release are incurred after April 9, 1990;

(2) The release has been reported to the cabinet; and

(3) The owner or operator takes corrective action consistent with the requirements of 401 KAR 42:050, 42:060 and 42:070, or as directed by the cabinet.

Section 3. Eligibility Requirements for the Class of Tanks Described in Section 1(1)(c) of this Administrative Regulation. (1) An owner or operator of a facility of the class described in Section 1(1)(c) of this administrative regulation may be eligible for participation in the petroleum storage tank account if the following eligibility requirements are met:

(a)1. A release of petroleum is detected at the facility after April 9, 1990; or

2. Corrective action costs associated with a release are incurred after April 9, 1990;

(b) The release has been reported to the cabinet;

(c) The owner or operator takes corrective action consistent with the requirements of 401 KAR 42:050, 42:060 and 42:070, or as directed in writing by the cabinet; and

(d) The owner or operator has filed a notice of intent with the cabinet to permanently close the petroleum storage tanks at the facility or to make a change in service to comply with the requirements of 401 KAR 42:020.

(2) If the owner or operator elects to upgrade the facility, the petroleum storage tanks at the facility shall not be used to store a regulated substance until the upgrade is completed.

Section 4. Eligibility Requirements For the Class of Tanks Described in Section 1(1)(d) of this Administrative Regulation. An owner or operator of a facility currently in use which is not in compliance with the requirements of 401 KAR 42:011 through 401 KAR 42:070, and 401 KAR 42:090 may be eligible for participation in the petroleum storage tank account if the following eligibility requirements are met:

(1)(a) A release of petroleum is detected at the facility after April 9, 1990; or

(b) Corrective action costs associated with a release are incurred after April 9, 1990;

(2) The release has been reported to the cabinet;

(3) The owner or operator is taking the actions necessary to bring the facility into compliance with applicable administrative regulations of the cabinet; and

(4) The owner or operator takes corrective action consistent with the requirements of 401 KAR 42:060 and 42:070, or as directed in writing by the cabinet.

Section 5. Entry Level For Participation in the Petroleum Storage Tank Account. (1) The entry level for participation in the petroleum storage tank account for an owner or operator of five (5) or less tanks shall be established and maintained at \$1,000 per occurrence for taking corrective action.

(2) The entry level for participation in the petroleum storage tank account for an owner or operator of six (6) to ten (10) tanks shall be established and maintained at \$5,000 per occurrence for taking corrective action.

(3) The entry level for participation in the petroleum storage tank account for an owner or operator of eleven (11) or more tanks shall be established and maintained at \$25,000 per occurrence for taking corrective action.

(4) An owner or operator of a facility of the class described in Section 1(1)(b) and (c) of this administrative regulation is not required to pay an entry level for participation in the petroleum storage tank account if the facility is taken permanently out of service.

(5) The entry level payments contained in subsections (1), (2) and (3) of this section shall apply retroactively to any facility involved in corrective action that had not been issued a closure letter by the cabinet prior to July 14, 1994.

Section 6. Ineligibility. (1)(a) The fund [commission] may determine that an owner or operator is not eligible for participation in the petroleum storage tank account if the owner or operator willfully or recklessly violated the requirements of 401 KAR Chapter 42 at the facility for which a claim is made.

(b) If the fund [commission] makes a determination that a facility should be ineligible for participation in the petroleum storage tank account the fund [commission] shall disallow twenty (20) percent of the total allowable reimbursable remediation costs after the entry level is deducted if the owner or operator willfully or recklessly violated the requirements of 401 KAR Chapter 42.

(c) The owner or operator of a facility placed in the petroleum storage tank account [by the commission] pursuant to 415 KAR 1:060, Section 10(2) shall be denied eligibility for reimbursement as delineated in 415 KAR 1:060, Section 10(2)(a) and (b) [and (e)].

(2) An owner or operator with an approved application for assistance [agreement] may be determined ineligible to receive payment from the petroleum storage tank account if the owner or operator has submitted false or inaccurate information to the fund [commission], and shall be required to repay any monies falsely received.

(3) The fund [commission] shall have the right to recover the money paid to an owner or operator, or a contractor when:

(a) The amount was paid due to an error of the fund [commission]; or

(b) The amount was paid due to a mistake or inaccurate information in the claim submitted by the owner or operator or in an invoice submitted by a contractor; or

(c) A person has obtained payment [from the commission] by fraud or intentional misrepresentation.

Section 7. Permanent Closure of Tanks. Prior to receiving final payment from the petroleum storage tank account, an owner or operator of tanks being permanently closed shall demonstrate that each tank has been removed from the ground or filled with an inert solid material in conformance with the applicable administrative regulations of the cabinet, and that closure of the facility has been approved by the cabinet.

Section 8. Newly Discovered Tanks. (1) The discovery of unregistered tanks at a facility during the performance of corrective action due to a release from a registered tank shall not affect eligibility to participate in the petroleum storage tank account.

(2) The costs of corrective action for releases from newly discovered tanks found during the performance of corrective action for registered tanks shall be paid from the petroleum storage tank account if the other eligibility requirements of this administrative regulation are met.

(3) The number of newly discovered tanks shall not increase the entry level to the fund.

Section 9. Applicable Costs. (1) Costs of corrective action incurred prior to April 9, 1990 shall not be payable from the petroleum storage tank account.

(2) Costs of corrective action incurred at a facility on or after April 9, 1990 may be payable from the petroleum storage tank account if the eligibility requirements of this administrative regulation are met.

(3) Costs incurred at a facility for sight investigation or corrective action at the written direction of the cabinet may be payable from the petroleum storage tank account if contamination requiring corrective action is substantiated by analytical samples and the eligibility requirements of this administrative regulation are met.

LAURA M. DOUGLAS, Secretary

APPROVED BY AGENCY: July 3, 1996

FILED WITH LRC: July 3, 1996 at 10 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact: David B. Wicker

(1) Type and number of entities affected: The proposed amended regulation will affect approximately 15,000 facilities with underground storage tanks containing petroleum products.

(a) Direct and indirect costs or savings to those affected:

1. First year: The tank owners or operators are financially responsible for \$1000, \$5,000 or \$25,000 depending on the number of tanks, rather than \$1,000,000 of financial responsibility for clean up of leaks from underground petroleum storage tanks.

2. Continuing costs or savings: Tank owners or operators will continue to experience savings associated with payment of corrective action, and third party liability expenses.

3. Additional factors increasing or decreasing costs: (Note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paper requirements: Tank owners or operators will be required to complete, file, maintain and process claim forms.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The Office of the Petroleum Storage Tank Environmental Assurance Fund receives operating expenses from the Petroleum Storage Tank Environmental Assurance Fund. The FY 96 administrative budget was 1.3 million dollars.

2. Continuing costs or savings: The fund anticipates continuing costs associated with staff and general operation of the program.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs. The fund believes that it has adequate staff at this time to administer this program.

(b) Reporting and paperwork requirements: The fund will be required to collect, review, maintain, and process claim forms. The fund will provide eligible entities with state certification of financial assistance.

(3) Assessment of anticipated effect on state and local revenues: See fiscal note on local government.

(4) Assessment of alternative methods: reasons why alternatives were rejected: House Bill 167, amending KRS 224.60-115, required these amendments. A recent reorganization moving this agency to the Public Protection and Regulation Cabinet also required the amending of this section.

Alternative:

1. Less stringent: The fund cannot be less stringent than the statute allows.

2. More stringent: The fund cannot be more stringent than the statute allows.

3. Present proposal: The amended regulation contains the eligibility requirements for this fund account which provides for reimbursement to facilities that are not eligible for reimbursement from the Financial Responsibility Account due to noncompliance with the applicable state and federal regulations pertaining to underground

ADMINISTRATIVE REGISTER - 336

petroleum storage tanks or for facilities that are not required by 40 CFR 280 Subpart H to maintain responsibility for taking corrective action and compensating third party damages.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplication: There are no statutes, administrative regulations or government policies in conflict with the proposed amendments of this regulation.

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was report made to harmonize the proposed regulation with conflicting provisions: There is no conflict.

(6) Geographical and environmental impact:

(a) Geographical: The effect of this regulation will be equal though all geographic regions of the state, as all areas have petroleum storage tanks. More populated areas will most likely contain more tanks.

(b) Environmental: The effect of this regulation is to provide reimbursement up to one million dollars for corrective action and one million dollars for third party liability for releases from petroleum storage tanks. A positive effect on the environment is expected as tank owners who were not financially able to remediate their sites will have assistance.

(7) Source of revenue: The funds expended by the fund will come from the Petroleum Storage Tank Environmental Assurance Fee, pursuant to KRS 224.60-145.

(8) Benefits of the regulation: The amended regulation conforms to the executive order and avoids confusion in the regulated public. The amendments should speed the process of determining fund placement and obligation.

(9) Any additional information or comments: There is no additional information.

(10) Tiering statement: Was tiering applied: Yes. This regulation applies to all owners or operators of underground petroleum storage tank systems. The amended regulation is tiered dependant on the number of tanks owned or operated, the level of financial responsibility required, and the financial ability of the applicant.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 CFR 280 Subpart H requires the owner or operator of petroleum storage tanks to demonstrate financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by a petroleum release to the environment. 40 CFR 280.101 allows for a state fund to be created and administered which will fulfill the liability requirements.

2. State compliance standards. No standards in addition to the federal standards.

3. Minimum or uniform standards contained in the federal mandate. 40 CFR 280 subpart H details the standards and compliance dates.

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.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This regulation will affect a local government or a division of local government that owns or operates underground petroleum storage tanks.

3. State the aspect or service of local government to which this administrative regulation relates. Any service provided by the local government which involves the storage of motor fuel in underground storage tanks.

4. How does this administrative regulation affect the local government or any service it provides? Local governments, like any owner or operator of an underground petroleum storage tank that are out of compliance or exempt from the requirements of 40 CFR 280 Subpart H, may be eligible for reimbursement of corrective action cost from this fund account. Excepting the required entry level imposed on the local government, extensive savings will be realized by the local government.

STATEMENT OF EMERGENCY

415 KAR 1:080E

WHEREAS, the Petroleum Storage Tank Environmental Assurance Fund Commission was abolished and the Office of the Petroleum Storage Tank Environmental Assurance Fund was created in the Public Protection and Regulation Cabinet by Executive Orders 96-485 and 96-591; and

WHEREAS, the Office of the Petroleum Storage Tank Environmental Assurance Fund has the same authority as the commission but a new appointing authority, it is necessary to amend this administrative regulation to conform to the Executive Orders and ease confusion in the public's mind; and

WHEREAS, HB 167, amending the statutory authorization for the fund, was passed by the General Assembly during the 1996 Regular Session and the statute now requires this administrative regulation to be amended; and

WHEREAS, an ordinary administrative regulation would not be sufficient as the provisions of HB 167 become effective on July 15, 1996, and the delay in promulgating ordinary administrative regulations would cause the fund to have inconsistency between its statute and the administrative regulations. An ordinary administrative regulation would also be insufficient as the administrative regulations no longer reflect the correct appointing authority for the fund. Allowing these factors to continue would endanger the fund's ability to assist in the protection of human health and the environment.

IT IS HEREBY DECLARED, that an emergency exist and this administrative regulation may be filed, pursuant to KRS 13A.190, as an emergency administrative regulation, to expire in 170 days from the date of its publication. This administrative regulation will be replaced by an ordinary administrative regulation.

PAUL E. PATTON, Governor
LAURA M. DOUGLAS, Secretary
ROBERT E. NICKEL, Executive Director

PUBLIC PROTECTION AND REGULATION CABINET Office of the Petroleum Storage Tank Environmental Assurance Fund

415 KAR 1:080E. Claims procedures.

RELATES TO: KRS 224.60-120, 224.60-130, 224.60-140, 40 CFR Part 280

STATUTORY AUTHORITY: KRS 224.60-120, 224.60-130

EFFECTIVE: July 3, 1996

NECESSITY AND FUNCTION: KRS 224.60-130 requires the fund [~~commission~~] to establish the procedures necessary to administer the fund. This administrative regulation establishes the procedures to be followed by a petroleum storage tank owner or operator who is certified as eligible to participate in the financial responsibility account or is eligible to participate in the petroleum storage tank account to make a claim to the fund [~~commission~~] for reimbursement or payment

of the costs of corrective action.

Section 1. Application for Assistance [Agreement]. (1) An owner or operator eligible to participate in the financial responsibility account or the petroleum storage tank account shall apply for ~~an~~ assistance ~~[agreement]~~ with the fund [commission].

(2) Application shall be made on the Assistance Agreement form dated June 1996 [October 1992], hereby incorporated by reference. This form may be inspected and obtained and inspected at the Office of Petroleum Storage Tank Environmental Assurance Fund [Commission], 911 Leawood Drive, Frankfort, Kentucky 40601, (502) 564-5981. The business hours of the fund [commission] are from 8 a.m. to 4:30 p.m. eastern time Monday through Friday. The eligible owner or operator shall demonstrate:

(a) The eligibility requirements of 415 KAR 1:060 or 415 KAR 1:070 have been met; and

(b) A release requiring corrective action from an eligible facility has occurred and has been reported to the cabinet.

(3)(a) If the owner or operator meets the requirements of subsection (2) of this section the fund [commission] may approve the application for [enter into an] assistance [agreement] and establish the amount to be obligated by the appropriate account based upon the approved contract.

(b) ~~(a)~~ Reimbursement pursuant to an approved application for assistance [agreement] is restricted to documented costs approved by the secretary [commission].

(c) ~~(b)~~ The approved application for assistance [agreement] may be used as a guarantee of payment by the owner or operator to a contractor performing corrective action to the extent of the amount obligated and approved by the fund [commission].

(4) The fund [commission] may amend the approved application for assistance [agreement] upon application by the eligible owner or operator, upon a demonstration that the amendment is necessary to guarantee payment of eligible costs of corrective action and that the additional costs are necessary to comply with the administrative regulations of the cabinet. Payment shall not exceed the amount obligated by the fund [commission].

(5) Payment under the terms of the approved application for assistance [agreement] may be made when the eligible owner or operator submits a claim form, and a certification ~~[by the certified contractor]~~ that the costs were consistent with the bid and necessary to comply with the administrative regulations of the cabinet at 401 KAR Chapter 42. The requirement for a certified contractor shall be enforced after March 1, 1995 pursuant to 415 KAR 1:114 (1994).

(6) The staff may request additional information from the applicant to determine eligibility or fund placement. Failure by the applicant to provide the requested information shall cause the application to be denied.

Section 2. Submittal of Claim. (1) A petroleum storage tank owner or operator eligible for participation in the fund shall submit a claim for reimbursement or payment from the fund for the costs of corrective action on the claim form ~~[established by the commission]~~ dated June 1996 [October 1992], hereby incorporated by reference. This form may be inspected and obtained and inspected at the Office of the Petroleum Storage Tank Environmental Assurance Fund [Commission], 911 Leawood Drive, Frankfort, Kentucky 40601, (502) 564-5981. The business hours of the fund [commission] are from 8 a.m. to 4:30 p.m. eastern time Monday through Friday. The claim shall contain:

(a) Original invoices for all costs for which payment is sought;

(b) A copy of the contract executed by the owner or operator and the person contracting to perform the corrective action;

(c) Documentation that the release has been reported to the cabinet; and

(d) Laboratory analysis substantiating the necessity of the corrective action to be or having been performed except for initial

abatement and free product recovery as required by 401 KAR 42:060; and

(e) Documentation to establish that the owner or operator has complied with the administrative regulations or written directions of the cabinet.

(2) The [Commission] staff may require additional information to determine the eligibility of a cost for payment.

(3)(a) The [Commission] staff shall review all claims within ninety (90) days of submission, unless an extension of time is agreed to by the applicant;

(b) If the claim is determined to be deficient, the [commission] staff shall notify the applicant, by certified mail, of the deficiencies. Supplemental information to correct the deficiencies shall be submitted by the applicant and received by the fund [commission] within fifteen (15) days of the notice of receipt by the applicant. The fund [commission] may grant the applicant a thirty (30) day extension if the written request is received ~~[by the commission]~~ within fifteen (15) days of receipt of the notice of deficiency;

(c) If the applicant fails to correct the deficiency or to supply the additional information required by the [commission] staff, that portion of the claim shall be denied.

(4) The fund [commission] shall issue a determination pursuant to KRS 224.60-140(7) as to whether the costs submitted in the claim are eligible for payment.

(5) The claim may be submitted with the application for an assistance but will not be reviewed until the application has been approved [agreement].

(6) An owner or operator of a facility, covered by a fund obligation, shall submit to the fund [commission], a copy of all reports required by administrative regulation or requested, in writing, by the cabinet detailing the status of remedial action at the facility, including site check, site investigation, corrective action plans, quarterly reports, closure assessment reports, site classification documents and any correspondence with the cabinet addressing remedial measures or regulatory requirements pertaining to the facility.

(a) A copy of the documents listed in this subsection shall be included with a claim for reimbursement. If a claim for reimbursement was not filed for costs incurred by the owner or operator at the facility in a calendar quarter, a copy of the documents listed in this subsection shall be due no later than the last working day of the calendar quarter; and

(b) Failure to submit the documents ~~[to the commission]~~ in three (3) consecutive calendar quarters shall result in the disallowance of ten (10) percent of the remaining reimbursable costs and no additional obligation shall be made.

Section 3. Contracts. (1) ~~[Effective July 14, 1993]~~ An owner or operator contracting for the performance of corrective action, including permanent closure, change-in-service, release investigation, site check, or site investigation, shall obtain a contract from a ~~[one (1)]~~ certified contractor to be eligible for reimbursement or payment from the fund. The contract shall be obtained prior to commencing the activity except emergency response measures as directed by the cabinet. The contract shall set forth the unit costs, in compliance with the requirements of 415 KAR 1:110, for the performance of the activity, including, but not limited to, the costs of personnel, sampling, removal, treatment or disposal of contamination, and other necessary expenses to comply with the provisions of 401 KAR Chapter 42.

(2) A copy of the contract shall be submitted with an application for assistance agreement.

(3) An owner or operator who has submitted an application for assistance received prior to this administrative regulation shall be required to submit a copy of a contract setting forth the scope of the services to be performed detailing the unit costs to be eligible for continued reimbursement or payment from the fund.

Section 4. Signatures. (1) A claim form or an application for

assistance shall be signed by an eligible owner or operator as follows:

(a) For a corporation by a principle executive officer of at least the level of vice-president or the duly authorized representative or agent of the executive officer if the representative or agent is responsible for overall operation of the facility, or a person whom the board of directors designates by means of a corporate resolution;

(b) For a partnership, sole proprietorship or individual, by a general partner, the proprietor or individual respectively; or

(c) For a municipality, state or federal agency by either a principle, executive officer or ranking elected official.

(2) The authorized representative shall make the following certification on a claim form:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision, that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based upon my inquiry of those individuals immediately responsible for obtaining the information, I believe that this submitted information, is true, accurate, and complete. I certify that all costs are necessary and were actually incurred in the performance of corrective action. I further certify that, if not the owner or operator, I am authorized by the owner or operator as an agent to make this certification.

(3) The ~~[authorized representative of an]~~ owner or operator signing the certification shall submit documentary evidence as requested by the ~~[commission]~~ staff to substantiate the legality of the authorized representatives power of agency.

Section 5. Criteria For Approval of a Claim. (1) ~~The [Commission]~~ staff shall review all claims in the order in which they are received.

(2) The claims shall be reviewed to determine whether:

(a) The corrective action activities comply with the administrative regulations of the cabinet;

(b) The costs are necessary, reasonable and consistent with the requirements of 401 KAR Chapter 42;

(c) The claim form is properly completed and accurate, and all necessary information has been supplied.

(3) All claims from owners or operators for a facility eligible to participate in the petroleum storage tank account shall be ranked as provided in 415 KAR 1:090.

Section 6. Payment. (1) Claims shall be reviewed by the ~~[commission]~~ staff to determine eligibility for payment and compliance with the administrative regulations of the fund ~~[commission]~~.

(2) Requests for payment under an assistance agreement may be submitted thirty (30) days following initiation of corrective action. Subsequent requests for payment may be made at thirty (30) day intervals thereafter, ~~if the payment request exceeds \$1,000,~~ until completion of the authorized activities. ~~[Upon request, the executive director may submit interim payments to the commission at more frequent intervals or for amounts below the \$1,000 payment request threshold. Each request shall be reviewed by commission staff to determine eligibility for payment and compliance with the administrative regulations of the commission.]~~

(3) All payments shall be subject to approval of the executive director ~~[commission]~~.

Section 7. Payment Procedures. (1)(a) When an owner or operator has submitted a claim for payment by the fund ~~[commission]~~, payment shall be made by a check written to the eligible owner or operator, or to a designated third party ~~[designated in a restricted assistance agreement]~~.

(b) A request for an interim partial payment shall be accompanied by documentation required by Section 2(6) of this administrative regulation; or

(c) A final payment shall be accompanied by a closure letter issued by the cabinet; or

(d) A one (1) time payment in full shall be accompanied by a

closure letter issued by the cabinet.

(2) Prior to payment being issued, the eligible owner or operator shall submit documentary evidence verifying that an amount equal to the entry level has been paid by the owner or operator.

Section 8. Eligible Costs. Payment for costs of corrective action shall be limited to reasonable and necessary costs, expenses and other obligations incurred for corrective action or site investigation as the result of release into the environment from a petroleum storage tank.

(1) Eligible costs shall include:

(a) Testing to determine tightness of tanks and lines in response to a suspected release due to tank or delivery line failure if a release is detected or upon written direction of the cabinet;

(b) Removal, treatment, and disposal of petroleum products from petroleum storage tank systems necessary to perform site investigation or corrective action;

(c) Performance of site checks, and site investigation to assess the extent of contamination caused by release from a petroleum storage tank system in compliance with the administrative regulations of the cabinet or pursuant to the written directions of the cabinet;

(d) Preparation of corrective action plans;

(e) Necessary monitoring of the environment performed pursuant to the written direction of the cabinet or in compliance with the administrative regulations of the cabinet;

(f) Necessary laboratory services to analyze samples taken as part of the site check, site investigation, corrective action, or maintenance of the corrective action system where a release has occurred at the facility or at the written direction of the cabinet;

(g) Restoration or replacement of a private or public drinking water supply;

(h) Removal, treatment, and disposal of contaminated liquids and soils resulting from corrective action;

(i) The costs of materials purchased to perform the site check, site investigation or corrective action, including but not limited to, bailers, sample containers, and similar equipment;

(j) The costs of implementation of corrective action technologies such as soil venting or bioremediation, and groundwater treatment systems, if accepted by the cabinet for the facility;

(k) Costs for replacing blacktop or concrete if removal was necessary to perform the corrective action;

(l) Attorney fees integral to the performance of site corrective action, such as preparation of off-site access agreements; and

(m) Other costs requested by the applicant and approved by the fund ~~[commission]~~, demonstrated to be necessary to the performance of a site check, site investigation or corrective action, or maintenance of the corrective action system.

(n) Purchases of capital equipment in excess of \$1,000 if the lease or rental for the equipment will exceed the purchase price. Prior approval for purchases of capital equipment in excess of \$1,000 shall be obtained from the executive director ~~[commission or their appointed delegate]~~.

(2) The following costs shall not be eligible for payment or reimbursement from the fund:

(a) Replacement, repair, maintenance, or retrofitting of tanks or piping;

(b) New or replacement fill material for tanks and piping;

(c) Equipment such as drill rigs and earth moving equipment;

(d) Loss of business, income or profits;

(e) Attorneys fees related to:

1. Any judicial or administrative litigation;

2. Consultation on regulatory regulations;

3. Consultation on ~~[Petroleum Storage Tank Environmental Assurance]~~ fund administrative regulations;

4. Preparation or submittal of commission documentation; and

5. Any other services determined by the fund ~~[commission]~~ not to be integral to the performance of corrective action.

- (f) Decreased property values for the facility;
- (g) Facility improvements;
- (h) Payment of the owner or operator's personnel for overtime or staff time in planning or implementing a site check, site investigation or corrective action plan;
- (i) Aesthetic improvements to the facility;
- (j) Interest on overdue accounts and loans;
- (k) Costs covered by insurance payable to the owner or operator;
- (l) Contractor surcharges implemented because the owner or operator failed to act in a timely fashion;
- (m) Any work performed that is not in compliance with safety codes;
- (n) Any costs associated with releases from aboveground tanks or aboveground piping;
- (o) Contractor markup expenses for in-stock materials;
- (p) Contractor markup expenses for personnel costs;
- (q) Rush laboratory fees unless directed by the cabinet;
- (r) Costs and cost recovery for governmental emergency services;
- (s) Preparation and implementation of corrective action plans when a written notice of ~~closure~~ ~~termination~~ is issued by the cabinet;
- (t) Payment from the fund shall only be made for the costs of corrective action required by the cabinet's administrative regulations or at written direction of the cabinet and shall not be made for costs to upgrade the facility;
- (u) Cost of any party or parties employed to act as a surrogate or stand-in for the owner or operator of the facility.

Section 9. Delegation to Executive Director. The secretary ~~[commissioner]~~ may delegate responsibility for the approval of a claim, an application for assistance ~~[agreement]~~, or the payment of a claim to the executive director.

Section 10. Subrogation. Prior to making payment of a claim, the fund ~~[commissioner]~~ shall acquire by subrogation the rights of the person receiving payment to recover the amounts paid by the fund ~~[commissioner]~~ for the performance of corrective action from the person responsible or liable for the release.

LAURA M. DOUGLAS, Secretary

APPROVED BY AGENCY: July 3, 1996

FILED WITH LRC: July 3, 1996 at 10 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact: David B. Wicker

(1) Type and number of entities affected: The proposed regulation will affect approximately 15,000 facilities with underground storage tanks containing petroleum products.

(a) Direct and indirect costs or savings to those affected:

1. First year: The tank owners or operators are financially responsible for \$1000, \$5,000 or \$25,000 depending on the number of tanks, rather than \$1,000,000 of financial responsibility for clean up of leaks from underground petroleum storage tanks.

2. Continuing costs or savings: Tank owners or operators will continue to experience savings associated with payment of corrective action, and third party liability expenses.

3. Additional factors increasing or decreasing costs: (Note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paper requirements: Tank owners or operators will be required to complete, file, maintain and process claim forms.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The Office of the Petroleum Storage Tank Environmental Assurance Fund receives operating expenses from the Petroleum Storage Tank Environmental Assurance Fund. The FY 96 administrative budget was 1.3 million dollars.

2. Continuing costs or savings: The fund anticipates continuing costs associated with staff and general operation of the program.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs. The fund believes that it has adequate staff at this time to administer this program.

(b) Reporting and paperwork requirements: The fund will be required to collect, review, maintain, and process claim forms. The fund will provide eligible entities with state certification of financial assistance.

(3) Assessment of anticipated effect on state and local revenues: See fiscal note on local government.

(4) Assessment of alternative methods: reasons why alternatives were rejected: House Bill 167, amending KRS 224.60-115, required these amendments. A recent reorganization moving this agency to the Public Protection and Regulation Cabinet also required the amending of this section.

Alternative:

1. Less stringent: The fund cannot be less stringent than the statute allows.

2. More stringent: The fund cannot be more stringent than the statute allows.

3. Present proposal: The amended regulation contains the claims procedures to be followed by owners or operators eligible to participate in the fund.

(5) Geographical and environmental impact:

(a) Geographical: The effect of this regulation will be equal though all geographic regions of the state, as all areas have petroleum storage tanks. More populated areas will most likely contain more tanks.

(b) Environmental: The effect of this regulation is to provide reimbursement up to one million dollars for corrective action and one million dollars for third party liability for releases from petroleum storage tanks. A positive effect on the environment is expected as tank owners who were not financially able to remediate their sites will have assistance.

(6) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplication: There is no conflict with statute, administrative regulations, or government policies in conflict with the amended regulation.

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was report made to harmonize the proposed regulation with conflicting provisions: There is no conflict.

(7) Source of revenue: The funds expended by the fund will come from the Petroleum Storage Tank Environmental Assurance Fee, pursuant to KRS 224.60-145.

(8) Benefits of the regulation: The amended regulation conforms to the executive order and avoids confusion in the regulated public. The amendments should speed the process of determining fund placement and obligation.

(9) Any additional information or comments: There is no additional information.

(10) Tiering statement: Was tiering applied? Yes. This regulation applies to all owners or operators of underground petroleum storage tank systems. The amended regulation is tiered dependant on the number of tanks owned or operated, the level of financial responsibility required, and the financial ability of the applicant.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 CFR 280 Subpart H requires the owner or operator of petroleum storage tanks to demonstrate financial ability to caused by a petroleum release to the environment.

2. State compliance standards. There are no standards in addition to the federal standards.

3. Minimum or uniform standards contained in the federal

ADMINISTRATIVE REGISTER - 340

mandate. 40 CFR 280 subpart details the standards and compliance dates.

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.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This regulation will affect a local government or a division of local government that owns or operates underground petroleum storage tanks.

3. State the aspect or service of local government to which this administrative regulation relates. Any service provided by the local government which involves the storage of motor fuel in underground storage tanks.

4. How does this administrative regulation affect the local government or any service it provides? This regulation will impose no different claim procedure from that imposed on a nongovernmental entity.

STATEMENT OF EMERGENCY

415 KAR 1:090E

WHEREAS, the Petroleum Storage Tank Environmental Assurance Fund Commission was abolished and the Office of the Petroleum Storage Tank Environmental Assurance Fund was created in the Public Protection and Regulation Cabinet by Executive Orders 96-485 and 96-591; and

WHEREAS, the Office of the Petroleum Storage Tank Environmental Assurance Fund has the same authority as the commission but a new appointing authority, it is necessary to amend this administrative regulation to conform to the Executive Orders and ease confusion in the public's mind; and

WHEREAS, HB 167, amending the statutory authorization for the fund, was passed by the General Assembly during the 1996 Regular Session and the statute now requires this administrative regulation to be amended; and

WHEREAS, an ordinary administrative regulation would not be sufficient as the provisions of HB 167 become effective on July 15, 1996, and the delay in promulgating ordinary administrative regulations would cause the fund to have inconsistency between its statute and the administrative regulations. An ordinary administrative regulation would also be insufficient as the administrative regulations no longer reflect the correct appointing authority for the fund. Allowing these factors to continue would endanger the fund's ability to assist in the protection of human health and the environment.

IT IS HEREBY DECLARED, that an emergency exist and this administrative regulation may be filed, pursuant to KRS 13A.190, as an emergency administrative regulation, to expire in 170 days from the date of its publication. This administrative regulation will be replaced by an ordinary administrative regulation.

PAUL E. PATTON, Governor
LAURA M. DOUGLAS, Secretary
ROBERT E. NICKEL, Executive Director

PUBLIC PROTECTION AND REGULATION CABINET Office of the Petroleum Storage Tank Environmental Assurance Fund

415 KAR 1:090E. Ranking system.

RELATES TO: KRS 224.60-120, 224.60-130, 224.60-140, 40 CFR Part 280

STATUTORY AUTHORITY: KRS 224.60-120, 224.60-130

EFFECTIVE: July 3, 1996

NECESSITY AND FUNCTION: The amendments to KRS 224.60-130 enacted by the 1992 Kentucky General Assembly require the fund ~~[commission]~~ to establish a ranking system to be used for the distribution of amounts from the petroleum storage tank account for the purpose of corrective action. In promulgating the administrative regulations the fund ~~[commission]~~ shall consider the financial ability of the petroleum storage tank owner or operator to perform corrective action and the extent of damage caused by release into the environment from a petroleum storage tank. This administrative regulation establishes the criteria for ranking sites according to the extent of damage to the environment and the financial ability of the petroleum storage tank owner or operator to perform corrective action.

Section 1. Applicability. An owner or operator of petroleum storage tanks eligible to participate in the petroleum storage tank account 415 KAR 1:070 shall not be classified pursuant to this administrative regulation for reimbursement if:

(1) The owner or operator, an individual owning or operating ~~[with an interest in only one (1) facility, or has]~~ five (5) or fewer tanks, whose average adjusted gross income for the five (5) year period, prior to application for assistance from the fund, is less than \$50,000; or

(2) The owner or operator of tanks abandoned or closed prior to December 22, 1988 and including facilities under the direction of the implementing agency pursuant to 401 KAR 42:080 at the time the release is detected.

Section 2. Priority for Environmental Damage. (1) The ranking of a facility to determine priority for the distribution of amounts from the petroleum storage tank account based upon the extent of damage caused or threatened by a release of petroleum into the environment from a petroleum storage tank at the facility shall be based upon the Petroleum Underground Storage Tank System Facility Classification Outline (1994) incorporated by reference pursuant to 401 KAR 42:080 and the administrative regulations adopted by the cabinet establishing standards for corrective action for release into the environment from a petroleum storage tank.

(2) Priority for distribution of amounts from the petroleum storage tank account due to the extent of environmental harm shall be given to those facilities:

(a) First, where the release of petroleum to the environment has contaminated a domestic use well, domestic use spring, domestic use well head protection area, as defined in 401 KAR 42:080, a drinking water supply, or a utility conduit in amounts in excess of a maximum contaminant level for petroleum constituents, or a statistically significant increase over background for petroleum constituents which do not have a maximum contaminant level, or the facility has been determined to be the source of fumes in an occupied building;

(b) Second, where the facility has encountered groundwater and is required to meet the levels specified in Groundwater Table 2 of the Petroleum Underground Storage Tank System Facility Classification Outline, as established in 401 KAR 42:080, for releases of petroleum which pose a direct threat of contamination to a domestic use well, domestic use spring, domestic use well head protection area, a drinking water supply or a utility conduit; or

(c) Third, where areas outside the facility's property boundary have been impacted by a release, but has not contaminated a

domestic use well, spring or well head protection area, does not pose a threat to a domestic use well, domestic use spring, domestic use well head protection area, drinking water supply, or a utility conduit and has not been determined to be a source of fumes in occupied buildings.

(3) The owner or operator of the facility shall submit information to the ~~fund [commission]~~ to establish that the release from the facility is within a category established in subsection (2) of this section. The information shall be submitted on the classification guide contained in the Petroleum Underground Storage Tank System Facility Classification Outline, (January 1994), as established in 401 KAR 42:080 or its superseding administrative regulation for BTEX contamination ~~and on the Environmental Harm Ranking Form, (October 1992), for other contamination].~~

Section 3. Priority for Financial Ability. (1) To determine the financial ability of an owner or operator to perform corrective action, the ~~fund [commission]~~ shall consider the following factors:

(a) Whether the facility is owned by a public or private person;

(b) Whether the owner or operator liable for the cost of corrective action is an individual. Only individuals who own or operate a single facility shall receive consideration as to financial ability. Each individual shall certify that they do not have an ownership or operating interest in another facility;

(c) Whether the owner or operator is a partnership. Only a partnership that is the owner or operator of a single facility shall receive consideration as to financial ability. Each partner shall certify that they do not have an ownership or operating interest in another facility; and

(d) Whether the owner or operator of the facility is a corporation which is a subsidiary, affiliate or parent of another corporation. Only a closely held corporation which is not a subsidiary, affiliate or parent corporation and is the owner or operator of a single facility shall receive consideration as to financial ability. The officers, directors and shareholders of the corporation shall certify that they not have an ownership or operating interest in another facility.

(2) An individual or partnership with an ownership or operating interest in more than one (1) facility may receive consideration as to financial ability if it is demonstrated that the individual or partnership has no sources of income other than revenue from the ownership or operation of the facilities and is unable to pay the entry level for participation in the petroleum storage tank account.

(3) A corporation that is not a subsidiary, affiliate, or parent of another corporation that is the owner of more than one (1) facility may receive consideration as to financial ability if the profits of the corporation are the sole source of revenue of the shareholders of the corporation, and it is demonstrated that the corporation has insufficient revenue to pay the entry level for participation in the petroleum storage tank account.

Section 4. Demonstration of Financial Ability. (1) To demonstrate financial ability, the individual, partnership or corporation shall submit ~~[to the commission]~~ the last five (5) years of income tax returns for the person, partnership or corporation.

(2) Priority for reimbursement from the petroleum storage tank account on the basis of financial ability shall be given to:

(a) First, an individual partnership or corporation whose average adjusted gross income for the five (5) year period is less than \$50,000, a public entity with an annual revenue and income of less than \$100,000, or an entity registered and recognized by the federal government as a tax exempt nonprofit organization;

(b) Second, an individual, partnership, or a corporation whose average adjusted gross income for the five (5) year period is less than \$100,000 but more than \$50,000 or a public entity with annual revenue or income of less than \$250,000 but more than \$100,000;

(c) Third, an individual, partnership or a corporation whose average net income for the five (5) year period is more than \$100,000

or a public entity with an annual revenue and income of more than \$250,000.

(3) Partnerships who are applicants for consideration as to financial ability shall submit the name and Social Security number of all partners.

(4) Subchapter S or closely held C Corporations who are applicants for consideration as to financial ability shall submit the name and Social Security number of all officers, directors and shareholders in the corporation.

(5) A public entity who is an applicant for consideration as to financial ability shall submit its annual budget for the last five (5) years to demonstrate financial ability.

(6) The ~~fund [commission]~~ may require that additional information be submitted to determine the financial ability of an applicant.

Section 5. The ~~fund [commission]~~ shall have the right to recover the amounts paid to persons receiving consideration for financial ability if the information submitted to the ~~fund [commission]~~ is inaccurate or misrepresented.

Section 6. Priority For Payment or Reimbursement From the Petroleum Storage Tank Account. Reimbursement or payment of the costs of corrective action from the petroleum storage tank account shall be paid in order of priority according to the following:

(1) An owner or operator of a facility that meets the conditions of Section 1(1) of this administrative regulation shall have their claims paid first;

(2) An owner or operator of a facility that meets the conditions of Section 1(2) of this administrative regulation shall have their claims paid second;

(3) An owner or operator of a facility that meets the conditions of Section 2(2)(a) of this administrative regulation and whose financial ability is in the category listed in Section 4(2)(a) of this administrative regulation shall have their claims paid third;

(4) An owner or operator of a facility that meets the conditions of Section 2(2)(b) of this administrative regulation and whose financial ability is in the category listed in Section 4(2)(a) of this administrative regulation shall have their claims paid fourth;

(5) An owner or operator of a facility that meets the conditions of Section 2(2)(c) of this administrative regulation and whose financial ability is in the category listed in Section 4(2)(a) of this administrative regulation shall have their claims paid fifth;

(6) An owner or operator of a facility that meets the conditions of Section 2(2)(a) of this administrative regulation and whose financial ability is in the category listed in Section 4(2)(b) of this administrative regulation shall have their claims paid sixth;

(7) An owner or operator of a facility that meets the conditions of Section 2(2)(b) of this administrative regulation and whose financial ability is in the category listed in Section 4(2)(b) of this administrative regulation shall have their claims paid seventh;

(8) An owner or operator of facility that meets the conditions of Section 2(2)(c) of this administrative regulation and whose financial ability is in the category listed in Section 4(2)(b) of this administrative regulation shall have their claims paid eighth;

(9) An owner or operator of a facility that meets the conditions of Section 2(2)(a) of this administrative regulation and whose financial ability is in the category listed in Section 4(2)(c) of this administrative regulation shall have their claims paid ninth;

(10) An owner or operator of a facility that meets the conditions of Section 2(2)(b) of this administrative regulation and whose financial ability is in the category listed in Section 4(2)(c) of this administrative regulation shall have their claims paid tenth;

(11) An owner or operator of a facility that meets the conditions of Section 2(2)(c) of this administrative regulation and whose financial ability is in the category listed in Section 4(2)(c) of this administrative regulation shall have their claims paid 11th;

(12) Claims in categories (1) through (11) of this section shall be

paid in order of their category ranking. Within each category the claims shall be paid by the date of receipt of the claim;

(13)(a) All other claims of nongovernment entities for reimbursement or payment of the costs of corrective action from the petroleum storage tank account shall be paid based upon financial ability determined as provided in Section 4 of this administrative regulation, and in order of the date of receipt of the claim;

(b) An individual, partnership or corporation with an average net income more than \$100,000 is not required to submit income tax returns and shall be paid after the claims addressed by subsections (1) through (13)(a) of this section in order of receipt of the claim;

(14)(a) Claims from organizational units of the executive branch of the Commonwealth of Kentucky, as set forth in KRS Chapter 12 shall have their claims paid last in order of the date of receipt of the claim.

(b) A claim from a county, a municipality, or an administrative body that is not an organizational unit of the executive branch, shall be paid based upon financial ability as determined in Section 4(2) of this administrative regulation, in order of receipt of the claim, and shall be ranked in the same manner as a claim from a private person.

Section 7. Payment of Certain Classes of Claims. The ~~fund~~ ~~(commission)~~ may determine that only specified classes of claims as described in Section 6 of this administrative regulation will be paid.

LAURA M. DOUGLAS, Secretary

APPROVED BY AGENCY: July 3, 1996

FILED WITH LRC: July 3, 1996 at 10 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact: David B. Wicker

(1) Type and number of entities affected: The proposed regulation will affect approximately 15,000 facilities with underground storage tanks containing petroleum products.

(a) Direct and indirect costs or savings to those affected:

1. First year: The tank owners or operators are financially responsible for \$1000, \$5,000 or \$25,000 depending on the number of tanks, rather than \$1,000,000 of financial responsibility for clean up of leaks from underground petroleum storage tanks.

2. Continuing costs or savings: Tank owners or operators will continue to experience savings associated with payment of corrective action, and third party liability expenses.

3. Additional factors increasing or decreasing costs: (Note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paper requirements: Tank owners or operators will be required to complete, file, maintain and process claim forms.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The Petroleum Storage Tank Environmental Assurance Fund receives operating expenses from the Petroleum Storage Tank Environmental Assurance Fund. The FY 96 administrative budget was 1.3 million dollars.

2. Continuing costs or savings: The fund anticipates continuing costs associated with staff and general operation of the program.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs. The fund believes that it has adequate staff at this time to administer this program.

(b) Reporting and paperwork requirements: The fund will be required to collect, review, maintain, and process claim forms. The fund will provide eligible entities with state certification of financial assistance.

(3) Assessment of anticipated effect on state and local revenues: See fiscal note on local government.

(4) Assessment of alternative methods: reasons why alternatives were rejected: House Bill 167, amending KRS 224.60-115, required

these amendments. A recent reorganization moving this agency to the Public Protection and Regulation Cabinet also required the amending of this section.

Alternative:

1. Less stringent: The fund cannot be less stringent than the statute allows.

2. More stringent: The fund cannot be more stringent than the statute allows.

3. Present proposal: The amended regulation delineate the method by which sites will be ranked and the order in which claims will be paid.

(5) Geographical and environmental impact:

(a) Geographical: The effect of this regulation will be equal though all geographic regions of the state, as all areas have petroleum storage tanks. More populated area will most likely contain more tanks.

(b) Environmental: The effect of this regulation is to provide reimbursement up to one million dollars for corrective action and one million dollars for third party liability for releases from petroleum storage tanks. A positive effect on the environment is expected as tank owners who were not financially able to remediate their sites will have assistance.

(6) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplication: There is no conflict with statute, administrative regulations, or government policies in conflict with the amended regulation.

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was report made to harmonize the proposed regulation with conflicting provisions: There is no conflict.

(7) Source of revenue: The funds expended by the fund will come from the Petroleum Storage Tank Environmental Assurance Fee, pursuant to KRS 224.60-145.

(8) Benefits of the regulation: The amended regulation conforms to the executive order and avoids confusion in the regulated public. The amendments should speed the process of determining fund placement and obligation.

(9) Any additional information or comments: There is no additional information.

(10) Tiering statement: Was tiering applied? Yes. This regulation applies to all owners or operators of underground petroleum storage tank systems. The amended regulation is tiered dependant on the number of tanks owned or operated, the level of financial responsibility required, and the financial ability of the applicant.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 CFR 280 Subpart H requires the owner or operator of petroleum storage tanks to demonstrate financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by a petroleum release to the environment. 40 CFR 280.101 allows for a state fund to be created and administered which will fulfill the liability requirements.

2. State compliance standards. No standards in addition to the federal standards.

3. Minimum or uniform standards contained in the federal mandate. 40 CFR 280 subpart H details the standards and compliance dates.

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.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes
2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This regulation will affect a local government or a division of local government that owns or operates underground petroleum storage tanks.
3. State the aspect or service of local government to which this administrative regulation relates. Any service provided by the local government which involves the storage of motor fuel in underground storage tanks.
4. How does this administrative regulation affect the local government or any service it provides? This regulation will delineate the priority of reimbursement of local government from the Petroleum Storage Tank Account.

STATEMENT OF EMERGENCY
415 KAR 1:100E

WHEREAS, the Petroleum Storage Tank Environmental Assurance Fund Commission was abolished and the Office of the Petroleum Storage Tank Environmental Assurance Fund was created in the Public Protection and Regulation Cabinet by Executive Orders 96-485 and 96-591; and

WHEREAS, the Office of the Petroleum Storage Tank Environmental Assurance Fund has the same authority as the commission but a new appointing authority, it is necessary to amend this administrative regulation to conform to the Executive Orders and ease confusion in the public's mind; and

WHEREAS, HB 167, amending the statutory authorization for the fund, was passed by the General Assembly during the 1996 Regular Session and the statute now requires this administrative regulation to be amended; and

WHEREAS, an ordinary administrative regulation would not be sufficient as the provisions of HB 167 become effective on July 15, 1996, and the delay in promulgating ordinary administrative regulations would cause the fund to have inconsistency between its statute and the administrative regulations. An ordinary administrative regulation would also be insufficient as the administrative regulations no longer reflect the correct appointing authority for the fund. Allowing these factors to continue would endanger the fund's ability to assist in the protection of human health and the environment.

IT IS HEREBY DECLARED, that an emergency exist and this administrative regulation may be filed, pursuant to KRS 13A.190, as an emergency administrative regulation, to expire in 170 days from the date of its publication. This administrative regulation will be replaced by an ordinary administrative regulation.

PAUL E. PATTON, Governor
LAURA M. DOUGLAS, Secretary
ROBERT E. NICKEL, Executive Director

PUBLIC PROTECTION AND REGULATION CABINET
Office of the Petroleum Storage Tank
Environmental Assurance Fund

415 KAR 1:100E. Third party claims.

RELATES TO: KRS 224.60-120, 224.60-130, 224.60-140, 40 CFR Part 280

STATUTORY AUTHORITY: KRS 224.60-120, 224.60-130

EFFECTIVE: July 3, 1996

NECESSITY AND FUNCTION: The 1992 Kentucky General

Assembly amended KRS 224.60-130 to direct the fund [commission] to establish a financial responsibility account within the fund which may be used by petroleum storage tank owners and operators to receive reimbursement or payment for third-party claims. This administrative regulation establishes the procedure for eligible petroleum storage tank owners or operators to receive reimbursement or payment for third-party claims.

Section 1. Applicability. Owners or operators are eligible to receive reimbursement or payment for third-party claims if they have been issued a certificate of eligibility pursuant to the provisions of 415 KAR 1:060 (1994) and have maintained compliance with the eligibility requirements of 415 KAR 1:060. This administrative regulation applies only to third-party claims, including claims for bodily injury and ~~and~~ property damage ~~and damage to natural resources~~, which are asserted against an owner or operator as a result of release into the environment from a petroleum storage tank at a facility eligible for participation in the financial responsibility account. Claims for property damage shall only be paid to the extent that the damages are not addressed by the performance of corrective action. Third-party claims shall be paid only to the extent specified in 401 KAR 42:090.

Section 2. Notice to the Fund [Commission]. (1) To assert a claim for payment or reimbursement of a third-party claim, an eligible owner or operator shall notify the fund [commission] of the assertion of the third-party claim within twenty-one (21) days of the filing of an action against the owner or operator by the third party, or the receipt of an assertion of a claim in writing by a third party.

(2) Third-party claims shall only be paid on the basis of a final and enforceable judgment, or pursuant to an agreement reviewed and approved by the secretary [commission].

(3) Settlement of claims.

(a) No settlement of a third-party claim shall be made by an owner or operator without the prior approval of the fund [commission]; and

(b) The fund shall not pay a final and enforceable third-party judgment or reimburse an owner or operator for payment of the judgment in any amount exceeding a settlement offer rejected by the owner or operator which was not submitted to the fund [commission] for consideration or after approval by the fund [commission].

Section 3. Payment of Claims. (1) Payment of claims shall be limited to actual damages caused by the release of petroleum.

(2) Payment shall be made to the third party after approval of payment by the secretary [commission].

(3) The amount of payment of all third-party claims caused by a release shall not exceed \$1,000,000.

(4) The fund [commission] shall acquire by subrogation the right of the third party to recover the amount of damages paid to the third party from the person responsible or liable for the release.

LAURA M. DOUGLAS, Secretary
APPROVED BY AGENCY: July 3, 1996
FILED WITH LRC: July 3, 1996 at 10 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact: David B. Wicker

(1) Type and number of entities affected: The proposed regulation will affect approximately 15,000 facilities with underground storage tanks containing petroleum products.

(a) Direct and indirect costs or savings to those affected:

1. First year: The tank owners or operators are financially responsible for \$1000, \$5,000 or \$25,000 depending on the number of tanks, rather than \$1,000,000 of financial responsibility for clean up of leaks from underground petroleum storage tanks.

2. Continuing costs or savings: Tank owners or operators will

continue to experience savings associated with payment of corrective action, and third party liability expenses.

3. Additional factors increasing or decreasing costs: (Note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paper requirements: Tank owners or operators will be required to complete, file, maintain and process claim forms.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The Office of the Petroleum Storage Tank Environmental Assurance Fund receives operating expenses from the Petroleum Storage Tank Environmental Assurance Fund. The FY 96 administrative budget was 1.3 million dollars.

2. Continuing costs or savings: The fund anticipates continuing costs associated with staff and general operation of the program.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs. The fund believes that it has adequate staff at this time to administer this program.

(b) Reporting and paperwork requirements: The fund will be required to collect, review, maintain, and process claim forms. The fund will provide eligible entities with state certification of financial assistance.

(3) Assessment of anticipated effect on state and local revenues: See fiscal note on local government.

(4) Assessment of alternative methods: reasons why alternatives were rejected: A recent reorganization moving this agency to the Public Protection and Regulation Cabinet required the amendment of this regulation.

Alternative:

1. Less stringent: The amendments do not alter the intent or function of the regulation.

2. More stringent: The amendments do not alter the intent or function of the regulation.

3. Present proposal: The amendments represent the change in cabinet and corresponding name change.

(5) Geographical and environmental impact:

(a) Geographical: The effect of this regulation will be equal though all geographic regions of the state, as all areas have petroleum storage tanks. More populated areas will most likely contain more tanks.

(b) Environmental: The effect of this regulation is to provide reimbursement up to one million dollars for corrective action and one million dollars for third party liability for releases from petroleum storage tanks. A positive effect on the environment is expected as tank owners who were not financially able to remediate their sites will have assistance.

(6) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplication: There is no conflict with statute, administrative regulations, or government policies in conflict with the amended regulation.

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was report made to harmonize the proposed regulation with conflicting provisions: There is no conflict.

(7) Source of revenue: The funds expended by the fund will come from the Petroleum Storage Tank Environmental Assurance Fee, pursuant to KRS 224.60-145.

(8) Benefits of the regulation: The amended regulation conforms to the executive order and avoids confusion in the regulated public.

(9) Any additional information or comments: There is no additional information.

(10) Tiering statement: Was tiering applied? No. This regulation applies in the same manner to all owners and operators in the Financial Responsibility Account that have third party actions brought against them.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 CFR 280 Subpart H requires the owner or operator of petroleum storage tanks to demonstrate financial ability to caused by a petroleum release to the environment.

2. State compliance standards. No standards in addition to the federal standards.

3. Minimum or uniform standards contained in the federal mandate. 40 CFR 280 subpart details the standards and compliance dates.

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.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This regulation will affect a local government or a division of local government that owns or operates underground petroleum storage tanks.

3. State the aspect or service of local government to which this administrative regulation relates. Any service that involves the storing of motor fuels in petroleum storage tanks will be affected by this regulation.

4. How does this administrative regulation affect the local government or any service it provides? This regulation will address local government third party damages in the same manner as nongovernmental entities.

STATEMENT OF EMERGENCY

415 KAR 1:110E

WHEREAS, the Petroleum Storage Tank Environmental Assurance Fund Commission was abolished and the Office of the Petroleum Storage Tank Environmental Assurance Fund was created in the Public Protection and Regulation Cabinet by Executive Orders 96-485 and 96-591; and

WHEREAS, the Office of the Petroleum Storage Tank Environmental Assurance Fund has the same authority as the commission but a new appointing authority, it is necessary to amend this administrative regulation to conform to the Executive Orders and ease confusion in the public's mind; and

WHEREAS, HB 167, amending the statutory authorization for the fund, was passed by the General Assembly during the 1996 Regular Session and the statute now requires this administrative regulation to be amended; and

WHEREAS, an ordinary administrative regulation would not be sufficient as the provisions of HB 167 become effective on July 15, 1996, and the delay in promulgating ordinary administrative regulations would cause the fund to have inconsistency between its statute and the administrative regulations. An ordinary administrative regulation would also be insufficient as the administrative regulations no longer reflect the correct appointing authority for the fund. Allowing these factors to continue would endanger the fund's ability to assist in the protection of human health and the environment.

IT IS HEREBY DECLARED, that an emergency exist and this administrative regulation may be filed, pursuant to KRS 13A.190, as an emergency administrative regulation, to expire in 170 days from the date of its publication. This administrative regulation will be

ADMINISTRATIVE REGISTER - 345

replaced by an ordinary administrative regulation.

PAUL E. PATTON, Governor
LAURA M. DOUGLAS, Secretary
ROBERT E. NICKEL, Executive Director

PUBLIC PROTECTION AND REGULATION CABINET Office of the Petroleum Storage Tank Environmental Assurance Fund

415 KAR 1:110E. Contractor costs.

RELATES TO: KRS 224.60-120, 224.60-130, 224.60-140, 40 CFR Part 280

STATUTORY AUTHORITY: KRS 224.60-120, 224.60-130

EFFECTIVE: July 3, 1996

NECESSITY AND FUNCTION: KRS 224.60-130 requires the fund ~~[commission]~~ to establish a range of amounts to be paid from the fund for the cost of corrective action, and to establish criteria to be met by persons who contract to perform corrective action to be eligible for reimbursement from the fund. This administrative regulation establishes the range of amounts that will be paid for the performance of particular aspects of corrective action and the manner of providing bids by contractors to determine eligibility for reimbursement from the fund.

Section 1. Range of Amounts to be Paid by the Fund for the Cost of Performing Corrective Action. (1) The fund ~~[commission]~~ shall not pay more than the following amounts for the performance of corrective action by certified contractors:

(a) Pavement ~~[removal and]~~ replacement ~~[not including labor costs]~~:

Asphalt

Removal

includes the cost of loading:

- 1) asphalt pad, for each 3 inches of thickness, per square yard \$1.30 to \$1.60
- 2) asphalt curbing, per linear foot \$1.25 to \$1.55

Replacement

- 1) asphalt pad, for each 4 inches of thickness, per square yard \$2.70 to \$3.30
- 2) asphalt curb and gutter, per linear foot \$3.50 to \$4.40

Concrete

Removal - includes the cost of loading:

- 1) concrete pad, per square yard
 - 4 inches thick \$1.70 to \$2
 - 6 inches thick \$3.25 to \$3.95
 - 9 inches thick \$8.20 to \$10
 - 10 inches or more thick \$26 to \$31with rebar add 15%
- 2) concrete curbing, per linear foot \$4.50 to \$5.50

Replacement - not including labor cost

- 1) concrete, 4 inches thick, per square foot \$2 to \$2.80with rebar add 15%
- 2) for each additional inch, per square foot \$0.20 to \$0.30

Transportation of asphalt or concrete to disposal facility, per cubic yard, for each 20 miles - mileage must be documented; if closest disposal facility not used, reasonableness of cost must be justified \$6.60 to \$8

Disposal fee, per ton ~~[cubic yard]~~, not to

exceed actual cost per unit \$12 to \$25

(b) Excavation and disposal of contaminated soil, not including labor costs:

Excavation and stockpiling or loading directly to trucks, per ton ~~[cubic yard]~~ \$2.45 to \$3
~~[\$3.15 to \$3.85]~~

Install and compact backfill, per ton - includes purchase of materials, equipment, labor and transportation ~~[cubic yard]~~ \$9 to \$15

Transportation of contaminated soil to disposal facility, per ton ~~[cubic yard]~~, for each 20 miles - mileage must be documented, if closest disposal facility not used, reasonableness of cost must be justified \$5.10 to \$6.15
~~[\$6.60 to \$8]~~

Disposal fee, per ton ~~[cubic yard, not to exceed actual cost per unit]~~ Actual cost to exceed \$26
~~[\$12 to \$26]~~

(c) Treatment of soils or water, not including labor costs:

Pump and treat contaminated water and charcoal filtration, per 1,000 gallons \$0.25 to \$2.50

Operation of air stripper, per 1,000 gallons \$0.05 to \$0.25

Treatment of contaminated soil by thermal desorber, landfarming, or other treatment of contaminated soil, per ton ~~[cubic yard]~~ not to exceed actual cost per unit \$9.25 to \$19.25
~~[\$12 to \$26]~~

Disposal of contaminated water in wastewater treatment plan, per gallon, not to exceed actual cost per unit \$0.50 to \$1.50

Transportation of contaminated water to approved facility, including truck, driver and travel time. \$60 to \$100

(d) Labor rates, per hour:

Labor rates include all fringes and benefits, and contractor's profits.

Carpenter	\$25 to \$35
Cement finisher	\$25 to \$35
Electrician	\$25 to \$30
Electrical contractor	\$30 to \$40
Equipment operator	\$20 to \$30
Laborer	\$15 to \$20
Master plumber	\$30 to \$40
Journeyman plumber	\$20 to \$30
Apprentice plumber	\$20 to \$25

(e) Geologic and field services labor rates, per hour:

Labor rates include all fringes and benefits, and contractor's profits.

Certified contractor	\$75 to \$90
Professional engineer	\$70 to \$80
Engineer-in-training	\$45 to \$55
Geologist	\$45 to \$55
Registered geologist	\$70 to \$80
<u>Hydrogeologist</u>	<u>\$45 to \$55</u>
Draft person	\$25 to \$35
Environmental technician, trained in	

ADMINISTRATIVE REGISTER - 346

sample collection	\$35 to \$45
Environmental specialist, must have a bachelor of science degree in chemistry, biochemistry, biology, [or] soil science, or other appropriate technical degree or experience as may be approved by the executive director	\$45 to \$55
Secretarial	\$15 to \$20
Mileage, per mile for automobile or [] pickup truck [or utility vehicle]	\$0.25 [\$0.22]
Mileage, per mile for utility truck	\$0.30
Overnight lodging - must be demonstrated to be necessary, double occupancy to be used when appropriate	actual cost, not to exceed \$70 [\$35 to \$70]
Meals - when overnight stay is necessary	
Breakfast	\$4
Lunch \$5	
Supper	\$11
[Long distance telephone calls]	Actual cost
Soil gas analysis for VOC (equipment charge), per day	\$150
(f) Environmental exploration - does not include labor costs unless so stated:	
Mobilization and demobilization of drilling equipment (includes rig, two (2) man crew, and initial off-site steam cleaning):	
1) Auger rig, core rig, or wash rotary rig, per mile, minimum of \$200	\$2 to \$3
2) Air rotary rig, per mile, minimum of \$350	\$3.50 to \$4
Installation of monitoring well, 4 inch diameter per linear foot	\$20 to \$35
Drilling (excluding monitoring well) per linear foot	\$7 to \$30
For depths greater than 60 feet, add \$2.40 per linear foot.	
Hourly services (rig and two (2) man crew)	
May include drilling, well installation, decontamination, well development, difficult moving, and delay (not related to weather or mechanical breakdown), per hour	\$110 to \$130
Equipment	
Steam cleaner, per day	\$50 to \$75
Self-contained steam cleaning unit, per day	\$100 to \$125
Grout unit, per day	\$45 to \$75
Water trailer (500 gal.), per day	\$50 to \$75
Water truck (1000 gal.), per day	\$125 to \$175
Materials	
Well materials, decontamination supplies, health and safety supplies, grout, well casing and screen, filter pack, well covers, etc.	Actual cost+15%
(g) Sampling analysis, not including labor to take sample, sampling materials, transportation of sample, and chain of custody:	
Soil Sample	
BTEX (benzene, toluene, ethylbenzene, xylene)	\$50 to \$120
Method 5030 in conjunction with SW 846 8240, 8260, 8020 or 8021	
Polynuclear Aromatic Hydrocarbons	\$150 to \$220
Method 3540 or 3550 in conjunction	

with SW 846 8100, 8270 or 8310	
Total recoverable oil and grease	
Method SW 846 9071	\$50 to \$60
Lead	
Method SW 846 7421 or 6010	\$25 to \$45
Water Samples	
BTEX (benzene, toluene, ethylbenzene, xylene)	\$50 to \$120
Method 5030 in conjunction with SW 846 8240, 8260, 8020 or 8021	
Polynuclear Aromatic Hydrocarbons	\$150 to \$220
Method 3540 or 3550 in conjunction with SW 846 8100, 8270 or 8310	
Total recoverable oil and grease	\$30 to \$60
Method SW 846 9070	
Total Lead	\$30 to \$60
Method SW 846 7421 or 6010	
Sludge and Cleaning Liquid Samples	
Toxicity Characteristic Leading Procedure for the parameters of metals, volatile organics, and Acid/Base/Neutral.	\$650 to \$750
If the parameter of Pesticides and Herbicides is required	\$50
Ignitability	
SW846 Method 9095	\$25 to \$35
Paint Filter Test	
SW846 Method 1010	\$15 to \$30
ph	Actual cost, not to exceed \$25

(h) Legal Services

Attorney	
Sole practitioner, per hour	\$40
Partner or principle in firm, per hour	\$75
Associate in firm, per hour	\$60
Paralegal, per hour	\$30

(2) An amount in excess of the maximum amount set forth in subsection (1) may be approved by the fund [commission] if the contractor demonstrates that the additional cost is necessary to the performance of corrective action and the services or materials are not available at a lower cost.

(3) At the beginning of each calendar year the secretary [At the first regular meeting of the commission in each calendar year, the commission] shall direct the staff [appoint a committee] to review the appropriateness of the range of amounts established by this administrative regulation. [The committee shall consist of three (3) members of the commission and the executive director.] The staff [committee] shall:

- Establish a mailing list of persons who want to comment on this issue;
- Solicit comments and information from interested persons and persons who contract to perform corrective action;
- Conduct a public hearing to receive comment on the cost of corrective action; and
- Submit a report to the secretary [commission] by July 1 of each calendar year recommending changes or revisions to this administrative regulation.

Section 2. Range of Amounts to be Paid for Items Not Listed in Section 1 of this Administrative Regulation. (1) Items not listed in Section 1 of this administrative regulation are subject to the following qualifications:

- Original invoices from manufacturers or retailers shall be supplied to the fund, with supporting documentation, if required [commission];
- Unlisted items shall be subject to a maximum reimbursable amount of fifteen (15) percent above cost, which includes rentals or

purchases;

(c) No markups shall be allowed on any pass through costs such as utilities or employee expense accounts; and

(d) Out-of-state travel expenses, including but not limited to air fare, shall not be reimbursed unless demonstrated to be necessary for the performance of corrective action (example: expertise not available within state);

(e) The cost is reasonable and necessary to the performance of corrective action.

(2) Costs for alternative corrective action technologies, such as soil venting, bioremediation, and groundwater treatment systems, shall be subject to the range of costs set forth in this section where appropriate. Additional costs associated with the technology shall be justified as to reasonableness and necessity.

(3) Costs of corrective action performed by an owner or operator as an initial response or an action to prevent or remedy an emergency situation, or as directed by the cabinet, shall be subject to the range of costs set forth in Section 1 of this administrative regulation where appropriate. These costs shall be justified as to reasonableness and necessity.

Section 3. Eligibility Criteria for Persons who Contract to Perform Corrective Action. To be eligible for payment from the fund, persons who contract to perform corrective action shall be certified according to 415 KAR 1:114 ~~[1:115 and shall provide a bid proposal to the owner or operator. The bid shall be submitted on the "Bid Proposal Form"]~~.

(1) Personnel shall be categorized according to the applicable type of personnel described in Section 1 of this administrative regulation and the appropriate rate applied;

(2) Costs shall be itemized to comply with the cost items listed in Section 1 of this administrative regulation;

(3) Original invoices shall be submitted with a request for payment or reimbursement from the fund;

(4) Documentation and additional information to support the request for payment or reimbursement shall be supplied as requested by the ~~[commission]~~ staff.

Section 4. Certification of Contractor Costs. (1)(a) The ~~fund [commission]~~ may issue a request for proposals from individuals or companies engaged in the performance of corrective action for releases from petroleum storage tanks.

(b) The ~~fund [commission]~~ shall establish the date by which the proposals shall be submitted in its request for proposals.

(2) The ~~fund [commission]~~ shall specify in the notice of the request for proposals the information to be submitted by the individual or company. The information to be supplied shall include:

(a) Verification that the submitter is a certified contractor, or a company employing certified contractors. A company shall include the name and position of its certified contractors;

(b) A statement of qualification of the individual or company, including a statement of relevant experience in the performance of corrective action for releases from petroleum storage tanks;

(c) A list of references, including the name, business address, and telephone number of at least three (3) persons for whom the individual or company has performed corrective action for a release from a petroleum storage tank. If the company has not performed corrective action for at least three (3) persons, a list of persons for whom the certified contractors employed by the company have performed corrective action may be submitted;

(d) A schedule of fees that the individual or company proposes to charge an owner or operator for the performances of corrective action for a release from a petroleum storage tank. The schedule of fees shall set forth a cost for each of the items listed in Section 1 of this administrative regulation. The schedule shall note any differences or variations in listed costs attributable to length of necessary transportation, or other factors. If subcontractors are to be used, the schedule

shall specify the maximum cost to be charged by the individual or company for the corrective action activities to be performed by a subcontractor;

(e) A verification by the individual, or an authorized agent of the company, that the proposal is true and accurate, and that the schedule of fees shall be applicable for a period of one (1) year from the date by which proposals shall be submitted to the ~~fund [commission]~~;

(3) The ~~fund [commission]~~ shall review all proposals received after the date established ~~[by the commission]~~ for submittal of proposals. Proposals are to be submitted for the purpose of assisting the ~~fund [commission]~~ in the regulation of persons who contract to perform corrective action. These proposals shall not be made available for public inspection until after the date for submittal established by the ~~fund [commission]~~, since to do so would create an unfair advantage for competitors of the individual or company. Proposals may not be amended after the date for submittal, except as provided in subsection (6) of this section.

(4) The ~~[Commission]~~ staff shall review each proposal to verify that the individual or company complies with the requirements for contractor certification, is qualified to perform corrective action for releases from petroleum storage tanks, and the proposed costs comply with the requirements of Section 1 of this administrative regulation.

(5) If the ~~fund [commission]~~ verifies that the individual or company complies with the requirements of subsection (4) of the section, the individual or company shall be placed upon a list of approved contractors that shall be made available to owners or operators of petroleum storage tanks upon request.

(6) If the ~~fund [commission]~~ verifies a proposal, the individual or company shall not charge the owner or operator more than the listed costs on the schedule of fees unless the individual or company demonstrates to the satisfaction of the ~~fund [commission]~~ that:

(a) The increase in costs was beyond the reasonable control of the contractor;

(b) The increase is due to an increase in costs to the contractor, such as an increase in disposal fees or equipment costs, and is supported by adequate documentation; and

(c) The increase is reasonable and necessary to cover the actual costs of performing corrective action.

(7) Claims submitted to the ~~fund [commission]~~ by an owner or operator for the costs of corrective action performed by an approved contractor shall be reviewed by the ~~[commission]~~ staff to determine that the costs were necessary.

Section 5. ~~[(1) "Bid Proposal Form (August, 1993)" is incorporated by reference.~~

~~(2) This form may be obtained, inspected, or copied at the Petroleum Storage Tank Environmental Assurance Fund Commission, 911 Leewood Drive, Frankfort, Kentucky, (502) 564-5981, 8 a.m. to 4:30 p.m., ET, Monday through Friday.~~

~~Section 6.]~~ The provisions of this administrative regulation shall be enforced beginning January 1, 1994.

LAURA M. DOUGLAS, Secretary

APPROVED BY AGENCY: July 3, 1996

FILED WITH LRC: July 3, 1996 at 10 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact: David B. Wicker

(1) Type and number of entities affected: The proposed regulation will affect approximately 15,000 facilities with underground storage tanks containing petroleum products.

(a) Direct and indirect costs or savings to those affected:

1. First year: The tank owners or operators are financially

responsible for the corrective action cost resulting from a release into the environment. Amendments to reflect price increases in the industry will result in a higher percentage of total cost being returned to the owner or operator.

2. Continuing costs or savings: Tank owners or operators will continue to experience a higher rate of reimbursement associated with payment of corrective action.

3. Additional factors increasing or decreasing costs: (Note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paper requirements: Tank owners or operators will be required to complete, file, maintain and process application and claim forms.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The Office of the Petroleum Storage Tank Environmental Assurance Fund receives operating expenses from the Petroleum Storage Tank Environmental Assurance Fund. The FY 96 administrative budget was 1.3 million dollars.

2. Continuing costs or savings: The fund anticipates continuing costs associated with staff and general operation of the program.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs. The fund believes that it has adequate staff at this time to administer this program.

(b) Reporting and paperwork requirements: The fund will be required to collect, review, maintain, and process claim forms. The fund will provide eligible entities with state certification of financial assistance.

(3) Assessment of anticipated effect on state and local revenues: See fiscal note on local government.

(4) Assessment of alternative methods: reasons why alternatives were rejected: The fund contends these amendments reflect reasonable cost associated with corrective action for a release for a petroleum storage tank. Any alternatives would not meet the statutory mandate of the fund.

Alternative:

1. Less stringent: The fund could allow the owner or operator to set the amounts to be reimbursed, but such an arrangement contains the potential for abuse and the waste of taxpayer money.

2. More stringent: The fund could set more stringent cost amounts that do not reflect the current market for corrective action. To do so, however, would lead to a reduction in the number of available contractors willing to accept fund reimbursement to preform corrective action.

3. Present proposal: The amended regulation contains cost that represent the current reasonable cost for the performance of corrective action and reflect market prices. A recent reorganization and name change is also reflected in the regulation.

(5) Geographical and environmental impact:

(a) Geographical: The effect of this regulation will be equal though all geographic regions of the state, as all areas have petroleum storage tanks. More populated areas will most likely contain more tanks.

(b) Environmental: The effect of this regulation is to provide reimbursement up to one million dollars for corrective action and one million dollars for third party liability for releases from petroleum storage tanks. A positive effect on the environment is expected as tank owners who were not financially able to remediate their sites will have assistance.

(6) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplication: There is no conflict with statute, administrative regulations, or government policies in conflict with the amended regulation.

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was report made to harmonize the proposed regulation with conflicting provisions: There is no conflict.

(7) Source of revenue: The funds expended by the fund will come from the Petroleum Storage Tank Environmental Assurance Fee, pursuant to KRS 224.60-145.

(8) Benefits of the regulation: The amended regulation conforms to the executive order and avoids confusion in the regulated public. The amendments should speed the process of reimbursing claims.

(9) Any additional information or comments: There is no additional information.

(10) Tiering statement: Was tiering applied? No. Tiering was not applied since the cost of corrective action to be reimbursed under the amended regulation is on a per unit basis. Since the amount to be reimbursed depends on the amount expended, smaller businesses are not unduly effected.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 CFR 280 Subpart H requires the owner or operator of petroleum storage tanks to demonstrate financial ability to perform corrective action on a release to the environment caused by a petroleum storage tank. A state assurance fund reimbursing the cost of corrective action is one method of making this demonstration.

2. State compliance standards. No standards in addition to the federal standards.

3. Minimum or uniform standards contained in the federal mandate. 40 CFR 280 subpart details the standards and compliance dates.

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.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This regulation will affect a local government or a division of local government that owns or operates underground petroleum storage tanks.

3. State the aspect or service of local government to which this administrative regulation relates. Any service that require the agency to own or operate petroleum storage tanks.

4. How does this administrative regulation affect the local government or any service it provides? This regulation will address local government cost reimbursement in the same manner as nongovernmental entities.

STATEMENT OF EMERGENCY 415 KAR 1:114E

WHEREAS, the Petroleum Storage Tank Environmental Assurance Fund Commission was abolished and the Office of the Petroleum Storage Tank Environmental Assurance Fund was created in the Public Protection and Regulation Cabinet by Executive Orders 96-485 and 96-591; and

WHEREAS, the Office of the Petroleum Storage Tank Environmental Assurance Fund has the same authority as the commission but a new appointing authority, it is necessary to amend this administrative regulation to conform to the Executive Orders and ease confusion in the public's mind; and

WHEREAS, HB 167, amending the statutory authorization for the fund, was passed by the General Assembly during the 1996 Regular

Session and the statute now requires this administrative regulation to be amended; and

WHEREAS, an ordinary administrative regulation would not be sufficient as the provisions of HB 167 become effective on July 15, 1996, and the delay in promulgating ordinary administrative regulations would cause the fund to have inconsistency between its statute and the administrative regulations. An ordinary administrative regulation would also be insufficient as the administrative regulations no longer reflect the correct appointing authority for the fund. Allowing these factors to continue would endanger the fund's ability to assist in the protection of human health and the environment. This administrative regulation was amended within the last nine months, however, the Executive Orders require further amendment.

IT IS HEREBY DECLARED, that an emergency exist and this administrative regulation may be filed, pursuant to KRS 13A.190, as an emergency administrative regulation, to expire in 170 days from the date of its publication. This administrative regulation will be replaced by an ordinary administrative regulation.

PAUL E. PATTON, Governor
LAURA M. DOUGLAS, Secretary
ROBERT E. NICKEL, Executive Director

PUBLIC PROTECTION AND REGULATION CABINET
Office of the Petroleum Storage Tank
Environmental Assurance Fund

415 KAR 1:114E. Contractor certification.

RELATES TO: KRS 224.60-110, 224.60-130
STATUTORY AUTHORITY: KRS 224.60-130
EFFECTIVE: July 3, 1996

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

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

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

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

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

(5) "Supervise" means having the authority and responsibility for the performance of corrective action at a facility in the event of a release from petroleum storage tank system, and having the ability to

exercise independent judgement and direct the activities of employees or subcontractors in the performance of corrective action to achieve compliance with the administrative regulations of the cabinet.

(6) "Cabinet" is defined by KRS 224.60-115(2).

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

(a) They are performed or supervised by an individual who is certified by the fund ~~[commission]~~;

(b) They are performed in compliance with 401 KAR Chapter 42; and

(c) The costs are necessary and reasonable, and performed in compliance with 415 KAR Chapter 1;

(d) This requirement shall apply only to applications approved ~~(for assistance agreements made)~~ after March 1, 1995.

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

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

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

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

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

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

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

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

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

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

(c) Makes a misrepresentation or submits false information in the application.

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

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

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

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

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

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

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

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

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

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

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

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

(3) Examinations shall be given, at a minimum, quarterly through December 31, 1997, and semiannually thereafter.

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

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

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

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

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

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

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

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

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

(d) Fails to maintain a professional registration.

(4) An applicant denied the opportunity to take the certification test or denied the renewal of their contractor certification may appeal the determination by requesting a hearing pursuant to 415 KAR 1:120.

(5) The fund [commission] may require that a certified contractor take and pass a written examination to renew a certification if there has been a significant change in the laws, codes or industry recommended practices with respect to performing corrective action or

procedures, reporting requirements and document requirements to be submitted to the Underground Storage Tank Branch or the Office of the Petroleum Storage Tank Environmental Assurance Fund [Commission] since the date of original certification.

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

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

Section 7. Revocation or Suspension of Certification. (1) A certificate issued pursuant to this administrative regulation may be suspended or revoked ~~by the commission~~ if the certified contractor:

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

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

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

(d) Fails to perform a corrective action in a manner consistent with state or federal laws and regulations for safety or corrective actions, or fails to perform a corrective action consistent with generally acceptable professional standards.

(2) The secretary shall have authority to revoke or suspend a certification. ~~[The commission shall address the charges specified in subsection (1)(a) through (d) of this section against a certified contractor. The commission vote on issues of suspension or revocation shall be in open session and require a simple majority of those commission members voting.]~~ The secretary [commission] shall then cause a letter to be issued notifying the certified individual of the fund's [commission's] action.

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

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

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

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

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

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

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

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

(a) "Certified Contractor Application Form (June 1996 [March, 1994])"; and

(b) "Certified Contractor Application for Renewal Form (June 1996 [March, 1994])".

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

ADMINISTRATIVE REGISTER - 351

LAURA M. DOUGLAS, Secretary
APPROVED BY AGENCY: July 3, 1996
FILED WITH LRC: July 3, 1996 at 10 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact: David B. Wicker

(1) Type and number of entities affected: The proposed amended regulation will affect approximately 400 contractors in the Commonwealth of Kentucky who perform corrective action due to releases from petroleum storage tanks.

(a) Direct and indirect costs or savings to those affected:

1. Effect on cost of living and employment: None

2. Effect on cost of doing business: There will be an indirect cost to the contractor due to the need to have persons certified by the fund to supervise corrective action. There will be an indirect cost due to the time necessary to fill out the necessary application for certification.

3. First year: There will be an indirect cost due to the need to have persons certified by the fund to supervise corrective action. There will be an indirect cost due to the time necessary to fill out the necessary application for certification.

4. Continuing costs or savings: There will be a continuing cost due to the need to apply biannually for renewal of the certification.

5. Additional factors increasing or decreasing costs: (Note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paper requirements: Individuals will be required to complete and file the application for certification and the application for renewal.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The fund will experience direct costs due to the need to prepare and administer the test for certification of contractors; receive, review and maintain applications for certification; and to identify the proper materials for the certification process. The amendments will decrease the fund's cost by becoming a biannual test.

2. Continuing costs or savings: The fund anticipates continuing costs due to the need to upgrade the test on a periodic basis, to identify new materials concerning performance of corrective action, and to process applications for renewal. The amendments will decrease the fund's cost by becoming a biannual test.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs. The fund believes that it has adequate staff at this time to implement and administer this program.

(b) Reporting and paperwork requirements: The fund will be required to collect, review, maintain, and process applications for certification and applications for renewal. The fund will provide applicants with information with which they must be familiar to obtain certification.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Source of revenue: The funds expended by the fund will come from the Petroleum Storage Tank Environmental Assurance Fee, pursuant to KRS 224.60-145.

(5) Assessment of alternative methods: reasons why alternatives were rejected: The amendments relate to a recent reorganization and resulting name change.

Alternative:

1. Less stringent: The fund cannot be less stringent than the statute allows.

2. More stringent: The fund cannot be more stringent than the statute allows.

3. Present proposal: The proposed regulation reflects a recent reorganization and the resulting name change.

(6) Economic impact: None

(7) Benefits of the regulation: The amended regulation conforms to the executive order and avoids confusion in the regulated public.

(8) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplication: This regulation overlaps and supplements 815 KAR 30:060, Underground Petroleum Storage Tank Installer/Remover Certification Regulation of the State Fire Marshal. This amendment will not effect the Fire Marshal's regulation.

(a) Necessity of proposed regulation if in conflict: There is no conflict. 815 AR 30:060 applies only to the installation and removal of underground storage tanks. This regulation will not duplicate or conflict with those requirements. This regulation is more comprehensive in that it requires a knowledge of all actions necessary to properly perform corrective action due to a release from a petroleum storage tank.

(b) If in conflict, was report made to harmonize the proposed regulation with conflicting provisions: There is no conflict.

(9) Geographical and environmental impact:

(a) Geographical: The effect of this regulation will be equal though all geographic regions of the state, as all areas have petroleum storage tanks. More populated areas will most likely contain more tanks and more certified individuals.

(b) Environmental: The effect of this regulation is to provide qualified individuals to provide the services for which the fund reimburses. A positive effect on the environment is expected.

(10) Any additional information or comments: There is no additional information.

(11) Tiering statement: Was tiering applied? No. This regulation applies to all individuals and companies contracting to perform corrective action for which reimbursement or payment will be sought from the fund.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. None

2. State compliance standards. None

3. Minimum or uniform standards contained in the federal mandate. None

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This regulation will require a local government or a division of local government to use a certified contractor in the performance of corrective action if reimbursement will be sought from the fund.

3. State the aspect or service of local government to which this administrative regulation relates. None

4. How does this administrative regulation affect the local government or any service it provides? This regulation will require a local government or a division of local government to use a certified contractor in the performance of corrective action if reimbursement will be sought from the fund.

STATEMENT OF EMERGENCY
415 KAR 1:120E

WHEREAS, the Petroleum Storage Tank Environmental Assurance Fund Commission was abolished and the Office of the Petroleum Storage Tank Environmental Assurance Fund was created in the Public Protection and Regulation Cabinet by Executive Orders 96-485 and 96-591; and

WHEREAS, the Office of the Petroleum Storage Tank Environmental Assurance Fund has the same authority as the commission but a new appointing authority, it is necessary to amend this administrative regulation to conform to the Executive Orders and ease confusion in the public's mind; and

WHEREAS, HB 167, amending the statutory authorization for the fund, was passed by the General Assembly during the 1996 Regular Session and the statute now requires this administrative regulation to be amended; and

WHEREAS, KRS Chapter 13B requires the amendment of hearings regulations that do not provide due process guarantees in compliance with KRS Chapter 13B, this administrative regulation must be amended to comply with those provisions.

WHEREAS, an ordinary administrative regulation would not be sufficient as the provisions of HB 167 become effective on July 15, 1996, and the delay in promulgating ordinary administrative regulations would cause the fund to have inconsistency between its statute and the administrative regulations. An ordinary administrative regulation would also be insufficient as the administrative regulations no longer reflect the correct appointing authority for the fund. Allowing these factors to continue would endanger the fund's ability to assist in the protection of human health and the environment.

IT IS HEREBY DECLARED, that an emergency exist and this administrative regulation may be filed, pursuant to KRS 13A.190, as an emergency administrative regulation, to expire in 170 days from the date of its publication. This administrative regulation will be replaced by an ordinary administrative regulation.

PAUL E. PATTON, Governor
LAURA M. DOUGLAS, Secretary
ROBERT E. NICKEL, Executive Director

PUBLIC PROTECTION AND REGULATION CABINET
Office of the Petroleum Storage Tank
Environmental Assurance Fund

415 KAR 1:120E. Hearings.

RELATES TO: KRS 224.60-120, 224.60-130, 224.60-140, 40 CFR Part 280

STATUTORY AUTHORITY: KRS 224.60-120, 224.60-130

EFFECTIVE: July 3, 1996

NECESSITY AND FUNCTION: KRS 224.60-130(2)(f) requires the Office of the Petroleum Storage Tank Environmental Assurance Fund [commission] to hear complaints brought regarding the payment of claims from the fund. This administrative regulation establishes hearing procedures to be followed in the hearing of those complaints.

Section 1. Definitions. (1) "Administrative hearing" means a formal adjudicatory proceeding conducted by the agency on the record to adjudicate the legal rights, duties, privileges or immunities of a named person at which each party is given the opportunity, after proper notice, to respond, present evidence and argument, conduct cross-examination, and submit rebuttal evidence.

(2) "Administrative action" means the formal administrative adjudicatory proceeding before the agency from the filing of the pleading commencing the formal administrative proceedings until the time for all administrative appeals has run regarding the claims made in the commencing document.

(3) "The agency" means the Office of the Petroleum Storage Tank Environmental Assurance Fund.

(4) "Docket coordinator" means the person responsible for receiving and filing pleadings in administrative hearings.

(5) "Hearing officer" is defined in KRS 13B.010(7).

(6) The "notice" means the notice of hearing required by KRS 13B.050.

(7) "Party" is defined in KRS 13B.010(3).

(8) "Person" means any individual, corporate entity, state governmental agency, or unit of local, state or federal government, and shall include any "party" as defined in these administrative regulations.

(9) "Petition for hearing" means any written request by a person other than the agency for an administrative hearing before the agency, including any document which by law or administrative regulation commences an adjudicatory administrative proceeding, that is filed in accordance with these administrative regulations.

(10) "Petitioner" means any person requesting an administrative hearing to which these administrative regulations apply.

(11) "Pleading" means the petition for hearing or notice of hearing and complaint, the answer, and any other responsive pleading ordered by a hearing officer or authorized by law or administrative regulation.

(12) "Record" is defined in KRS 13B.130.

(13) "Preponderance of evidence" means substantial evidence of sufficient weight to establish that a factual allegation is more likely true than not.

(14) "Responsive pleading" means the answer or any document required or authorized by law, administrative regulation, or order of a hearing officer to be filed in response to a pleading.

(15) "Substantial evidence" means evidence that taken alone or in the light of all the evidence has sufficient probative value to induce conviction in the minds of reasonable persons.

Section 2. Reconsideration. Any person not previously heard in connection with a determination of the Office of Petroleum Storage Tank Environmental Assurance Fund or the secretary denying eligibility for participation in the fund or payment of any portion of a claim, who considers himself aggrieved by such determination may request in writing that the determination be reconsidered. The writing shall set forth the grounds for the request and shall be accompanied by any documentation or other competent evidence related to the disputed issue that was not previously considered by the staff. The right to request a reconsideration of the determination shall be limited to a period of thirty (30) days after the applicant has had actual notice, or could have reasonably had notice, of the fund's action. The staff shall evaluate the documents and other competent evidence after receipt of the request. The fund shall reevaluate the claim if the documentation or evidence accompanying the request for reconsideration warrants reconsideration of a prior recommendation on the issue. If the reconsideration by the staff or the secretary fails to resolve the applicant's concerns the applicant may request a hearing on the determination pursuant to Section 3 of this administrative regulation.

Section 3. Commencement of Hearing. (1) Petition for hearing. Any person not previously heard in connection with a determination of the Office of Petroleum Storage Tank Environmental Assurance Fund or the secretary denying eligibility for participation in the fund or payment of any portion of a claim, who considers himself aggrieved by such determination may request a formal hearing in writing. The petition for hearing shall be in writing signed by the filing party, and shall contain a short and plain statement of the facts upon which the petition is based, a request for relief, including a hearing; and the filing party's name, address and phone number. The right to request a hearing shall be limited to a period of thirty (30) days after the applicant has had actual notice, or could have reasonably had notice,

of the Office of Petroleum Storage Tank Environmental Assurance Fund's action. The petition for hearing shall indicate on its face the name and address of each party to be served by the agency. Any doubts about whether a document constitutes a petition for hearing shall be resolved in favor of the filing party. Within fifteen (15) days of the filing of a petition, the agency shall issue a notice of hearing conforming to KRS 13B.050, and shall serve the notice and a copy of the petition on each person set forth on the face of the petition.

(2) Service of notice and complaint and petition. The agency shall serve the notice, complaint and copy of the petition by certified mail or personal delivery as set forth in Section 9 of this administrative regulation. If served by mail, the agency shall enter the date of mailing in the record and shall file the return receipt or returned envelope in the record when it is received by the agency.

(3) Answer.

(a) The agency shall file an answer to the allegations in that pleading within thirty (30) days of the service of the pleading.

(b) The answer shall specifically admit or deny in short and plain terms each and every allegation contained in the pleading and shall set forth all claims against other parties which arise out of the same transaction or occurrence that is the subject matter of the claims in the pleading and which fall within the agency's jurisdiction. If the answering party is unable to admit or deny an allegation in the pleading, it shall so state in his answer and this shall have effect of a denial. The answer shall be in writing, and shall include the agency's address and telephone number. Parties against whom claims are directed in an answer shall answer such claims within five (5) days after service of the answer.

(c) Filing after motion. Filing of a motion for more definite statement, motion for judgment on the pleadings, motion to dismiss or a motion for summary disposition shall toll the time to file a responsive pleading until five (5) days after the hearing officer rules on such motion.

(4) Notice of determination not to conduct hearing. Within five (5) days of the commencement of an administrative action, the agency shall notify the person commencing the action, in writing, of any determination by the agency not to conduct a hearing. The notice under this section shall give the factual, legal, and policy grounds for the agency's determination, and shall inform the petitioner of any right to appeal. Mere recitation of statutory or regulatory standards is not a sufficient summary of the grounds for the agency's action.

Section 4. Affirmative Defenses. (1) Every defense in law or fact to a claim for relief in any pleading shall be asserted in the responsive pleading thereto, if one is required.

(2) Any matter constituting an avoidance or affirmative defense in an administrative action shall be set forth in a responsive pleading. Failure to plead an affirmative defense in a responsive pleading may constitute a waiver of that defense.

(3) The following defenses may at the option of the pleading party be asserted by motion before making a responsive pleading:

- (a) Lack of jurisdiction over the person;
- (b) Lack of jurisdiction over the subject matter;
- (c) Improper venue;
- (d) Insufficiency of process;
- (e) Insufficiency of service of process;
- (f) Failure to state a claim upon which relief can be granted; and
- (g) Failure to join a required party.

Failure to plead any of the defenses listed in this subsection in a responsive pleading shall not constitute a waiver of that defense.

Section 5. Right of Counsel. (1) Any person who appears before the agency at any stage in a formal administrative hearing shall have the right, at their own expense, to be represented or advised by legal counsel. Nothing in these administrative regulations shall be construed to allow or permit representation of a person by a nonattorney, however, individuals may represent themselves without representation

by counsel.

(2) Any attorney representing a party before the agency must file a written Notice of Entry of Appearance in each case before he may practice in that case before the agency. Filing of a Notice of Entry of Appearance shall constitute agreement by the attorney to be bound by the provisions of this section.

(3) An attorney of record in an administrative action before the agency shall request permission to withdraw as counsel for a party in writing, with an affidavit from the moving attorney setting forth the grounds for withdrawal, certifying that the request to withdraw has been served upon the attorney's client, and an explanation why the withdrawal will not have a material adverse effect on the interests of the attorney's client.

(4) An attorney shall not withdraw from representing a person in an administrative action before the agency without permission of the hearing officer before whom he is practicing. Within ten (10) days of an administrative hearing, an attorney of record shall not be permitted to withdraw from an administrative action absent a compelling reason shown upon a written motion filed in the record.

(5) Intentional or repeated failure or refusal of an attorney to obey any of the requirements of this section shall be grounds for recommendation to the secretary that the attorney be barred from practice before the agency.

Section 6. Burden of Proof. (1) The party proposing the agency take action or grant a benefit shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion to show the propriety of the agency action or entitlement to the benefit sought.

(2) The party asserting an affirmative defense shall have the burden of going forward and the ultimate burden of persuasion to establish that defense.

(3) The ultimate burden of persuasion in all administrative actions shall be met by a preponderance of substantial evidence in the record.

(4) Unless otherwise ordered by the hearing officer, the party with the burden of proof shall present its evidence first at a formal administrative hearing, followed by the opposing party. If new matters are raised in the presentation of the opposing party's evidence, the hearing officer shall afford the party with the burden of proof the opportunity to present rebuttal evidence. The hearing officer, may in his discretion, order the proof in any manner which will promote the orderly and prompt conduct of the hearing.

Section 7. Assignment and Duties of Hearing Officers. The agency shall designate a hearing officer for a formal administrative action in any manner consistent with KRS 13B.030 within ten (10) days of the commencement of the administrative action.

(1) If the agency elects to designate a hearing officer from the Division of Administrative Hearings in the Attorney General's Office under KRS 13B.030, it shall make that request in writing to the division within ten (10) days of the commencement of the administrative action.

(2) Assignment of a hearing officer from the Division of Administrative Hearings of the Office of the Attorney General shall be made according to the administrative regulations governing the conduct of the Division of Administrative Hearings of the Office of the Attorney General.

(3) A request for or assignment of a hearing officer under KRS 13B.030(2) shall be a designation of a hearing officer under these administrative regulations and a delegation to the hearing officer under KRS 13B.030(1) of all powers conferred on an agency relating to the conduct of the administrative action. The hearing officer shall have the authority to take any procedural action authorized by KRS 224.60-130, KRS Chapter 13B, or these administrative regulations, including, but not limited to the authority to:

- (a) Administer oaths and affirmations;

(b) Issue subpoenas for witnesses and production of documents or things;

(c) Regulate discovery;

(d) Rule on procedural requests;

(e) Hold prehearing conferences;

(f) Regulate the course of, and maintain order in the administrative hearing;

(g) Rule on evidentiary matters and admit in or exclude evidence from the record;

(h) Examine witnesses;

(i) Require the parties to submit legal memoranda, and proposed findings of fact and conclusions of law;

(j) Make proposed findings of fact, conclusions of law and recommended orders for the secretary; and

(k) Take any action consistent with law to promote the orderly and prompt conduct of the administrative action.

(4) The agency shall take no further action with respect to an administrative action, except as a party litigant, as long as the administrative action is assigned to a hearing officer.

Section 8. Hearing Officer Conduct. (1) Conflict of interest.

(a) At any time during an administrative action an assigned hearing officer's continued service would violate the standard set forth in KRS 13B.040(2)(a) or a Canon of Judicial Ethics, that hearing officer shall disqualify himself and enter a written order withdrawing from an administrative action.

(b) At any point during an administrative action a party may move the hearing officer to recuse from an administrative action. The Motion to Recuse shall be in writing filed in the record and shall be supported by an affidavit setting forth specific facts which demonstrate one or more of the grounds for recusal set forth in KRS 13B.040(2)(b).

(c) Within ten (10) days of recusal of a hearing officer, the secretary shall request or assign another hearing officer by written order according to this administrative regulation.

(2) Ex Parte contact.

(a) Unless otherwise allowed by KRS 13B.100, there shall be no ex parte contact between a hearing officer assigned to an administrative action, or any person working under the hearing officer's supervision, and any person with a direct or indirect interest in the outcome to that administrative action concerning the merits of the administrative action assigned to the hearing officer.

(b) This administrative regulation shall not prohibit ex parte contact with staff on purely procedural matters not at issue in the case. This section shall not prohibit communications with staff regarding the status of a case.

(c) Upon receiving an ex parte contact prohibited by this section, the hearing officer shall take every action required under KRS 13B.100, shall cause the parties to be notified of the contact, and shall inform the other parties to the action of their right to move for a recusal.

(d) The hearing officer may impose appropriate sanctions on a person who knowingly makes a prohibited ex parte contact, including, but not limited to deeming the person to have defaulted, striking all or part of that person's pleadings, claims, or defenses, denying any pending motions by the party, issuing a show cause order requiring the person to show why the hearing officer should not sanction the person, or taking such other actions as are appropriate.

Section 9. Service. (1) Unless the hearing officer otherwise orders, every order, every pleading subsequent to the document commencing the administrative action, every paper relating to discovery required to be served upon a party and every written motion, summons, notice, appearance, demand, and similar paper filed in the record shall be served upon each party to an administrative action.

(2) Service may be made by personal delivery of or by mailing a copy of the paper to the party served.

(a) Service by certified mail. Service may be accomplished by certified mail by placing a copy of the paper to be served in an envelope, addressing the envelope to the person to be served at his last known address, affixing adequate postage to and mailing the sealed envelope by certified mail, return receipt requested. Service by certified mail under this section is complete upon mailing. The agency shall immediately upon receipt mark all return receipts and returned mail served under this paragraph with the date the agency receives the receipt or the mail. The United States mail return receipt or returned mail shall be proof of the date of acceptance or refusal to claim a paper served by mail. The certificate of service required by subsection (5) of this section for papers to be filed in the record shall be evidence of the date of service. The proper address for the purposes of service by mail shall be the last known address of the person to be served. If the person to be served is a licensee or permittee of the agency, then the proper address for service of process shall include that person's last address of record in the agency's files.

(b) Service by regular mail. Service may be accomplished by regular mail in the same manner as for certified mail. Service by regular mail is effective upon mailing. The certificate of service required by subsection (5) of this section for papers to be filed in the record shall be evidence of the date of service.

(c) Service by personal delivery. Papers may be served by personal delivery by any person over eighteen (18) years of age authorized by law or administrative regulation to deliver them in person. Delivery within this administrative regulation means handing it to the party; or leaving it at the party's business address with the person in charge thereof; or, leaving it at the party's residence with a person eighteen (18) years of age or older residing therein. The person serving the papers in person shall fill out a certificate of service indicating the date and manner of service and whether service was offered and accepted or refused. The serving person shall return the endorsed certificate of service to the agency, which shall immediately file it in the record.

(3) Service on attorney. Whenever under these administrative regulations service is required or permitted to be made upon a party represented by an attorney of record in the administrative action, service may be made upon the attorney in the same manner as upon the represented party.

(4) Who is responsible for service. Unless the hearing officer orders otherwise, the person filing papers shall be responsible for serving those papers.

(5) Certificate of Service. Whenever any pleading or other paper is served under these administrative regulations, the serving party shall file proof of the date and manner the filed paper was served upon the other parties to the administrative action. Proof of service shall be by a certificate signed by the person who served the paper, or by any other proof satisfactory to the hearing officer. The certificate of service shall identify by name the persons served.

Section 10. Filing of Papers. (1) Papers required to be filed. All papers after the petition required to be served upon a party shall be filed with the agency either before service or within a reasonable time thereafter.

(2) Method of filing. Pleadings and other papers shall be filed with the agency when they are received and endorsed by the agency. The agency shall endorse the date of receipt on every paper filed in an action immediately upon receipt.

(3) Facsimile filings. Papers may be filed with the agency by telefacsimile machine at the telefacsimile telephone number listed for the agency on the Summons. Parties filing by telefacsimile machine shall include a certificate that the paper is being filed by fax and the original paper is being filed by mail and shall immediately after faxing such a paper mail the original paper to the agency. The filing date of a paper sent by facsimile shall be the date the agency receives the original, unless the original is received within five (5) business days

of the facsimile, in which case the filing date shall be the date the agency received the facsimile.

(4) Signature required. All papers filed in an administrative action must be signed by the filing person. The signature of the filing person or his authorized representative constitutes a certificate that the signing person has read the paper and that to the best of his knowledge, information and belief formed after reasonable inquiry, it is not interposed for any improper purpose. If a paper is signed in violation of this subsection, the hearing officer may strike the paper from the record, deem the party to have failed to file the paper and take any action allowed as a consequence of such failure, strike all or part of any pleading, claim or defense asserted in the filing, or bar an attorney violating this subsection from future participation in that administrative action, and recommend that the secretary bar that attorney from appearing in future administrative actions before the agency.

Section 11. Venue. Administrative hearings shall be conducted at the office of the agency, unless the hearing officer rules that this would place an undue hardship on one of the parties. In determining venue, the hearing officer shall consider the requirements of law, the convenience of the parties, the witnesses and the evidence.

Section 12. Time Computation. (1) Computation. In computing any period of time prescribed or allowed by order of the hearing officer or by administrative regulation, the day of the act, event or default after which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday or a legal holiday. Unless otherwise directed by the hearing officer, when the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays and legal holidays shall be excluded from the computation.

(2) Enlargement. When by administrative regulation or by order of the hearing officer an act is required or allowed to be done by a specified time, the hearing officer may, before the specified time expires order the period enlarged or, may upon motion made after the specified period expires, permit the act to be done where the failure to act was the result of excusable neglect. The hearing officer may not enlarge a time frame established by statute.

(3) Additional time after service by mail. Whenever a party has the right or is required to do some act or take some proceeding within a period prescribed by order of the hearing officer or by administrative regulation after the service of a notice or other paper upon the party by mail, three (3) days shall be added to the prescribed period. This provision shall not apply to the service of administrative summons, notices and petitions by mail.

Section 13. Amended and Supplemental Pleadings. (1) Amendments. A party may amend his pleading once as a matter of course at any time before a responsive pleading is served, or if the pleading is one to which no responsive pleading is permitted, he may so amend it at any time within five (5) days after it is served. Otherwise, a party may amend his pleading only by leave of the hearing officer or by written consent of the adverse party filed in the record. Leave to amend shall be freely given to achieve just, timely and inexpensive determinations of matters before the agency.

(2) Response to amended pleading. A party shall file a response to an amended pleading within the time remaining for response to the original pleading or within five (5) days after service of the amended pleading, whichever period may be longer, unless the hearing officer orders otherwise.

(3) Relation back of amendments. Whenever the claim or defense asserted in an amended pleading arises out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment shall relate back to the date of filing of the

original pleading.

(4) Supplemental pleadings. The hearing officer may upon his own initiative or upon motion of a party permit a party to file a supplemental pleading which sets forth transactions, occurrences or events which have happened since the date of a prior pleading. The hearing officer shall allow such supplemental filings upon reasonable notice and upon such terms as are just, and shall grant the adverse party leave to file a responsive pleading to the supplemented pleading.

Section 14. Prehearing Conferences and Orders. (1) General provisions. A hearing officer, upon the motion of any party, or upon the hearing officer's own initiative, may hold a prehearing conference in any administrative action assigned to him to consider any matter set forth in KRS 13B.070(1).

(2) Telephonic prehearing conferences. Prehearing conferences may be held by telephone upon agreement of all persons concerned. The persons to be involved in the telephonic conference shall place the conference call to the hearing officer.

(3) Prehearing conferences to be recorded. Any prehearing conference in which the hearing officer will hear or rule on motions, objections, or hear argument on or make intermediate rulings shall be recorded and made part of the record.

(4) Settlement conferences. A hearing officer may order a settlement conference to facilitate settlement discussions. The hearing officer assigned to the administrative action shall not be present during the course of a settlement conference in that administrative action. No statements or admissions made at the settlement conference for the purpose of settlement negotiations shall be admitted in evidence at a formal administrative hearing nor be used by the hearing officer in making any report and recommendation to the secretary. To facilitate the settlement conference, the hearing officer may order:

(a) That expedited discovery be had before the settlement conference;

(b) That the parties or their representatives appear at the settlement conference with settlement authority;

(c) That any party produce witnesses, documents or other discovery at the settlement conference.

(5) Prehearing conference orders. The hearing officer shall file a prehearing conference order in compliance with KRS 13B.070(2) after each prehearing conference which sets forth the date, place and attendees of the prehearing conference and sets out any rulings made by the hearing officer at the prehearing conference.

Section 15. Consolidation and Severance. (1) Consolidation. A hearing officer, on motion of a party or on his own, may consolidate any cases assigned to his docket upon a finding by the hearing officer that the cases concern common questions of law or fact, or have an identity of issues or witnesses, and that consolidation is appropriate according to reasonable administrative practice.

(2) Severance. A hearing officer in his own discretion or on motion of a party, may sever consolidated cases or claims in an administrative action for a separate administrative hearing.

Section 16. Subpoenas. (1) Issuance. Upon motion of a party, the hearing officer may issue subpoenas requiring the attendance and testimony of witnesses and the production of any tangible items in the possession or under the control of witnesses.

(2) Motion for subpoena. A motion for issuance of a subpoena shall be in writing, filed with the agency at least five (5) days before the hearing. The motion shall set forth the need for the subpoena and shall specify the name and address of the person to be subpoenaed, and the name, address and phone number of the party requesting a subpoena. If the subpoena requests the production of tangible items, the motion shall describe those items with particularity. Attached to the motion, the party requesting the subpoena shall attach completed

subpoenas on forms provided by the agency.

(3) Quashing subpoenas. Any person subject to a subpoena may, before the time for compliance set forth in the subpoena, move the hearing officer to quash the subpoena on the grounds that it was not lawfully issued, is unreasonably broad in scope, or requires production of evidence that is irrelevant, immaterial, unduly repetitious, or excludable on constitutional or statutory grounds or violates an evidentiary privilege recognized in the courts of this Commonwealth. The hearing officer shall rule expeditiously on any motion to quash.

Section 17. Motion Practice. (1) General provisions.

(a) All requests for relief from a hearing officer shall be in the form of a motion. Unless otherwise provided by law or administrative regulation, a person may move at any time during an administrative action, orally or in writing for any relief within the authority and jurisdiction of the hearing officer.

(b) Motions and responses. All motions filed with the agency going to the merits of an administrative action shall state the grounds and supporting authority for the motion and the precise relief requested. Any party properly served with a motion may, within fifteen (15) days of the date of service of a motion, file a response stating grounds and supporting authorities for opposing the motion. No motion or response longer than twenty-five (25) pages in length shall be filed without prior leave of a hearing officer.

(c) Format of written motions. All written motions filed under this section shall be on eight and one-half (8 1/2) inches by eleven (11) inches paper stock, shall be signed by the filing person and shall include the name, address, telephone number and telefax number of each person filing the motion. Motions shall not be side-bound or top bound with a binding that interferes with the inclusion of the papers or pleadings in the agency files, unless permitted by the hearing officer. All printed or typed motions shall be in type no smaller than ten (10) point nor closer than twelve (12) pitch. All written motions filed with the agency which are longer than fifteen (15) pages in length shall contain an introduction, a table of contents and authorities, an argument and a conclusion section in which the filing person asks for specific relief. Failure to comply with the requirements of this subsection may be grounds for denying a motion.

(d) Argument on motions. Any party making a motion may move for oral argument before the hearing officer on that motion. If the hearing officer grants oral argument on the motion, he shall record the oral argument and make the recording part of the record.

(2) Motion for more definite statement.

(a) If a pleading is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, the responding party may move for a more definite statement before filing a responsive pleading. The motion for more definite statement shall detail the defects complained of and shall set forth the details desired and explain how the details desired cannot be reasonably understood from the pleading. A hearing officer may on his own initiative require a party to file in the record a more definite statement of his allegations, claims, defenses and requested relief.

(b) If the hearing officer grants a motion for a more definite statement, the nonmoving party shall file an amended pleading setting forth the claims in the original pleading more definitely within ten (10) days of the hearing officer's order, or within such time as the hearing officer may order. If the nonmoving party does not timely file an amended pleading, the hearing officer may, upon motion, strike the pleading to which the motion was directed or make such order as the hearing officer deems just.

(3) Motion for recommendation on the pleadings. After the time for filing any responsive pleading has passed, but within such time as not to delay a formal administrative hearing, any party may move for a recommendation on the pleadings. If, on such motion, matters outside the pleadings are presented to the hearing officer, the hearing officer shall treat and determine the motion as one for summary disposition.

(4) Motion for summary disposition.

(a) Time and form of filing. At any time after an administrative action commences, a party may move for summary disposition of a claim in his favor. In moving for summary disposition, the moving party shall support any factual allegations with affidavits or citations to deposition testimony, answers to interrogatories, responses to requests to admit, documents or with other citations to the record.

(b) Standard. The hearing officer may grant a motion for summary disposition and recommend the secretary rule in the moving party's favor if the hearing officer finds that there is no genuine dispute as to any issue of material fact and the moving party is entitled to a summary disposition as a matter of law.

(c) Partial summary disposition. If the hearing officer grants a motion for summary disposition in part, the hearing officer shall, as part of his order granting summary disposition in part, set forth all facts that are not genuinely disputed. These facts shall be established for the purpose of any subsequent proceedings in the administrative action. Following a partial summary disposition, the hearing officer shall order such further proceedings as are appropriate.

Section 18. Directed Disposition. (1) Time and standard. At the close of the presentation of evidence by a party at an administrative hearing, an opposing party may move the hearing officer for a directed disposition to the secretary, stating the specific grounds therefor on the record. In ruling on the motion for directed disposition, the hearing officer shall consider all of the evidence in the record presented by the nonmoving party and shall draw all inferences therefrom in favor of the nonmoving party. If, after so considering the evidence, the hearing officer determines there is not substantial evidence appearing in the record upon which the secretary could grant the nonmoving party relief, the hearing officer shall grant the moving party's motion and shall recommend that the secretary deny the nonmoving party's request for relief.

(2) Motion for directed disposition not a waiver. A motion for a directed disposition is not a waiver of the right to an administrative hearing. A party who moves for a directed disposition at the close of the evidence offered by an opponent may offer evidence in the event that the motion is not granted, without having to reserve the right to do so and to the same extent as if the motion had not been made.

Section 19. Evidence. (1) General. The hearing officer shall admit evidence in the record in accordance with KRS 13B.090 and reasonable administrative practice.

(2) Separation of witnesses; cumulative testimony. The hearing officer may on his own motion or motion of a party, separate the witnesses while testimony is being offered, and may limit cumulative testimony by any witness.

(3) Proffers of proof. Upon the exclusion of evidence offered for the record, the hearing officer may allow proffers of the excluded proof to be placed in the official record in any expeditious manner, including but not limited to allowing such evidence in the form of testimony, affidavits, summaries, excerpts or documents. Proffers of proof shall be placed in the record outside the presence of the hearing panel, if any, and shall not be considered part of the record for the purpose of rendering a recommended order.

(4) Documentary evidence. The hearing officer may admit documentary evidence in the record in the form of a copy or excerpt if the original document is not available. Any party to the proceeding shall have the right to compare the copy or excerpt with the original prior to the copy or excerpt being admitted in to the record.

Section 20. Recording Proceedings; Transcripts; Exhibits. (1) Recording of proceedings. All testimony, proffers of proof, oral motions, objections and rulings thereon in an administrative action shall be recorded verbatim stenographically, electromechanically or by other means.

(2) Proceedings conducted by electronic means. Upon the filing

of a signed written agreement of the parties, any administrative hearing may be conducted in whole or in part by telephone, television or other electronic means in accordance with KRS 13B.080(7). If any part of a hearing is conducted by electronic means for which there is a charge, each party shall bear a pro rata portion of the cost of conducting the proceedings electronically, or shall bear such costs as the hearing officer deems just. Any part of a hearing conducted by electronic means shall be recorded stenographically or by electro-mechanical means or by other means. Any electromechanical record of a hearing conducted by electronic means shall be filed in the record.

(3) Transcript of proceeding. A hearing officer may, in his discretion, order a transcript be made of all or a portion of any recording of an administrative action assigned to that hearing officer. The agency shall bear the cost of a transcript ordered by the hearing officer.

(4) Use of transcript. No party may cite to, quote or otherwise rely upon a transcript of a proceeding in any paper filed in the record, unless a complete copy of that transcript is also in the record. Any party may file a transcript cited, quoted or relied upon at the same time that party files the paper referring to the transcript. Failure to file a transcript as required by this subsection shall be grounds for denying a motion, or striking from the record all or part of a motion, memorandum, pleading or other paper violating this subsection.

(5) Exhibits. Following the close of the formal administrative hearing, the agency shall retain the record, including all exhibits introduced at the administrative hearing, for at least five (5) years. After five (5) years, or the time for all appeals has expired or the final appeal has been decided, the agency shall notify the parties to the administrative action that they must retrieve their exhibits by a date certain. If the parties do not retrieve their exhibits by the date set by the agency, the agency may dispose of the exhibits pursuant to the agency's records retention procedures.

Section 21. Default. (1) Default on failure to comply with order. If a party fails to timely comply with an order of a hearing officer or a requirement of these administrative regulations, the hearing officer shall file an order directing the noncomplying party to show cause why the hearing officer should not deem that party to have waived his right to an administrative hearing and why the hearing officer should not immediately recommend the secretary enter an order adverse to the party. If the noncomplying party does not satisfy the show cause order as required, the hearing officer may recommend the secretary enter a final order in conformity with the relief requested by the opposing party in the administrative action.

(2) Default on failure to appear at hearing. If a party fails to appear at a formal administrative hearing, the hearing officer may deem that party to have waived his right to a formal administrative hearing and may immediately recommend the secretary enter a final order in conformity with the relief requested in the appropriate pleadings, or may proceed without the defaulting party.

(3) Default recommendation limits. Upon a party's failure to timely comply with a hearing officer's order, the hearing officer may recommend the secretary grant any relief to which the opposing party is entitled. Upon a party's failure to appear at a formal administrative hearing, the hearing officer shall recommend the secretary grant the relief requested in the appropriate pleading.

(4) Default set aside on good cause shown. A hearing officer may, before the time for filing exceptions with the secretary has run, set aside a recommendation by default under this section for good cause shown.

Section 22. Posthearing Procedures; Exceptions; Jurisdiction. (1) Posthearing memoranda. At the conclusion of an administrative hearing, the hearing officer may, within his discretion, order the parties to submit posthearing memoranda or draft recommended orders for the secretary. If the hearing officer orders such filings, he

may allow response times for each side. The hearing officer may in his discretion hear oral argument on posthearing filings. The record of the formal administrative hearing shall not close until after the time has run for all posthearing filings.

(2) Posthearing order. As soon as practicable after the conclusion of the administrative hearing, the hearing officer shall file an order that memorializes the time, place and duration of the hearing of the administrative action and recites appearances by counsel and parties. The hearing officer shall order at the close of the hearing whether the hearing will be transcribed, and shall set this forth in the posthearing order. The posthearing order shall set a date for the final close of the record.

(3) Transmission of official record. Within five (5) days after the posthearing order is filed, or the transcript of the hearing is received by the agency if a hearing officer orders a transcript, the agency shall compile the official record, as defined in KRS 13B.130, and shall transmit a dated, certified copy of the record to the hearing officer. The hearing officer shall file a recommended order within sixty (60) days of the record's certified date.

(4) Exceptions. Any party filing exceptions to a hearing officer's recommended order as provided for in KRS 13B.110(4) shall file with their exceptions a draft final order for the secretary. The excepting party's draft final order shall set out the relief the party requests in its exceptions. The party filing exceptions shall serve a copy on the hearing officer.

(5) Jurisdiction. The hearing officer shall retain jurisdiction over the administrative action until the time for filing exceptions under KRS 13B.110(4) has run. After that time, the administrative action shall be submitted to and within the sole jurisdiction of the secretary.

(6) The hearing officer shall within thirty (30) days of the closing of the hearing record, make a report and a recommended order to the secretary. The recommended order shall contain the appropriate findings of fact and conclusions of law. If the secretary finds upon written request of the hearing officer that additional time is needed, then the secretary may grant a reasonable extension. The hearing officer shall serve a copy of his report and recommended order upon all parties. The parties may file within fourteen (14) days of service of the hearing officer's report and recommended order exceptions to the recommended order. The secretary may remand the matter to the hearing officer for further deliberation, adopt the report and recommended order of the hearing officer, or refuse to adopt the report and recommended order of the hearing officer and issue its own written order based on the record as a whole.

(7) After completion of the hearing and filing of exceptions, the secretary shall notify the applicant in writing, certified mail with return receipt requested, of the final decision. If any extension of time is granted by the secretary for a hearing officer to complete his report, the secretary shall notify all parties at the time of the granting of the extension.

(8) The secretary shall not grant extensions of time to the hearing officer for more than thirty (30) days for any one (1) extension, and no more than two (2) such extensions shall be granted.

(9) A final order of the secretary shall be based on substantial evidence appearing in the record as a whole and shall set forth the decision of the secretary and the facts and law upon which the decision is based.

Section 23. Appeal Rights. Any person aggrieved by the secretary's final order shall have recourse to the Franklin Circuit Court.

[Section 1. Requests for Reconsideration or Hearing. (1) Any person not previously heard in connection with a determination of the commission or the executive director denying eligibility for participation in the fund or payment of a claim, who considers himself aggrieved by such determination, may request in writing that the determination be reconsidered. The writing shall set forth the grounds for the request and shall be accompanied by any documentation or

other competent evidence related to the disputed issue that was not previously considered by the commission staff. The right to request a reconsideration of the determination shall be limited to a period of thirty (30) days after the applicant has had actual notice of the commission's action. The commission staff shall evaluate the documents and other competent evidence after receipt of the request. The commission staff shall resubmit the claim to the commission if the documentation or evidence, accompanying the request for reconsideration, warrants reconsideration of a prior recommendation on the issue. If the reconsideration, by the commission staff or the commission, fails to resolve the applicant's concerns the applicant may request a hearing on the determination pursuant to subsection (2) of this section.

(2) Any person not previously heard in connection with a determination of the commission or the executive director denying eligibility for participation in the fund or payment of a claim, who considers himself aggrieved by such final determination, may request in writing that a hearing be conducted by the commission. The writing shall set forth the grounds for the request and the relief sought. The commission, the executive director or a person designated by the commission shall be the hearing officer. The right to request a hearing shall be limited to a period of thirty (30) days after the applicant has had actual notice of the action, or could reasonably have had notice. A subsection (1) of this section reconsideration is not required prior to requesting a hearing pursuant to this subsection. Requests for reconsideration under subsection (1) of this section shall not prejudice the right of a party to seek a hearing under this subsection, except as specifically set out in this administrative regulation. Unless the request is frivolous, the commission shall schedule a hearing before the commission not less than twenty-one (21) days after receipt of the request.

(3) The notice of hearing shall include a statement of the time, place, and nature of the hearing; the legal authority for the hearing; reference to the statutes and administrative regulations involved; and a short statement of the reason for the granting of the hearing.

(4) Upon receipt of notice of hearing, by the hearing officer, summons shall issue upon petition directing the commission to send all pertinent portions of the commission file related to the determination before the hearing officer, properly bound to the clerk of the administrative hearing office after certifying that such record is the total content of commission file documents pertaining to the issue before the hearing officer and that said record is the basis for the commission's determination. The hearing officer shall review the commission record the commission's determination.

Section 2. The Burden of Persuasion. The person requesting the hearing shall have the burden of persuasion to establish a case for the relief sought. The standard to meet the burden is a preponderance of the evidence.

Section 3. Documentary Evidence. Documentary evidence which is existing or obtained by any party during the time a claim is pending before the commission, and is not submitted to the commission, by such party, prior to the determination or reconsideration by the commission shall not be admitted into the hearing record in the absence of extraordinary circumstances, unless by agreement of the parties.

Section 4. Prehearing Conference. Prior to the formal hearing, and upon seven (7) days written notice to all parties, delivered personally or by certified mail with return receipt requested, the hearing officer may hold a prehearing conference to consider simplification of the issues, admissions of fact and documents which will avoid unnecessary proof, limitations of the number of witnesses and such other matters as will aid in the disposition of the matter. Disposition of the matter may be made at the prehearing conference by stipulation, agreed settlement, consent order, or default for

nonappearance.

Section 5. Administrative Hearing Procedure. (1) Any party to a hearing may be represented by counsel, may make oral or written argument, offer testimony, cross-examine witnesses, or take any combination of such actions. A hearing officer shall preside at the hearing in accordance with reasonable administrative practice.

(2) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. When necessary to ascertain facts not reasonably susceptible of proof under judicial rules of evidence, evidence not admissible thereunder may be admitted (except where precluded by statute) if it is a type commonly relied upon by reasonably prudent men in the conduct of their affairs. Hearing officers shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form. Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original. A party may conduct cross-examinations required for a full and true disclosure of the facts.

(3) The hearing officer shall provide for the hearing to be stenographically, mechanically or electronically recorded. It is within the hearing officer's discretion to require official transcripts. The record of such hearing, consisting of all pleadings, motions, rulings, documentary and physical evidence received or considered, a statement of matters officially noticed, questions and offers of proof, objections and rulings thereon, proposed findings and recommended order, and legal briefs, shall be open to public inspection and copies thereof shall be made available to any person upon completion of the hearing process upon payment of the actual cost of reproducing the original except as provided in KRS 224.10-210 or 224.10-212, and 400 KAR 1:060. The commission may cause the mechanical recording of the testimony to be transcribed. When certified as a true and correct copy of the testimony by the hearing officer, the transcript shall constitute the official transcript of the evidence.

(4) The hearing officer shall within thirty (30) days of the closing of the hearing record, make a report and a recommended order to the commission. The recommended order shall contain the appropriate findings of fact and conclusions of law. If the commission finds upon written request of the hearing officer that additional time is needed, then the commission may grant a reasonable extension. The hearing officer shall serve a copy of his report and recommended order upon all parties. The parties may file within fourteen (14) days of service of the hearing officer's report and recommended order exceptions to the recommended order. The commission may remand the matter to the hearing officer for further deliberation, adopt the report and recommended order of the hearing officer, or refuse to adopt the report and recommended order of the hearing officer and issue its own written order based on the record as a whole.

(5) After completion of the hearing and filing of exceptions, the commission shall notify the applicant in writing, certified mail with return receipt requested, of the final decision of the commission. If any extension of time is granted by the commission for a hearing officer to complete his report, the commission shall notify all parties at the time of the granting of the extension.

(6) The commission shall not grant extensions of time to the hearing officer for more than thirty (30) days for any one (1) extension, and no more than two (2) such extensions shall be granted.

(7) A final order of the commission shall be based on substantial evidence appearing in the record as a whole and shall set forth the decision of the commission and the facts and law upon which the decision is based.

(8) There shall be no ex parte communications between a hearing officer and parties to the action.

(9) Any person aggrieved by a final order of the commission may

have recourse to the Franklin Circuit Court.]

LAURA M. DOUGLAS, Secretary

APPROVED BY AGENCY: July 3, 1996

FILED WITH LRC: July 3, 1996 at 10 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact: David B. Wicker

(1) Type and number of entities affected: The proposed regulation will affect approximately 15,000 facilities with underground storage tanks containing petroleum products.

(a) Direct and indirect costs or savings to those affected:

1. First year: The tank owners or operators are financially responsible for \$1000, \$5,000 or \$25,000 depending on the number of tanks, rather than \$1,000,000 of financial responsibility for clean up of leaks from underground petroleum storage tanks. Cost should not rise for the public.

2. Continuing costs or savings: The amendments should not raise cost to the public.

3. Additional factors increasing or decreasing costs: (Note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paper requirements: Tank owners or operators will be required to complete, file, maintain and process application and claim forms.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The Office of the Petroleum Storage Tank Environmental Assurance Fund receives operating expenses from the Petroleum Storage Tank Environmental Assurance Fund. The FY 96 administrative budget was \$1.3 million. The cost to the fund will increase as we are now required to keep the original hearing files at the agency.

2. Continuing costs or savings: The fund anticipates continuing costs associated with staff and general operation of the program.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs. The fund believes that it has adequate staff at this time to administer this program.

(b) Reporting and paperwork requirements: The fund is required to collect, review, maintain, and process hearing files.

(3) Assessment of anticipated effect on state and local revenues: See fiscal note on local government.

(4) Assessment of alternative methods: reasons why alternatives were rejected:

(a) KRS Chapter 13B required three amendments. A recent reorganization moving this agency to the Public Protection and Regulation Cabinet also required amendments to this section.

Alternative:

1. Less stringent: The fund cannot be less stringent than the statute allows.

2. More stringent: The fund cannot be more stringent than the statute allows.

3. Present proposal: The amended regulation provides the due process procedures provided for in KRS Chapter 13B.

(5) Geographical and environmental impact:

(a) Geographical: The effect of this regulation will be equal though all geographic regions of the state, as all areas have petroleum storage tanks. More populated areas will most likely contain more tanks.

(b) Environmental: None

(6) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplication: KRS Chapter 13B may have some overlapping provisions, but the regulations are consistent with the statutory provisions.

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was report made to harmonize the proposed regulation with conflicting provisions: There is no conflict.

(7) Source of revenue: The funds expended by the fund will come from the Petroleum Storage Tank Environmental Assurance Fee, pursuant to KRS 224.60-145.

(8) Benefits of the regulation: Amendments guarantee due process standards.

(9) Any additional information or comments: There is no additional information.

(10) Tiering statement: Was tiering applied? No. Tiering was not necessary.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 CFR 280 Subpart H requires the owner or operator of petroleum storage tanks to demonstrate financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by a petroleum release to the environment. 40 CFR 280.101 allows for a state fund to be created and administered which will fulfill the liability requirements.

2. State compliance standards. KRS Chapter 13B.

3. Minimum or uniform standards contained in the federal mandate. None

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This regulation will affect a local government or a division of local government that owns or operates underground petroleum storage tanks.

3. State the aspect or service of local government to which this administrative regulation relates. Any service provided by the local government which involves the storage of motor fuel in underground storage tanks.

4. How does this administrative regulation affect the local government or any service it provides? Local governments, like any owner or operator of an underground petroleum storage tank, will be required to demonstrate financial responsibility for taking corrective action and for compensating third party damages. Excepting the required entry level imposed on the local government extensive savings will be realized by the local government.

STATEMENT OF EMERGENCY

415 KAR 1:125E

WHEREAS, the Petroleum Storage Tank Environmental Assurance Fund Commission was abolished and the Office of the Petroleum Storage Tank Environmental Assurance Fund was created in the Public Protection and Regulation Cabinet by Executive Orders 96-485 and 96-591; and

WHEREAS, the Office of the Petroleum Storage Tank Environmental Assurance Fund has the same authority as the commission but a new appointing authority, it is necessary to amend this regulation to conform to the Executive Orders and ease confusion in the public's mind; and

WHEREAS, HB 167, amending the statutory authorization for the

fund, was passed by the General Assembly during the 1996 Regular Session and the statute now requires this regulation to be amended; and

WHEREAS, KRS Chapter 13B requires the amendment of hearings regulations that do not provide due process guarantees in compliance with KRS Chapter 13B, this regulation must be amended to comply with those provisions.

WHEREAS, an ordinary regulation would not be sufficient as the provisions of HB 167 become effective on July 15, 1996, and the delay in promulgating ordinary regulations would cause the fund to have inconsistency between its statute and the regulations. An ordinary regulation would also be insufficient as the regulations no longer reflect the correct appointing authority for the fund. Allowing these factors to continue would endanger the fund's ability to assist in the protection of human health and the environment.

IT IS HEREBY DECLARED, that an emergency exist and this regulation may be filed, pursuant to KRS 13A.190, as an emergency regulation, to expire in 170 days from the date of its publication. This regulation will be replaced by an ordinary regulation.

PAUL E. PATTON, Governor
LAURA M. DOUGLAS, Secretary
ROBERT E. NICKEL, Executive Director

PUBLIC PROTECTION AND REGULATION CABINET
Office of the Petroleum Storage Tank
Environmental Assurance Fund

415 KAR 1:125E. Discovery procedure.

RELATES TO: KRS 224.60-120, 224.60-130, 224.60-140, 40 CFR Part 280

STATUTORY AUTHORITY: KRS 224.60-120, 224.60-130
EFFECTIVE: July 3, 1996

NECESSITY AND FUNCTION: KRS 224.60-130(2)(c) requires the Office of the Petroleum Storage Tank Environmental Assurance Fund to hear complaints brought regarding the payment of claims from the fund. This administrative regulation establishes discovery procedures for the hearings provided in 415 KAR 1:120.

Section 1. General Provisions Governing Discovery. (1) Discovery methods. Parties to administrative actions may, upon leave of the hearing officer, obtain discovery by one or more of the following methods:

- (a) Depositions upon oral examination or written questions;
- (b) Written interrogatories;
- (c) Production of documents or things or, for parties other than the Agency, permission to enter upon land or other property, for inspection and other purposes; and
- (d) Requests for admission.

- (2) Scope of discovery.

(a) In general. Parties with leave of the hearing officer may obtain discovery regarding any matter, not privileged or confidential under law or regulation or falling within any evidentiary privilege recognized in the courts of this Commonwealth, whether it relates to a claim or defense of the party seeking discovery or to a claim or defense of any other party, which is relevant to the subject matter involved in the administrative action, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not grounds for objection that the information sought will be inadmissible at the administrative hearing if the information sought appears reasonably calculated to lead to the discovery of admissible relevant evidence.

(b) Insurance agreements. A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part

or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment.

(c) Hearing preparation: materials.

1. Subject to the provisions of paragraph (d) of this subsection, a party may obtain discovery of documents and tangible things otherwise discoverable under paragraph (a) of this subsection and prepared in anticipation of the administrative action by or for another party or by or for that other party's representative (including the party's attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the hearing officer shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the proceeding.

2. A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for an order of the hearing officer. For purposes of this paragraph, a statement previously made is a written statement signed or otherwise adopted or approved by the person making it, or a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(d) Hearing preparations: experts. Discovery of facts known and opinions held by experts, otherwise discoverable under this administrative regulation and acquired or developed in anticipation of or preparation for the administrative action, may be obtained only as follows:

1. A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at the administrative hearing, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. Upon motion, the hearing officer may order further discovery by other means, subject to those restrictions as to scope as the hearing officer may deem appropriate.

2. A party may discover facts known or opinions held by an expert who has been retained or employed by another party in anticipation of or preparation for an administrative action and who is not expected to be called as a witness at the administrative hearing, only upon a showing of exceptional circumstances under which it is impracticable for the party to obtain facts or opinions on the same subject by other means.

(3) Protective orders.

(a) Upon motion by a party or by the person from whom discovery is sought, accompanied by a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute, and for good cause shown, the hearing officer may make any order which justice requires to protect a person from annoyance, embarrassment, oppression, or undue burden or expense, including one (1) or more of the following:

- 1. That the discovery not be had;
- 2. That the discovery may be had only on specified terms and conditions, including a designation of the time or place;
- 3. That the discovery may be had only by a method of discovery other than selected by the party seeking discovery;
- 4. That certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;
- 5. That discovery be conducted with no one present except persons designated by the hearing officer;

6. That a deposition after being sealed be opened only by order of the hearing officer or the secretary; or

7. That a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way.

(b) If the motion for a protective order is denied in whole or in part, the hearing officer may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of Section 10(1)(c) of this administrative regulation apply to the award of expenses incurred in relation to the motion.

(4) Sequence and timing of discovery. The hearing officer shall order the methods and sequence of discovery in the order granting discovery, and the fact that a party is granted discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

(5) Supplementation of responses. A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement that response to include information thereafter acquired, except as follows:

(a) A party is under a duty seasonably to supplement a response with respect to any question directly addressed to the identity and location of persons having knowledge of discoverable matters, or the identity of each person expected to be called as an expert witness at the hearing, the subject matter on which the person is expected to testify, and the substance of the person's testimony.

(b) A party is under a duty seasonably to amend a prior response if the party obtains information upon the basis of which the party knows that the response was incorrect when made, or the party knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(c) A duty to supplement responses may be imposed by order of the hearing officer, agreement of the parties, or at any time prior to the hearing through new requests for supplementation of prior responses.

Section 2. Persons before whom Depositions may be Taken. Depositions shall be taken under oath before a hearing officer, judge, clerk, commissioner or official reporter of a court, a notary public, or before such other persons and under such other circumstances as are authorized by law or ordered by the hearing officer.

Section 3. Stipulations Regarding Discovery Procedure. Unless the hearing officer orders otherwise, the parties may, by agreement, provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions, and modify the procedures provided by this administrative regulation for other methods of discovery.

Section 4. Depositions upon Oral Examination. (1) When depositions may be taken. After commencement of the administrative action, any party may with leave of the hearing officer take the testimony of any person, including a party, by deposition upon oral examination. The attendance of witnesses may be compelled by subpoena issued by the hearing officer.

(2) General requirements.

(a) A party with leave of the hearing officer to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the administrative action. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs, the matter upon which each person will be examined, and the name or descriptive title and address of the person before whom the deposition is to be taken. If a subpoena is to be served on the person to be examined requiring the production of documents or things, the

designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.

(b) The hearing officer may enlarge or shorten the time for taking the deposition.

(c) The hearing officer may order that the testimony at a deposition be recorded by other than stenographic means, in which event the order shall designate the manner of recording, preserving, and filing the deposition, and may include other provisions to assure that the recorded testimony will be accurate and trustworthy. A party may arrange to have a stenographic transcription made at the party's own expense.

(d) The notice to a party deponent may be accompanied by a request that the deponent produce documents and tangible things at the deposition. The procedures of Section 8(2) of this administrative regulation shall apply to any such request for production.

(e) A party may in the notice and subpoena name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one (1) or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. A subpoena shall advise a nonparty organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization. This paragraph does not preclude taking a deposition by any other procedure authorized in this administrative regulation.

(3) Examination and cross-examination.

(a) Examination and cross-examination of witnesses may proceed as permitted at the administrative hearing. The person before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under the person's direction and in the person's presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other means ordered in accordance with subsection (2)(c) of this section. If requested by one (1) of the parties, the testimony shall be transcribed at that party's expense.

(b) All objections made at the time of the examination to the qualifications of the person taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the person taking the deposition upon the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition and that party shall transmit them to the person taking the deposition, who shall propound them to the witness and record the answers verbatim.

(4) Motion to terminate or limit examination. At any time during the taking of the deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the hearing officer may order the person conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in Section 1(3) of this administrative regulation. If the order made terminates the examination, it shall be resumed thereafter only upon the order of the hearing officer. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. The provisions of Section 10(1)(c) of this administrative regulation apply to the award of expenses incurred in relation to the motion.

(5) Submission to witness. Any party to an action may make a written request before the person taking a deposition therein that it be submitted to the witness. Upon such a request, the transcription of the deposition shall be submitted to the witness for examination and

shall be read to or by the witness. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the person taking the deposition with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness unless the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness, the person before whom the deposition is taken shall sign it and state on the record the fact of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed unless on a motion to exclude the hearing officer holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(6) Certification and filing by person taking deposition.

(a) The person before whom the deposition is taken shall certify on the deposition that the witness was duly sworn by that person and that the deposition is a true record of the testimony given by the witness.

(b) Documents and things produced for inspection during the examination of the witness shall, upon the request of a party, be marked for identification and annexed to and returned with the deposition, and may be inspected and copied by any party. The person producing the materials may substitute copies to be marked for identification, if a fair opportunity is afforded all parties to verify the copies by comparison with the originals. If the person producing the materials requests their return, the person before whom the deposition is taken shall mark them, give each party an opportunity to inspect and copy them, and return them to the person producing them. The materials may then be used in the same manner as if annexed to and returned with the deposition. Any party may move for an order that the original be annexed to and returned with the deposition pending final disposition of the administrative action.

(c) Upon payment of reasonable charges therefor, not to exceed those fixed by law, the person taking the deposition shall furnish a copy of the deposition to any party or to the deponent.

(7) Failure to attend or to serve subpoena; expenses.

(a) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the hearing officer may order the party giving the notice to pay to such other party the amount of the reasonable expenses incurred by the party and the party's attorney in so attending, including reasonable attorney's fees.

(b) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon the witness and the witness because of such failure does not attend, and if another party attends in person or by attorney because the party expects the deposition of that witness to be taken, the hearing officer may order the party giving the notice to pay to such other party the amount of the reasonable expenses incurred by the party and the party's attorney in so attending, including reasonable attorney's fees.

Section 5. Depositions upon Written Questions. (1) Serving questions; notice.

(a) After commencement of the administrative action, any party may, with leave of the hearing officer, take the testimony of any person, including a party, by deposition upon written questions. The attendance of witnesses may be compelled by the use of subpoenas issued by the hearing officer.

(b) A party desiring to take a deposition upon written questions shall serve them upon every other party with a notice stating the name and address of the person who is to answer them, if known, and if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs, and the name or description title and address of the person before whom the deposition is to be taken. A deposition upon written questions may be taken of a public or private corporation or a partnership or association or governmental agency in accordance with

the provisions of Section 4(2)(e) of this administrative regulation.

(c) The hearing officer may establish an expeditious schedule for the service of cross, redirect, and recross questions.

(2) A copy of the notice and copies of all questions served shall be delivered by the party taking the deposition to the person designated in the notice, who shall proceed promptly, in the manner provided by Section 4(3), (5) and (6) of this administrative regulation, to take the testimony of the witness in response to the questions and to prepare, certify, and file or mail the deposition, attaching thereto the copy of the notice and the questions which were received. Neither party agent, or attorney shall be present at the examination of the witness.

Section 6. Use of Depositions in Administrative Hearings. (1) Use of depositions. At the administrative hearing any part or all of a deposition so far as admissible may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

(a) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness.

(b) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent, or a person designated under Section 4(2)(e) or 5(1)(b) of this administrative regulation to testify on behalf of a public or private corporation, partnership or association or governmental agency which is a party may be used by an adverse party for any purpose.

(c) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the hearing officer finds that:

1. The witness is dead;
2. The party offering the deposition has been unable to procure the attendance of the witness by subpoena;
3. The witness is at a greater distance than 100 miles from the place of the administrative hearing or out of the state, unless it appears that the absence of the witness was procured by the party offering the deposition;
4. The witness is the Governor, the secretary, auditor or treasurer of the state; or the witness is a judge or clerk of a court; or the witness is a postmaster; or the witness is a president, cashier, teller or clerk of a bank; or the witness is a practicing physician, dentist or lawyer; or the witness is a keeper, officer or guard of a penitentiary;
5. The witness is of unsound mind, having been of sound mind when his deposition was taken;
6. The witness is prevented from attending the administrative hearing by illness, infirmity, or imprisonment;
7. The witness is in the military service of the United States or of this state and is not able to attend the administrative hearing to testify; or

8. The hearing officer finds that such circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally at the administrative hearing, to allow the deposition to be used.

(d) If only a part of a deposition is offered in evidence by a party, an adverse party may require introduction of any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts.

(e) Substitution of parties does not affect the right to use depositions previously taken.

(2) Objections to admissibility. Objection may be made at any time during the administrative hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

(3) Effect of taking or using depositions. The taking of a deposition or the questioning of a deponent shall not make evidence admissible which is otherwise incompetent or constitute a waiver of

objections to its admissibility.

(4) Effect of errors and irregularities.

(a) As to notice. All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

(b) As to disqualification of person before whom deposition is to be taken. Objection to taking a deposition because of disqualification of the person before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(c) As to taking of deposition.

1. Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

2. Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless timely objection thereto is made at the taking of the deposition.

3. Objections to the form of written questions are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other questions and within three (3) days after service of the last questions authorized.

(d) As to completion and return of deposition. Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed, or otherwise dealt with by the person before whom the deposition was taken under this section and Section 5 of this administrative regulation are waived unless a motion to exclude the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

Section 7. Interrogatories to Parties. (1) Availability; procedures for use.

(a) With leave of the hearing officer after the administrative action commences, any party may serve upon any other party written interrogatories to be answered by the party served, or if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. A copy of the interrogatories, answers and all related pleadings shall be served upon all parties.

(b) Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers and objections shall be signed by the person making them. The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within thirty (30) days of service or within such other time as specified by the hearing officer or agreed upon. The party submitting the interrogatories may move for an order under Section 10(1) of this administrative regulation with respect to any objection to or other failure to answer an interrogatory.

(2) Scope; use at administrative hearing.

(a) Interrogatories may relate to any matters which may be inquired into under Section 1(2) of this administrative regulation, and the answers may be used to the extent permitted by these regulations and KRS Chapter 13B.

(b) An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the hearing officer may order that such an interrogatory need not be answered until after designated discovery has been completed

or until a prehearing conference or other later time.

(3) Option to produce business records. Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, or from a compilation, abstract or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries.

(4) Limitation on the number of interrogatories. Unless otherwise allowed by the hearing officer for cause shown, each party may propound a maximum of thirty (30) interrogatories. For purposes of this section, each subpart of an interrogatory shall be counted as a separate interrogatory. The following interrogatories shall not be included in the maximum allowed:

(a) A request for the names and addresses of persons answering the interrogatories;

(b) A request for the names and addresses of the witnesses; and

(c) A request as to whether the persons answering are willing to supplement their answers if information subsequently becomes available.

Section 8. Production of Documents and Things. (1) Scope. After commencement of the administrative action, any party may, with leave of the hearing officer, serve on any other party a request to produce and permit the party making the request, or someone acting on the party's behalf, to inspect and copy any designated documents;

(2) Procedure. The request may be served on any party with leave of the hearing officer after service of the summons. The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts. The party upon whom the request is made shall serve written response within thirty (30) days or within such other time as specified by the hearing officer or agreed upon by the parties. The party submitting the request may move for an order under Section 10 of this administrative regulation with respect to any objection to or failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

(3) Limitation on the number of requests. Unless otherwise allowed by the hearing officer for cause shown, each party may propound a maximum of thirty (30) requests under this section. For purposes of this section, each subpart of a request shall be counted as a separate request.

Section 9. Requests for Admission. (1) Scope. With leave of the hearing officer after the administrative action commences, a party may serve upon any other party a written request for admission, for purposes of the pending administrative action only, of the truth of any matters within the scope of Section 1(2) of this administrative regulation set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying.

(2) Form. Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within thirty (30) days after service of the request, or within such shorter or longer time as the hearing officer may allow or the parties may agree, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by the party's attorney. If objection is

made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify the answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that a reasonable inquiry has been made and that the information known or readily obtainable is insufficient to enable the party to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for the hearing may not, on that ground alone, object to the request; the party may deny the matter or set forth reasons why the matter cannot be admitted or denied.

(3) Sufficiency of answers. The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the objection is justified, the hearing officer shall order that an answer be served. If the hearing officer determines that an answer does not comply with the requirements of this section, the hearing officer may order either that the matter is admitted or that an amended answer be served. The hearing officer may, in lieu of these orders, determine that final disposition of the request be made at a prehearing conference. The provisions of Section 10(3) of this administrative regulation apply to the award of expenses incurred in relation to the motion.

(4) Effect of admission. Any matter admitted under this section is conclusively established unless the hearing officer on motion permits withdrawal or amendment of the admission. The hearing officer may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the hearing officer that withdrawal or amendment will prejudice the party in maintaining the action or defense on the merits. An admission made by a party under this section is for the purpose of the pending administrative action only and is not an admission for any other purpose nor may it be used against the party in any other proceeding.

(5) Limitation on the number of requests. Unless otherwise allowed by the hearing officer for cause shown, each party may propound a maximum of thirty (30) requests under this section. For purposes of this section, each subpart of a request shall be counted as a separate request.

Section 10. Failure to Make Discovery: Sanctions. (1) Motion for order compelling discovery. A party, upon reasonable notice to other parties and all persons affected thereby, may move the hearing officer for an order compelling discovery as follows:

(a) Motion.

1. If a deponent fails to answer a question propounded or submitted under Section 4 or 5 of this administrative regulation or a corporation or other entity fails to make a designation under Section 4(2)(e) or 5(1)(b) of this administrative regulation, or a party fails to answer an interrogatory submitted under Section 7 of this administrative regulation, or a party fails to allow examination under Section 8 of this administrative regulation, the discovering party may move for an order compelling an answer or a designation or an order compelling examination in accordance with the request. The motion shall include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make the discovery in an effort to secure the information or material. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before he applies for an order.

2. If the motion is denied in whole or in part, the hearing officer may make such protective order as the hearing officer would have been empowered to make on a motion made pursuant to Section 1(3) of this administrative regulation.

(b) Evasive or incomplete answer. For the purposes of this section an evasive or incomplete answer is to be treated as a failure to answer.

(c) Award of expenses of motion.

1. If the motion is granted the hearing officer shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees, unless the hearing officer finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

2. If the motion is denied, the hearing officer shall, after opportunity for hearing, require the moving party or the attorney advising the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney's fees, unless the hearing officer finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

3. If the motion is granted in part and denied in part, the hearing officer may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

(2) Failure to comply with order.

(a) Sanctions by the hearing officer. If a party or an officer, director, or managing agent of a party or a person designated under Section 4(2)(e) or 5(1)(b) of this administrative regulation to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subsection (1) of this section, the hearing officer may make such orders in regard to the failure as are just, and among others the following:

1. An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

2. An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting the party from introducing designated matters in evidence;

3. An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a recommended order by default against the disobedient party.

(b) Expenses on failure to obey order. In lieu of any of the foregoing orders or in addition thereto, the hearing officer shall require the party failing to obey the order or the attorney advising the party or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the hearing officer finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

(3) Expenses on failure to admit. If a party fails to admit the genuineness of any document or the truth of any matter as requested under Section 9 of this administrative regulation, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, the requesting party may apply to the hearing officer for an order requiring the other party to pay the reasonable expenses incurred in making that proof, including reasonable attorney's fees. The hearing officer shall make the order unless he finds that the request was held objectionable pursuant to Section 9(1) of this administrative regulation, or the admission sought was of no substantial importance, or the party failing to admit had reasonable ground to believe that the party might prevail on the matter, or there was other good reason for the failure to admit.

(4) Failure of party to attend at own deposition or serve answers to interrogatories or respond to request for inspection.

(a) If a party or an officer, director, or managing agent of a party or a person designated under Section 4(2)(e) or 5(1)(b) of this administrative regulation to testify on behalf of a party fails to appear before the person who is to take his deposition, after being served

with a proper notice, or to serve answers or objections to interrogatories submitted under Section 7 of this administrative regulation, after proper service of the interrogatories, or to serve a written response to a request for examination submitted under Section 8 of this administrative regulation, after proper service of the request, the hearing officer on motion may make such orders in regard to the failure as are just, including any action authorized under subparagraphs 1, 2, and 3 of subsection (2)(a) of this section. In lieu of any order or in addition thereto, the hearing officer may require the party failing to act to pay the reasonable expenses, including attorney's fees, caused by the failure unless the hearing officer finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

(b) The failure to act described in this section may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided in Section 1(3) of this administrative regulation.

LAURA M. DOUGLAS, Secretary

APPROVED BY AGENCY: July 3, 1996

FILED WITH LRC: July 3, 1996 at 10 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact: David B. Wicker

(1) Type and number of entities affected: The proposed regulation will affect approximately 15,000 facilities with underground storage tanks containing petroleum products.

(a) Direct and indirect costs or savings to those affected:

1. First year: The tank owners or operators are financially responsible for \$1000, \$5,000 or \$25,000 depending on the number of tanks, rather than \$1,000,000 of financial responsibility for clean up of leaks from underground petroleum storage tanks. Cost should not rise for the public.

2. Continuing costs or savings: This proposed regulation should not increase cost to the public.

3. Additional factors increasing or decreasing costs: (Note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paper requirements: Tank owners or operators will be required to complete, file, maintain and process application and claim forms.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The Office of the Petroleum Storage Tank Environmental Assurance Fund receives operating expenses from the Petroleum Storage Tank Environmental Assurance Fund. The FY 96 administrative budget was.

2. Continuing costs or savings: The fund anticipates continuing costs associated with staff and general operation of the program.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs. The fund believes that it has adequate staff at this time to administer this program.

(b) Reporting and paperwork requirements: The fund is required to collect, review, maintain, and process hearing files.

(3) Assessment of anticipated effect on state and local revenues: See fiscal note on local government.

(4) Assessment of alternative methods: reasons why alternatives were rejected:

(a) KRS Chapter 13B required these amendments. A recent reorganization moving this agency to the Public Protection and Regulation Cabinet also required the amendments.

Alternative:

1. Less stringent: The fund cannot be less stringent than the statute allows.

2. More stringent: The fund cannot be more stringent than the statute allows.

3. Present proposal: The present proposal complies with KRS Chapter 13B.

(5) Geographical and environmental impact:

(a) Geographical: The effect of this regulation will be equal though all geographic regions of the state, as all areas have petroleum storage tanks. More populated areas will most likely contain more tanks.

(b) Environmental: None

(6) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplication: KRS Chapter 13B may contain some overlapping provisions, but this regulation is consistent with the statute.

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was report made to harmonize the proposed regulation with conflicting provisions: There is no conflict.

(7) Source of revenue: The funds expended by the fund will come from the Petroleum Storage Tank Environmental Assurance Fee, pursuant to KRS 224.60-145.

(8) Benefits of the regulation: The amended regulation conforms to the executive order and avoids confusion in the regulated public. The amendments guarantee minimum due process standards.

(9) Any additional information or comments: There is no additional information.

(10) Tiering statement: Was tiering applied? No. Tiering was not necessary.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 CFR 280 Subpart H requires the owner or operator of petroleum storage tanks to demonstrate financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by a petroleum release to the environment. 40 CFR 280.101 allows for a state fund to be created and administered which will fulfill the liability requirements.

2. State compliance standards. KRS Chapter 13B.

3. Minimum or uniform standards contained in the federal mandate. None

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This regulation will affect a local government or a division of local government that owns or operates underground petroleum storage tanks.

3. State the aspect or service of local government to which this administrative regulation relates. Any service provided by the local government which involves the storage of motor fuel in underground storage tanks.

4. How does this administrative regulation affect the local government or any service it provides? Local governments, like any owner or operator of an underground petroleum storage tank, will be required to demonstrate financial responsibility for taking corrective action and for compensating third party damages. Excepting the required entry level imposed on the local government extensive savings will be realized by the local government.

**STATEMENT OF EMERGENCY
603 KAR 5:330E**

House Bill 168 passed by the 1996 General Assembly has an implementation date of July 15, 1996. This bill allows for the issuance of annual overweight permits for nondivisible loads. It further allows the Transportation Cabinet by administrative regulation to establish safety criteria relating to the use and issuance of the annual permits. This administrative regulation is needed on an emergency basis in order that the safety requirements associated with the annual permit can be in place when the first of the annual permits are issued. Since several trucking companies have already approached the Transportation Cabinet to apply for an annual permit to be effective July 15, 1996, it is imperative that this administrative regulation which includes safety criteria also be effective as soon as possible. The Notice of Intent to promulgate an ordinary administrative regulation is attached to this administrative regulation for filing with the Administrative Regulations Compiler. This emergency administrative regulation will be replaced by an ordinary administrative regulation as soon as possible.

PAUL E. PATTON, Governor
FRED N. MUDGE, Secretary

**TRANSPORTATION CABINET
Department of Highways
Division of Operations
Department of Vehicle Regulation
Division of Motor Carriers**

603 KAR 5:330E. Annual overweight permits for nondivisible loads.

RELATES TO: KRS 189.222, House Bill 168, Regular Session 1996, 23 CFR 658.17

STATUTORY AUTHORITY: KRS 189.000 (House Bill 168)

EFFECTIVE: July 12, 1996

NECESSITY, FUNCTION and CONFORMITY: House Bill 168 passed by the 1996 General Assembly created a new section of KRS Chapter 189 which authorizes the Department of Highways to issue an annual \$500 permit for the movement of a motor vehicle whose nondivisible load does not exceed a gross weight of 120,000 pounds. This administrative regulation establishes the procedures for application and safety requirements necessary in the interest of highway safety and convenience for the issuance of this overweight permit.

Section 1. Definitions. (1) "Nondivisible load" means a load which cannot be dismantled or divided without incurring substantial cost or delay.

(2) "Overweight" means the motor vehicle exceeds:

- (a) The gross weight limit established for a highway segment in 603 KAR 5:301;
- (b) The axle weight limit established in 603 KAR 5:066;
- (c) The bridge weight limit established by 603 KAR 5:066; or
- (d) The gross weight limit posted at a bridge or other structure.

Section 2. Application for Permit. (1) An application for an annual overweight permit issued pursuant to this administrative regulation shall contain the following information:

- (a) The name, address, and telephone number of the applicant;
- (b) The purpose of the movements for which a permit is requested;
- (c) The portions of the state primary road system requested to be used;
- (d) Description and identity of the vehicle for which the application is made including the following:
 - 1. Vehicle identification number of the power unit;

- 2. Year, make, and model of the power unit;
- 3. License plate number of the power unit, if required; and
- 4. State which issued the license plate.
 - (e) An axle-by-axle breakdown of the weight of the combined vehicle and load;
 - (f) The gross weight of the vehicle and load for which the application is made;
 - (g) The KYU number required by 601 KAR 1:200 under which the overweight motor vehicle will be operated;
 - (h) Requested issue date for the permit; and
 - (i) A certification that the tractor, towing unit, or overweight vehicle has sufficient horsepower and braking capacity to safely transport the overweight load.
- (2) A highway map showing each of the proposed routes for which application is being made shall also be attached to the application.
- (3) A separate permit application and fee shall be required for each tractor or power unit which the applicant intends to operate under the provisions of this administrative regulation.

Section 3. Limits on Permits. (1) This annual overweight permit shall only be issued to a tractor or power unit which is:

- (a) Registered in Kentucky for a combined gross weight of 80,000 pounds;
- (b) Apportioned registered in another licensing jurisdiction to operate in Kentucky with a gross weight of 80,000 pounds; or
- (c) Is not required to be registered or licensed in order to operate the vehicle in Kentucky.
- (2) All trailers or semitrailers used in conjunction with the tractor or power unit shall be registered and licensed:
 - (a) In Kentucky; or
 - (b) If in another jurisdiction, apportioned registered to operate in Kentucky.

(3) Each annual permit issued shall be limited to designated portions of the state primary road system.

(4) An overweight permit shall not be issued or valid for a vehicle or vehicle combination whose axle weight exceeds the product of 700 pounds times the aggregate width in inches established from the manufacturer's stamped tire measurement for all tires on the axle.

(5) An annual overweight permit shall not be issued or valid for a vehicle or vehicle combination whose axle or axle group weight exceeds the limits set forth in subsection 2 of section 1 of House Bill 168.

Section 4. Denial or Restriction of Permit Application. The Transportation Cabinet shall have the right to deny or restrict a permit for the use of any route which may be detrimental to public safety or convenience. The Transportation Cabinet shall consider the following when making the determination on the application:

- (1) The strength of all bridges and structures on the route;
- (2) Traffic congestion on the route;
- (3) Horizontal and vertical alignment of the route;
- (4) The availability of alternate routes that afford greater safety;
- (5) Urban development in residential and commercial areas on the route;
- (6) The proximity of schools to the route;
- (7) Highway construction or reconstruction scheduled for the route; and
- (8) Any other condition that would unduly compromise public safety and convenience.

Section 5. Permit Availability. (1) The original of the annual permit or a copy authenticated by the Department of Vehicle Regulation by embossing shall be carried in the overweight vehicle at all times.

(2) The annual permit shall be presented, upon request, to any law enforcement officer or authorized personnel of the Department of Vehicle Regulation.

(3) An unauthenticated photocopy of the annual permit shall not be valid.

Section 6. Overdimensional Loads. If any movement to be made under an annual permit issued under this administrative regulation involves a motor vehicle which exceeds the dimension limits for the routes requested, the permit holder shall apply for an overdimensional permit under the provisions of KRS Chapter 189.

Section 7. 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 permit requested shall be subject to the fees set forth in KRS Chapter 189.

Section 8. Permit Validity. (1) The annual permit issued under the provisions of this administrative regulation shall be valid for one (1) year from the date of issuance.

(2)(a) If the conditions on an approved route change, the permit holder shall notify the Transportation Cabinet of the change in order for the cabinet to determine if the route is still available for use by the overweight vehicle.

(b) If the route is unavailable for overweight vehicles, the Transportation Cabinet shall attempt to reroute the permit holder.

(c) If an alternative route is approved, the Transportation Cabinet shall, free of charge, issue a supplemental permit to the permit holder. The supplemental permit shall expire either when the initial route is again available for use or at the end of the permit year.

(d) If an alternative route is unavailable, the permit holder shall not operate overweight until the initial route is again available for use.

(3) A permit issued pursuant to the provisions of this administrative regulation shall not have an effective date earlier than July 15, 1996.

ED LOGSDON, Commissioner
J. M. YOWELL, State Highway Engineer
FRED N. MUDGE, Secretary
APPROVED BY AGENCY: July 11, 1996
FILED WITH LRC: July 12, 1996 at 4 p.m.

Contact Person: Sandra Pullen Davis

(1) Type and number of entities affected: Only the few transportation companies which will be eligible for the annual overweight permit. Since most of the overweight loads in Kentucky are divisible, the transporters are not eligible for this permit. Other transporters need a new route each trip and therefore will not apply for an annual permit, but will continue to apply for a trip permit pursuant to 603 KAR 5:075. The few companies which will be eligible are those which deliver a commodity, such as a single coil of steel from one plant to another.

(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: Public comment hearing held did not address this issue. However, there appears to be no impact.

(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: Public comment hearing did not address this issue. However, HB 168 (rather than this administrative regulation) will decrease the cost of transporting certain products, reducing the cost of doing business for those particular companies.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: Since HB 168 authorized an annual permit, the

amount of paperwork will decrease significantly for those few companies able to take advantage of the annual permit. Currently, they must purchase a single trip permit each time a movement is made.

1. First year following implementation:

2. Second and subsequent years:

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: The passage of HB 168 will reduce the overweight permit fees collected by the Transportation Cabinet, but will also reduce the administrative duties of the cabinet. The net result should be \$0.

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: Road funds authorized in the biennium budget for the Transportation Cabinet's Department of Vehicle Regulation 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: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: The Transportation Cabinet considered including all of the routes over which the permit holders could operate on the preprinted permit. However, such a list is not available and will take considerable effort to prepare. It obviously could not be ready in time to file the emergency administrative regulation for the implementation of HB 168.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

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

(c) If detrimental effect would result, explain detrimental effect: Not applicable

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(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. Tiering was not applied because this administrative regulation is only applicable in very restricted circumstances. All applicants for this permit should undergo the same administrative process.

STATEMENT OF EMERGENCY 704 KAR 20:305E

This emergency administrative regulation deletes the assessment requirements for middle school teacher certification in the areas of mathematics, English/language arts, and social studies that were to become effective on September 1, 1996. Educational Testing Service, the organization which developed the content specialty tests in the areas mentioned above, has recommended to the Education Professional Standards Board that the effective date for these assessments be postponed until further validation studies can be conducted regarding the appropriateness of these assessments for middle school certification candidates. This emergency administrative regulation puts the current assessment requirements back in place

until the additional validation studies are completed. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The notice of intent for the ordinary administrative regulation will be filed June 28, 1996.

PAUL E. PATTON, Governor
DANIEL GREENE, Chair

**EDUCATION, ARTS, AND HUMANITIES CABINET
EDUCATION PROFESSIONAL STANDARDS BOARD**

704 KAR 20:305E. Written examination prerequisites for teacher certification.

RELATES TO: KRS 161.028, 161.030

STATUTORY AUTHORITY: KRS 161.028, 161.030

EFFECTIVE: June 28, 1996

NECESSITY AND FUNCTION: KRS 161.030 requires that all new teachers, including out-of-state teachers with less than two (2) years' experience, successfully complete appropriate written tests prior to initial certification in Kentucky. The tests are to measure communication skills, general knowledge, professional education concepts, and knowledge in the specific teaching field of the applicant. The Education Professional Standards Board is charged with selecting the tests; determining minimum acceptable levels of achievement on each test; establishing a reasonable fee related to the cost of administration of the tests, such fees to be paid by the teacher applicants; and establishing procedures for persons having less than minimum levels of performance on any test to repeat that test and be informed of strengths and weaknesses in performance areas. This administrative regulation implements these [such] duties relative to teacher testing.

Section 1. All new teacher applicants and out-of-state applicants for certification with less than two (2) years of teaching experience as defined in 704 KAR 20:045 shall successfully complete the appropriate written tests identified in this administrative regulation prior to initial Kentucky certification. Scores on tests completed five (5) or more years prior to application for certification shall not be acceptable.

Section 2. The following NTE Core Battery Tests and passing scores shall be required of each applicant:

- (1) Communication skills - 646;
- (2) General knowledge - 643;
- (3) Professional knowledge - 644.

Section 3. Specialty tests and passing scores shall be required of each applicant as identified in this section.

(1) Applicants for interdisciplinary early childhood education, birth to primary, certification shall take an Education Professional Standards Board test for interdisciplinary early childhood, with a passing score of 150 [no passing score established].

(2) Applicants for elementary certification shall take the NTE Early Childhood Education Test (10020) with a passing score of 480.

(3)[(a)] Applicants for middle school certification shall take Education in the Elementary School Test (20010) with a passing score of 510 [through August 31, 1996].

[(b) Effective September 1, 1996, applicants for middle grade certification shall take the following specialty tests with the passing scores corresponding to the middle school teaching fields:

1. English and communications - English Language Literature and Composition: Content Knowledge (10041) with a passing score of 138 and English Language, Literature, and Composition: Essays (20042) with no passing score established.

2. Mathematics - Mathematics: Content Knowledge (10061) with a passing score of 130 and Mathematics: Proofs, Models, and Problems, Part I (20063) with no passing score established.

~~3. Science - Education Elementary School (20010) with a passing score of 510.~~

~~4. Social Studies - Social Studies: Content Knowledge (10081) with a passing score of 146 and Social Studies: Interpretation of Materials (20083) with no passing score established.]~~

(4) Applicants for school media librarian certification shall take the Library Media Specialist Test (10310) with a passing score of 590.

(5) Applicants for certification for teachers of exceptional children (except for communication disorders) shall take the Special Education Test (10350) with a passing score of 500.

(6) Applicants for certification at the secondary level shall take the specialty test(s) corresponding to the teaching area or major with the passing score as identified in this subsection through August 31, 1996. Applicants whose teaching specialty is in a major for which no appropriate specialty test is available shall take the specialty test corresponding to the minor teaching specialty.

(a) Art - Art Education Test (10130) - 510;

(b) Biology - Biology and General Science (10030) - 550;

(c) Chemistry - Chemistry, Physics and General Science (10070) - 510;

(d) Comprehensive Business - Business Education Test (10100) - 540;

(e) Distributive Education - Business Education Test (10100) - 540;

(f) Dramatics - Speech Communication Test (10220) - 540;

(g) Dramatics-Speech - Speech Communication Test (10220) - 540;

(h) English - English Language and Literature Test (10040) - 510;

(i) French - French Test (10170) - 510;

(j) German - German Test (20180) - 490;

(k) Health - Education Professional Standards Board test for health education - 67;

(l) Health Occupations - Test by the State licensing agency corresponding to the health specialty;

(m) History - Social Studies Test (10080) - 500;

(n) History - Political Science - Social Studies Test (10080) - 500;

(o) Industrial Education - Orientation and Exploration Levels - Technology Education Test (10050) - 550;

(p) Industrial Education - Preparation Level (area) - shall take other designated special test corresponding to the preparation specialty;

(q) Mathematics - Mathematics Test (10060) - 500;

(r) Mathematics - Physical Science (area) - Select from either Mathematics Test (10060) - 500; or Chemistry, Physics and General Science Test (10070) - 510;

(s) Music (vocal and instrumental) - Music Education Test (10110) - 510;

(t) Physical Education - Physical Education Test (10090) - 540;

(u) Physics - Chemistry, Physics, and General Science Test (10070) - 510;

(v) Political Science - Social Studies Test (10080) - 500;

(w) Science (area) - Select from either Biology and General Science Test (10030) - 550; or Chemistry, Physics and General Science Test (10070) - 510;

(x) Social Studies (area) - Social Studies Test (10080) - 500;

(y) Spanish - Spanish Test (10190) - 490;

(z) Speech - Speech Communication Test (10220) - 540;

(aa) Vocational Agriculture - Education Professional Standards Board test for vocational agriculture (10700) - 530; and

(bb) Vocational Home Economics - Home Economics Education Test (10120) - 540.

(7) Effective September 1, 1996, applicants for certification at the secondary level shall take the specialty test(s) with the passing score as identified in this subsection.

(a) English - English Language, Literature, and Composition: Content Knowledge (10041) with a passing score of 138; and English Language, Literature, and Composition: Essays (20042) with no

passing score established, shall be required for applicants for secondary certification with teaching area in English and majors in dramatics, dramatics-speech, English, journalism, and speech.

(b) Biological Science - Biology: Content Knowledge, Part I (20231) with a passing score of 139 and Biology: Content Essays (30233) with no passing score established, shall be required for applicants for secondary certification with a teaching major in biology.

(c) Physical Science - General Science: Content Knowledge, Part 2, (10432) with a passing score of 150 and either Chemistry: Content Knowledge (20241) with a passing score of 144 or Physics: Content Knowledge (10261) with a passing score of 141 shall be required for applicants for secondary certification with a major in chemistry, earth science and physics.

(d) Mathematics - Mathematics: Content Knowledge (10061) with a passing score of 141 and Mathematics Proofs, Models and Problems, Part I (20063) with no passing score established shall be required for applicants for secondary certification with a major in mathematics.

(e) Social Studies - Social Studies: Content Knowledge (10081) with a passing score of 146 and Social Studies: Interpretation of Materials (20083) with no passing score established shall be required of applicants for secondary certification with an area in social studies or a major in economics, economics-sociology, geography, history, history-political science, political science, or psychology.

(8) Effective September 1, 1996, applicants for certification in all grades shall take the specialty test(s) with the passing score as identified in this subsection.

(a) Physical Education - Physical Education: Content Knowledge (10091) with a passing score of 152 and Physical Education: Movement Forms-Analysis and Design (30092) with no passing score established.

(b) Spanish - Spanish Content Knowledge (10191) with a passing score of 145 and Spanish: Productive Language Skills (20192) with no passing score established.

(9) Specialty tests for applicants who successfully complete the new test(s) identified in subsections (3)(b), (7), and (8) of this administrative regulation prior to September 1, 1996, shall be accepted for the issuance of the corresponding certification. In addition, for issuance of the corresponding certificate for middle school certification, successful completion of the following tests prior to September 1, 1996, shall be accepted:

1. English and communications - English Language Literature and Composition: Content Knowledge (10041) with a passing score of 138, and English Language, Literature, and Composition: Essays (20042) with no passing score established;

2. Mathematics - Mathematics: Content Knowledge (10061) with a passing score of 130, and Mathematics: Proofs, Models, and Problems, Part I (20063) with no passing score established; or

3. Social Studies - Social Studies: Content Knowledge (10081) with a passing score of 146, and Social Studies: Interpretation of Materials (20083) with no passing score established.

Section 4. (1) Applicants for initial certification may take the NTE Core Battery Tests and Praxix II: Subject Assessments and Specialty Area Tests on any of the dates established by the Educational Testing Service for national administration or on any [such] date[s] as may be established by the Education Professional Standards Board for special administration.

(2) Applicants shall [must] authorize test results to be forwarded by the Educational Testing Service to the Kentucky Department of Education and to the appropriate teacher preparation institution.

(3) Public announcement of testing dates and locations shall be issued sufficiently in advance of testing dates to permit advance registration as required by the Educational Testing Service. It shall be the responsibility of each applicant to seek information regarding the dates and location of the tests and to make application for the appropriate examinations prior to the deadlines established and

sufficiently in advance of anticipated employment to permit test results to be received by the Department of Education and processed in the normal certification cycle.

Section 5. Applicants shall pay the appropriate examination fee for the relevant test(s) required to be taken, to the Educational Testing Service, publisher of the National Teacher Examinations, unless a lesser fee has been negotiated by the Department of Education. Fees for specialty tests developed by the Department of Education shall be equivalent to the current fees for the [such] tests administered by the Educational Testing Service.

Section 6. Applicants who fail to achieve at least the minimum score on one (1) or more of the core battery examinations (communication skills, general knowledge, professional knowledge) or on the specialty examination appropriate to the teaching field shall be permitted to retake the test or tests during one (1) of the scheduled test administrations.

Section 7. The Education Professional Standards Board shall collect [such] data and conduct [such] analyses of the impact of these tests [ae] to permit a review of this [these] administrative regulation on an annual or biennial basis.

DANIEL GREENE, Chair

APPROVED BY AGENCY: June 24, 1996

FILED WITH LRC: June 28, 1996 at 1 p.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Rita Osborne

(1) Type and number of entities affected: All middle school candidates for teacher certification in the areas of mathematics, social studies, and English/language arts are affected.

(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: Routine reporting.

2. Second and subsequent years: Routine reporting.

(3) Effects on 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: Routine processing of report.

(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: State 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: EPSB is charged with implementing KRS 161.030 regarding the requirement of appropriate tests for teacher certification. EPSB can only do so by policy making through a regulation.

- (8) Assessment of expected benefits:
 - (a) Identify effects on public health and environmental welfare of the geographical areas 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 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? No - same requirements for everyone.

STATEMENT OF EMERGENCY
704 KAR 20:475E

This emergency administrative regulation provides a method of enlarging the pool of certified teachers of technology education. In order to ensure a sufficient number of qualified teachers for the 1996-1997 school year, this emergency administrative regulation has been developed by the Education Professional Standards Board. The proposed administrative regulation requires an applicant to hold a valid middle or secondary school teaching certificate, be enrolled in a preparation program leading to full certification and to have completed training related to student safety. Renewal of the one (1) year certificate requires completion of specific semester hours of graduate credit toward full certification. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The notice of intent for the ordinary administrative regulation will be filed June 28, 1996.

PAUL E. PATTON, Governor
DANIEL GREENE, Chair

EDUCATION, ARTS, AND HUMANITIES CABINET
Education Professional Standards Board

704 KAR 20:475E. Probationary certificate for teachers of technology education.

RELATES TO: KRS 161.020, 161.028, 161.030
STATUTORY AUTHORITY: KRS 161.028, 161.030
EFFECTIVE: June 28, 1996

NECESSITY AND FUNCTION: KRS 161.020 and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Education Professional Standards Board. Pursuant to KRS 161.028, the teacher education institutions are required to be approved for offering the preparation programs corresponding to particular certificates on the basis of standards and procedures adopted by the Education Professional Standards Board. This administrative regulation establishes a plan for recruiting certified classroom teachers into positions for teachers of technology education.

Section 1. Definition. "Qualified technology education teacher" means a teacher who holds certification as a technology education teacher unless the superintendent of the employing school district has documented evidence that the teacher is unsuitable for appointment.

Section 2. Requirements for Probationary Certificate in Technology Education. If a qualified teacher is not available for the position of technology education teacher as attested by the local superintendent,

the superintendent may request that a one (1) year probationary certificate be issued for a specific technology education offering as approved by the Division of Secondary Vocational Education to a teacher who meets the following requirements:

(1) Holds a valid classroom teaching certificate for teaching in the middle school or secondary school.

(2) Has enrolled in a preparation program which shall lead to full certification in technology education. This program shall be developed with a technology education teacher trainer and a program consultant representing the Division of Secondary Vocational Education and shall include a personal professional development plan.

(3) Has completed twelve (12) clock hours of training, as required and verified by the Division of Secondary Vocational Education, on student safety in activities associated with the specific technology education offering for which application is being made.

Section 3. Requirements for Renewal of Probationary Certificate in Technology Education. (1) The applicant shall complete six (6) clock hours of orientation and management training provided by the Division of Secondary Vocational Education no later than the first six (6) weeks of employment.

(2) The applicant shall complete six (6) semester hours from the professional development plan within the first semester of the technology education teaching assignment.

(3) The first one (1) year renewal of the probationary certificate shall require twelve (12) semester hours from the professional development plan to be completed by September 1 of the year of expiration.

(4) Each subsequent one (1) year renewal shall require an additional six (6) semester hours from the professional development plan to be completed by September 1 of the year of expiration.

Section 4. Requirements for Extending the Probationary Certificate. The probationary certificate may be extended to include additional technology education offerings upon recommendation by the Division of Secondary Vocational Education and the technology education teacher trainer.

DANIEL GREENE, Chair

APPROVED BY AGENCY: June 24, 1996

FILED WITH LRC: June 28, 1996 at 1 p.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Dr. Betty Lindsey

(1) Type and number of entities affected: All candidates for the probationary certificate for teachers of technology education.

(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: Candidates will be required to file appropriate applications, complete all requirements for renewal, and local districts will maintain appropriate records. The Division of Secondary Vocational Education will provide training related to student safety and assist the candidate in developing planned coursework that will lead to full certification.

2. Second and subsequent years: Same as above.

(3) Effects on promulgating administrative body: The Division of Certification will review applications, issue or deny certificates, maintain records for all transactions. Local districts will maintain

appropriate documentation. The Division of Secondary Vocational Education staff will provide assistance to the candidate for this probationary certificate.

(a) Direct and indirect costs or savings:

1. First year: Costs associated with the dissemination of program requirements, issuing certificates, staff assistance to the candidate, and maintenance of records.

2. Continuing costs or savings: Continuing costs to be the same as above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The Office of Teacher Education and Certification must monitor program standards, issue certificates, and maintain records. Local districts and the Division of Secondary Vocational Education must maintain reports and records.

(4) Assessment of anticipated effect on state and local revenues: No additional costs above the budgeted amount for The Office of Teacher Education and Certification.

(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:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: Qualified instructional personnel are required for the instruction of public school students.

(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 adverse effects.

(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 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, certification requirements are uniformly applicable to all individuals.

STATEMENT OF EMERGENCY

787 KAR 1:200E

Under KRS Chapter 13A, the administrative body is required to implement this administrative regulation in order to have sufficient authority for the declaring of a maximum benefit rate. Therefore, in order to properly establish a maximum weekly unemployment insurance rate for the year beginning July 1, 1996, the Workforce Development Cabinet needs to implement this emergency administrative regulation. An ordinary administrative regulation will not suffice because the correct weekly benefit amount would not be declared in a timely manner. This emergency administrative regulation will be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A. A notice of intent to promulgate administrative regulation shall be filed with the Regulations Compiler.

PAUL E. PATTON, Governor
RODNEY S. CAIN, Secretary

WORKFORCE DEVELOPMENT CABINET Department for Employment Services Division of Unemployment Insurance

787 KAR 1:200E. Maximum weekly benefit rate.

RELATES TO: KRS 341.380

STATUTORY AUTHORITY: KRS 151B.020, 341.115

EFFECTIVE: June 26, 1996

NECESSITY AND FUNCTION: KRS 341.380 requires the Secretary for Workforce Development to determine the average weekly wage for insured employment. Fifty-five (55) percent of this amount adjusted to the nearest multiple of one (1) dollar constitutes the maximum weekly unemployment insurance benefit rate for those workers whose benefit year commences on or after July 1, 1996 [1995], and prior to July 1, 1997 [1996]. This administrative regulation applies the mathematical computation required by statute and contains the determination of the maximum weekly benefit rate.

Section 1. The secretary finds the following to exist:

(1) The "total monthly employment" reported by subject employers for the calendar year of 1995 [1994] was 18,593,452; [~~18,059,106~~]

(2) The "average monthly employment," obtained by dividing the total monthly employment by twelve (12), was 1,549,454; [~~1,504,926~~]

(3) The "total wages" reported by subject employers for the calendar year of 1995 [1994] was \$36,017,761,705; [~~33,842,048,247~~]

(4) The "average weekly wage" for the calendar year of 1995 [1994] for insured employment, obtained by dividing the average monthly employment into total wages for such year and dividing by fifty-two (52), was \$447.03 [~~432.45~~];

(5) Fifty-five (55) percent of the average weekly wage of \$447.03 [~~432.45~~] for the calendar year of 1995 [1994] was \$245.87 [~~237.85~~].

Section 2. On the basis of the above findings, and in accordance with KRS 341.380(3), the maximum weekly benefit rate for those workers whose benefit year commences on or after the first day of July 1996 [1995], and prior to the first day of July 1997 [1996], is determined to be \$246 [~~238~~].

RHONDA K. RICHARDSON, Commissioner

RODNEY S. CAIN, Secretary

APPROVED BY AGENCY: June 24, 1996

FILED WITH LRC: June 26, 1996 at 8 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Rhonda K. Richardson, Commissioner

(1) Type and number of entities affected: All eligible UI recipients for the year July 1, 1996, through June 30, 1997.

(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

(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

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

1. First year: An additional \$5 million paid to eligible UI recipients.

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings:

1. First year: An additional \$5 million paid from the Unemployment Insurance Trust Fund to UI recipients

2. Continuing cost or savings: None

3. Additional factors increasing or decreasing costs: The number

of people filing UI claims may increase or decrease.

(b) Reporting and paperwork requirements: None

(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: 100% federal funds (BCAA).

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

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods available in accordance with statutory requirements.

(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: NA

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: NA

(10) Any additional information or comments: This regulation satisfies the statutory requirements of KRS 341.380(3), which mandates that the secretary determines the maximum weekly unemployment insurance benefit rate prior to July 1 of each year.

(11) TIERING: Is tiering applied? Tiering was not applied as all claimants are treated equally.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this administrative regulation will affect. All local government agencies could be affected, but only if they have unemployment insurance claims filed against them.

3. State the aspect or service of local government to which this administrative regulation relates. Relates to their payment of unemployment benefits to former employees.

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 (+/-): None

Expenditures (+/-): Nondeterminable

Other Explanation: Effective July 1, 1996, the maximum weekly benefit rate will increase to \$246, an increase of \$8 per claim over the present rate of \$238. If a local government agency chooses to file and pay unemployment insurance taxes quarterly, this potential \$8 increase per claim could deplete their reserve account faster and create a deficit. If this were to occur, their tax rate would go up. If a local government agency chooses to be a reimbursing employer, where they would pay out of the reserve account dollar for dollar for every claim filed against them, their expenditures will likely increase.

STATEMENT OF EMERGENCY 803 KAR 25:089E

This emergency administrative regulation substantially amends the physical medicine portion of the Workers' Compensation Medical Fee Schedule for Physicians, 803 KAR 25:089, having an effective date of February 9, 1995. This emergency administrative regulation is necessary because of an amendment to KRS 342.035 enacted by the regular session of the 1996 General Assembly. House Bill 298 provides that the Workers' Compensation Medical Fee Schedule for Physicians shall remain in effect until July 1, 1996, or until the effective date of any amendments promulgated by the commissioner, whichever occurs first. Most of the complaints received about the Workers' Compensation Medical Fee Schedule for Physicians during the previous promulgation process concerned the reimbursement levels provided under the physical medicine section. The amendments contained in the version of the fee schedule incorporated by reference in this emergency administrative regulation are intended to address those complaints. The ordinary administrative regulation that eventually replaces this emergency administrative regulation will incorporate a comprehensive review and update of the entire Workers' Compensation Medical Fee Schedule for Physicians pursuant to KRS 342.035. This emergency administrative regulation will be replaced by an ordinary administrative regulation.

PAUL E. PATTON, Governor

WALTER W. TURNER, Commissioner

LABOR CABINET DEPARTMENT OF WORKERS' CLAIMS

803 KAR 25:089E. Workers' Compensation Medical Fee Schedule for Physicians.

RELATES TO: KRS Chapter 342

STATUTORY AUTHORITY: KRS 342.020, 342.035

EFFECTIVE: June 28, 1996

NECESSITY AND FUNCTION: KRS 342.035 requires the Commissioner of the Department of Workers' Claims to promulgate administrative regulations to ensure that all fees, charges and reimbursements for medical services under KRS Chapter 342 are limited to charges that are fair, current, and reasonable for similar treatment of injured persons in the same community for like services, where treatment is paid for by general health insurers. The function of this administrative regulation is to regulate the fees of "physicians" as defined in KRS 342.0011.

Section 1. Definitions. (1) "Medical fee schedule" refers to the [1994] Workers' Compensation Medical Fee Schedule for Physicians.

(2) "Physician" shall have the same meaning as in KRS 342.0011, and may also include other health care or medical services providers to whom a procedure code listed in the medical fee schedule is applicable if another fee schedule of the Department of Workers' Claims does not apply.

Section 2. Services Covered. The medical fee schedule governs all medical services provided to injured employees by physicians under KRS Chapter 342, and also applies to other health care or medical services providers to whom a listed CPT code is applicable if another fee schedule of the Department of Workers' Claims does not apply, unless a lower fee is required by KRS 342.035 or a managed care plan approved by the commissioner pursuant to administrative regulations.

Section 3. Fee Computation. The appropriate fee for a procedure covered by the medical fee schedule is obtained by multiplying the listed unit value for the medical procedure by the applicable conver-

sion factor. The resulting fee is the maximum fee allowed for the service provided.

Section 4. Incorporation by Reference. (1) The 1994 Workers' Compensation Medical Fee Schedule for Physicians is hereby incorporated by reference.

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

(a) Frankfort - Perimeter Park West - Building C, 1270 Louisville Road, Frankfort, Kentucky 40601;

(b) Louisville - 410 West Chestnut Street, Suite 700, [Fourth Floor - The Meyer Building, 624 West Main Street], Louisville, Kentucky 40202;

(c) ~~[Lexington - 950 National City Plaza, Lexington, Kentucky 40507;~~

~~(d)] Paducah - 220B North 8th Street, Paducah, Kentucky 42001;~~

(d) ~~(e)] Pikeville - 101 Summit Drive [The Justice Building, 3rd Floor, 314-316 Second Street]~~, Pikeville, Kentucky 41501.

(e) ~~(d)]~~ Office hours of each office are 9 a.m. to 4 p.m., Monday through Friday, inclusive, for this purpose. Copies of the medical fee schedule may be obtained from the agency upon payment of reproduction costs.

WALTER W. TURNER, Commissioner

APPROVED BY AGENCY: June 27, 1996

FILED WITH LRC: June 28, 1996 at noon

REGULATORY IMPACT ANALYSIS

Contact Person: Valerie L. Salven

(1) Type and number of entities affected: This proposed administrative regulation will affect "physicians" as defined in KRS 342.0011, the employees who seek medical treatment under KRS Chapter 342, and the employers, self-insured employers, Special Fund, Uninsured Employers' Fund and insurance carriers making medical payments under the Kentucky Workers' Compensation Act.

(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: Overall reimbursement to the providers of medical services under the physical medicine section for workers' compensation cases will be increased pending an update of all sections of the Workers' Compensation Medical Fee Schedules for Physicians to assure that reimbursement for services provided to workers' compensation patients is limited to such charges as are fair, current, and reasonable for similar treatment of injured persons in the same community for like services, where treatment is paid for by general health insurers.

(b) Costs of doing business in geographical area in which the administrative regulation will be implemented to the extent available from public comments received: See response under subsection (a), above.

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

1. First year following implementation: No change.

2. Second and subsequent years: No change.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There will be an initial expense to the Department of Workers' Claims for the copying and distribution of the new fee schedule when the ordinary regulation becomes final. This expense is not expected to exceed \$10,000. Photocopies of the amended physical medicine section contained in the fee schedule incorporated by reference in this emergency regulation will be provided to the public at no charge. The cost to the agency is not expected to exceed \$100.

2. Continuing costs or savings: The agency expects to recover most of the expenses of providing copies of the Workers' Compensation Medical Fee Schedule for Physicians adopted in the ordinary regulation through the sale of the fee schedule at cost.

3. Additional factors increasing or decreasing costs. None

(b) Reporting and paperwork requirements: Copying and distribution of the new fee schedule.

(4) Assessment of anticipated effect on state and local revenues: None; no effect.

(5) Source of revenue to be used for implementation and enforcement of this administrative regulation: The Kentucky Workers' Compensation Funding Commission pursuant to KRS 342.122.

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

(a) Geographic area in which administrative regulation will be implemented: This administrative regulation will be implemented throughout the state of Kentucky, and will affect the reimbursement for some services rendered by out-of-state medical services providers. For further discussion of the economic impact see Section (2), above.

(b) Kentucky: See response to (a) above.

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

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No effect.

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

(c) If detrimental effect would result, explain detrimental effect: Not applicable.

(9) Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping or duplication: None

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize proposed administrative regulation with conflicting provisions: Not applicable.

(10) Additional information or comments: None

(11) Tiering: Is tiering applied? No. All similarly situated or similarly licensed medical service providers to whom this regulation applies are treated equally and receive the same fees for services described in the schedule.

STATEMENT OF EMERGENCY

804 KAR 13:010E

804 KAR 13:010E establishes the procedures for the implementation of SB No. 137, enacted by the 1996 General Assembly and Executive Order 96-619. It is necessary to promulgate this emergency administrative regulation because SB 137 is in effect and this emergency administrative regulation is required immediately as there is a need to implement SB 137 and Executive Order 96-619, to protect the health and safety of minors, and notify sellers of tobacco products of conduct required or prohibited by SB 137. The notice of intent to promulgate the administrative regulation and the ordinary regulation will be filed with the Regulations Compiler on the same date.

PAUL PATTON, Governor

LAURA DOUGLAS, Secretary

GREG GINTER, Commissioner and Chair

PUBLIC PROTECTION AND REGULATION CABINET
Department of Alcoholic Beverage Control

804 KAR 13:010E. Tobacco enforcement and administration.

RELATES TO: EO 96-619

STATUTORY AUTHORITY: EO 96-619

NECESSITY, FUNCTION AND CONFORMITY: SB 137, enacted by the 1996 General Assembly, became effective March 5, 1996. SB 137 requires a seller of tobacco products to obtain proof of the age of a prospective buyer recipient of tobacco products if he has reason to believe the prospective buyer or recipient is under eighteen (18) years old; requires the establishment of the types of documentation accepted as proof of age, notification of the employees of a seller of tobacco products of the requirements of SB 137, administrative proceedings in the enforcement of SB 137, and the collection of statistics relating to the illegal sale to minors of tobacco products and enforcement of SB 137.

Section 1. Definition. "Department" means the Department of Alcoholic Beverage Control.

Section 2. Administration. The department shall be the administrative agency for hearing violations of KRS 438.305 to 438.340.

Section 3. Enforcement. (1) The department shall record and investigate complaints relating to violations of KRS 438.305 to 438.340.

(2) The department shall enforce the provisions of KRS 438.305 to 438.340 by random inspection conducted by duly qualified enforcement officers and agents of the department.

(3) The department may employ underage buyers to participate in enforcement activities. The participation of the underage buyers shall be contingent upon a written consent and release from his or her parents or legal guardian, and upon the completion of enforcement training to be conducted by the department.

(4) The department shall conduct annually random base line sampling to determine the existing level of tobacco sales to minors on or before June 30 of each fiscal year. A copy of the annual survey shall be submitted to the Department of Agriculture.

(5) The result of the annual survey may be inspected, copied or obtained at the office of the Department of Agriculture, Capital Plaza Tower, 7th Floor, 500 Mero Street, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m., Monday through Friday, excepting state holidays.

Section 4. Procedures. (1) A person found to be violation of KRS 438.305 to 438.340 may be cited by the department. Any administrative citation shall conform to the requirements of KRS Chapter 13B.

(2) A person receiving an administrative citation pursuant to KRS 438.305 to 438.340 may request an administrative hearing, to be conducted by the department, to contest the allegation in the citation. The department may, in its discretion, employ one (1) or more hearing officers to conduct the administrative hearings. All administrative hearings shall be governed by KRS Chapter 13B.

(3) A fine levied pursuant to an administrative citation shall be prepayable within thirty (30) days of issuance of the citation. A person not wishing to contest the allegations in the citation may resolve the charge by mailing a check or money order in the amount set forth in the citation, payable to the Kentucky State Treasurer, to the hearing agency name and address set forth in the citation.

(4) Disposition of juvenile records. The department shall preserve the confidentiality of all juvenile records. Juvenile records shall be maintained in a separate filing system, under lock and key, with access limited to the parties and their legal counsel. Juvenile records shall be destroyed one (1) year after the case is conducted, with all avenues of appeal exhausted. The department shall maintain statistical summaries of case information, including date of buy,

geographical location of buy, name and address of retail seller, date of purchase, date of birth and gender of underage buyer, and disposition of case. Statistical summaries relating to underage buyers shall not identify the underage buyer by name.

(5) Evidence seized in the course of administrative violations of KRS 438.305 to 438.340 shall be maintained by the department in a secured evidentiary storage facility. The department may destroy evidence related to a case thirty-one (31) days after the case is concluded, with all avenues of appeal exhausted.

Section 5. Appeal. A person aggrieved by the final ruling of the department may appeal such ruling to the Franklin Circuit Court, Frankfort, Kentucky 40601 within thirty (30) days of the rendition of such ruling.

LAURA DOUGLAS, Secretary

GREG GINTER, Commissioner

APPROVED BY AGENCY: June 24, 1996

FILED WITH LRC: July 8, 1996 at 9 a.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Pamela Carroll Farmer

(1) Type and number of entities affected: Approximately 5,000.

(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: Maintain separate file for each retail establishment subject to compliance check and for enforcement action, compile and maintain annual baseline random statewide retailer sample, create and maintain records of unlawful retail sales statewide, compile, maintain and submit reports consistent with federal regulations.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body: Anticipate new employees in both office and enforcement officers.

(a) Direct and indirect costs or savings:

1. First year: Additional personnel costs, salaries, training, furniture, office equipment, enforcement vehicles, salaries, training, travel (enforcement), additional office space and equipment.

2. Continuing costs or savings: Unknown

3. Additional factors increasing or decreasing costs: None

(4) Assessment of anticipated effect on state and local revenues: Unknown

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Transfer of funds from Department of Agriculture and the ABC retaining one-half of all fines collected pursuant to the enforcement of SB 137.

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

(a) Geographical area in which administrative regulation will be implemented: No public comments received.

(b) Kentucky: No public comments received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No existing regulations in effect.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of

the geographical area in which implemented and on Kentucky: Reduction of sales of tobacco products to minors.

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

(c) If detrimental effect would result, explain detrimental effect: Without the enforcement of SB 137, a detrimental effect is anticipated on the health and safety of Kentucky's minors.

(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: No conflict.

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not applied because this regulation will be applied equally to all entities statewide.

STATEMENT OF EMERGENCY

806 KAR 5:060E

This emergency administrative regulation sets forth filing requirements for makers of service contracts who repair, replace, or maintain consumer products. Pursuant to 1996 Ky. Acts ch. 291, service contracts described above shall not be insurance if the maker of the contract is registered with the Department of Insurance. This administrative regulation must be in place by July 15, 1996, the effective date of the statute so the Department of Insurance can begin implementation of 1996 Ky. Acts ch. 291. This emergency administrative regulation shall be replaced by an ordinary administrative regulation which to be filed at a later date.

PAUL E. PATTON, Governor

LAURA M. DOUGLAS, Secretary

GEORGE NICHOLS III, Commissioner

PUBLIC PROTECTION AND REGULATION CABINET

Department of Insurance

806 KAR 5:060E. Registration of service contracts for consumer products.

RELATES TO: 1996 Ky. Acts ch. 291

STATUTORY AUTHORITY: 1996 Ky. Acts ch. 291

EFFECTIVE: July 15, 1996

NECESSITY, FUNCTION, AND CONFORMITY: 1996 Ky. Acts ch. 291 requires that makers of service contracts who repair, replace, or maintain consumer products register with the department to be exempt from the definition of casualty insurance. This administrative regulation sets forth the filing requirements for that registration.

Section 1. Service contracts to repair, replace, or maintain consumer products shall not be considered casualty insurance if the makers of these service contracts do the following:

(1) Maintain sufficient net worth or an insurance policy or performance bond as required by Section 2 of this administrative regulation.

(2) Register with the commissioner by providing the information in Section 3 of this administrative regulation.

Section 2. The amount of the maker's net worth or insurance policy or performance bond shall be the amount of estimated unpaid claims for all contracts sold. However, the minimum amount of net worth or insurance policy or performance bond shall be \$50,000.

Section 3. (1) The maker of the service contract shall initially register with the commissioner by submitting the following information:

(a) Name of the maker of the service contract and owners of the

organization, location of its principal office, and date of organization;

(b) Copy of articles of incorporation;

(c) Type of consumer products repaired, replaced, or maintained;

(d) Value of consumer products repaired, replaced or maintained;

(e) Copy of service contract with consumers;

(f) Copy of agreement with any service company;

(g) The following statistical information, for each of the last five (5) policy years, by product and term of contract, with data evaluated as of the most recent December 31:

1. Number of service contracts sold;

2. Cost of service contracts to consumers or premiums paid for service contracts;

3. Number of paid claims;

4. Cost of paid claims;

5. Average claims per contract;

6. Average cost per claim;

7. Average loss per contract; and

8. Estimated unpaid claim amounts.

(h) A projection, by product and term of contract, of the number of service contracts, cost of service contracts or premiums paid for service contracts, to be sold in the current policy year;

(i) Financial statement audited by an independent certified public accountant in conformity with statutory accounting practices prescribed or otherwise permitted by the commissioner that reflect the following:

1. Financial position of applicant;

2. Results of its operation;

3. Cash flows; and

4. Changes in capital and surplus.

(j) Copy of insurance policy or performance bond; and

(k) Address where books and records are maintained at all times.

(2) If any of the above information changes or becomes incorrect, the maker of the service contract shall notify the department in writing of the change immediately.

(3) After the initial registration, each maker of a service contract shall annually, on or before March 1, file a report that sets forth or is accompanied by the information required in subsection (1) of this section, with the service contract statistical information evaluated as of December 31 of the previous year.

Section 4. (1) The department shall evaluate all of the information filed in Section 3 of this administrative regulation to assure that the maker's net worth, insurance policy, or performance bond is sufficient to assure the maker's performance with regard to all service contracts sold.

(2) After evaluation, the department shall approve or disapprove the amount submitted by the maker of the service contract to prove net worth or for an insurance policy or performance bond.

GEORGE NICHOLS III, Commissioner

LAURA M. DOUGLAS, Secretary

APPROVED BY AGENCY: July 11, 1996

FILED WITH LRC: July 15, 1996 at 9 a.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Carla H. Montgomery.

(1) Type and number of entities affected: The department does not have this information. This is a new exemption created by 1996 Ky. Acts ch. 291.

(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 department has not received public comments at this time.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available

from the public comments received: The department has not receive public comments at this time.

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

1. First year following implementation: Makers of service contracts described in 1996 Ky. Acts ch. 291 must register with the Department of Insurance and demonstrate sufficient net worth.

2. Second and subsequent years: The makers of service contracts would need to keep the Department of Insurance advised of any changes or updates to their original filings.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The department cannot predict, because we do not know how many filings will be received.

2. Continuing costs or savings: Same as above comment.

3. Additional factors increasing or decreasing costs: The number of applicants.

(b) Reporting and paperwork requirements: The department will have to review all of the filings. The department will have to send notice of approval or disapproval to the applicants.

(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 for the Department of Insurance will be used to implement this administrative regulation.

(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 at this time.

(b) Kentucky: Same comment as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The Department of Insurance needs this information to adequately review whether the makers of service contracts have sufficient net worth to meet the exemption.

(8) Assessment of expected benefits: The department will be able to make an informed decision, and the applicants will know how to become exempt.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environmental and public health would result if not implemented: 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: 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: None

(11) TIERING: Is tiering applied? Tiering is not applied because the administrative regulation will be applied equally to all makers of service contracts who register with the department.

STATEMENT OF EMERGENCY

806 KAR 17:100E

This emergency administrative regulation sets forth filing requirements for applicants who want to become a provider-sponsored network. In 1996 Ky. Acts ch. 371 § 7(6), § 18, and § 19, provider-sponsored networks are required to obtain a certificate of filing from the Department of Insurance. The Department of Insurance needs this administrative regulation in place by July 15, 1996, when 1996 Ky. Acts ch. 371 becomes effective to implement the statute.

This emergency administrative regulation shall be replaced by an ordinary administrative regulation to be filed at a later date.

PAUL E. PATTON, Governor
LAURA M. DOUGLAS, Secretary
GEORGE NICHOLS III, Commissioner

PUBLIC PROTECTION AND REGULATION CABINET Department of Insurance

806 KAR 17:100E. Certificate of filing for provider-sponsored networks.

RELATES TO: 1996 Ky. Acts ch. 371 §7(6), §18, 19

STATUTORY AUTHORITY: 1996 Ky. Acts ch. 371 §18, 19, KRS 304.2-110(1)

EFFECTIVE: July 15, 1996

NECESSITY, FUNCTION AND CONFORMITY: KRS 304.2-110(1) provides that the commissioner may promulgate reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. 1996 Ky. Acts ch. 371 §18 requires that provider sponsored networks obtain a certificate of filing before doing business in Kentucky. This administrative regulation sets forth the requirements for applying for a certificate of filing.

Section 1. Definitions. A provider-sponsored network is a provider sponsored integrated health delivery network as defined in 1996 Ky. Acts ch. 371 §7(6).

Section 2. A provider-sponsored network shall apply for and obtain a certificate of filing from the commissioner in order to provide, directly or through arrangements with others, a health benefit plan to consumers voluntarily enrolled with the organization on a per capita or a predetermined, fixed prepayment basis.

Section 3. (1) Each application for a certificate of filing for a provider-sponsored network shall be filed on Form 996 and verified by an officer or authorized representative of the applicant.

(2) Each application shall set forth or be accompanied by the following:

(a) Name, address, principal place of business, owners, officers, managers, and sponsors of provider-sponsored networks.

(b) Address where books and records of the provider-sponsored network will be maintained at all times.

(c) The providers who sponsor, own, govern, or manage the provider-sponsored network shall provide a copy of their licenses and affidavit confirming good standing with their licensure board.

(d) A copy of the organizational documents of the applicant including:

1. Articles of incorporation;
2. Articles of association;
3. Partnership agreement;
4. Trust agreement;
5. Bylaws;
6. Organizational chart; and
7. Other applicable documents and amendments.

(e) A copy of the policies, procedures, and other documents explaining how the provider-sponsored network will:

1. Administer health plans;
2. Have ability, experience, and structure to arrange for appropriate level and type of health care services;
3. Conduct utilization management activities;
4. Achieve, monitor, and evaluate the quality and cost effectiveness of care provided;
5. Monitor access to its provider network; and
6. Use standardized electronic claims and billing processes and formats.

(f) Names, addresses, and biographical information of the following:

1. Board of directors;
2. Board of trustees;
3. Executive committee or other governing body;
4. Each owner of five (5) percent or more of the provider-sponsored network;
5. Principal officers;
6. Partners; and
7. Persons responsible for the conduct of the applicants affairs and day-to-day operations.

(g) Financial statements audited by an independent certified public accountant in conformity with statutory accounting practices prescribed or otherwise permitted by the commissioner that reflect the following:

1. Financial position of the applicant;
2. Results of its operation;
3. Cash flows; and
4. Changes in capital and surplus.

(h) If the "as of" date of the financial statements filed pursuant to paragraph (f) of this subsection is more than ninety (90) days from the date of the application, interim financial statements compiled by an independent certified public accountant as of a date less than ninety (90) days from the application containing the same information as the audited financial statements.

(i) List of providers including name, address, license number, and health services provided.

(j) A statement or map reasonably describing the counties to be served and written assurance that health services will be provided to enrollees within fifty (50) miles of their residences.

(k) Proposed contracts and agreements including the following:

1. Applications or individual enrollment forms;
2. Master contract forms;
3. Evidence of coverage or handbook;
4. Riders or endorsements; and
5. Rates with actuarial justifications.

(l) A copy of the following professional agreements:

1. Provider agreements;
2. Third party administrators;
3. Service agreements;
4. Administrative agreements; and
5. Reinsurance agreements.

(m) A copy of grievance procedures to be utilized for the investigation and resolution of enrollee and provider complaints and grievances.

(n) A copy of the applicant's plan for handling insolvency as required by 1996 Ky. Acts ch. 371 §19(6).

(o) Financial program setting forth a three (3) year projection of operations on a quarterly basis which shall include the following:

1. Detailed enrollment projections;
2. Projection of balance sheets;
3. Projection of cash flow statements showing any capital expenditures;
4. Projection of purchase and sale of investments and deposits;
5. Projection of income and expense statements anticipated from the start of operation until the organization has had net income for one (1) year; and
6. Statement of the sources of working capital as well as other sources of funding.

Section 4. If any of the information filed with the department pursuant to Section 3 of this administrative regulation changes or becomes incorrect, then the provider-sponsored network shall immediately notify the department in writing of the change and immediately give the department the correction.

Section 5. Form numbered "996", revised June 1996, is pre-

scribed by the department and incorporated by reference. Copies may be obtained from the Department of Insurance, P.O. Box 517, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. (ET).

GEORGE NICHOLS III, Commissioner

LAURA M. DOUGLAS, Secretary

APPROVED BY AGENCY: July 11, 1996

FILED WITH LRC: July 15, 1996 at 9 a.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Carla H. Montgomery

(1) Type and number of entities affected: The department does not know how many providers will apply for a certificate of filing as a provider-sponsored network. At this time, there are none in existence.

(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 department has not received public comments at this time.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The department has not received public comments at this time.

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

1. First year following implementation: This administrative regulation requires filing of information to determine if a provider meets all of the requirements in 1996 Ky. Acts ch. 371 §7(6), §18, and §19 to become a provider-sponsored network.

2. Second and subsequent years: The only additional information filed with regard to this administrative regulation would occur if something in the original filing changed.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The department will have an additional responsibility of evaluating the provider-sponsored networks. However, at this time the department cannot predict the costs since we do not know how many providers will apply to be provider-sponsored networks.

2. Continuing costs or savings: Unknown

3. Additional factors increasing or decreasing costs: The number of applicants.

(b) Reporting and paperwork requirements: The department will have to review all of the filings. The department will have to send a certificate of filing or rejection to the applicants.

(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 for the Department of Insurance will be used to implement this administrative regulation.

(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 at this time.

(b) Kentucky: Same comment as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This administrative regulation is necessary for the Department of Insurance to determine whether to grant a certificate of filing to an applicant. Applicants need the administrative regulation so they can make an adequate filing with the Department of Insurance.

(8) Assessment of expected benefits: The department will be able to make an informed decision when approving provider-sponsored

networks. Applicants will know all of the information to file with the Department of Insurance.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Consumers in Kentucky may have more choices in health care benefit plans.

(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 government policy which may be in conflict, overlapping, or duplication: No conflict.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation will be applied equally to all applicants of provider-sponsored networks.

STATEMENT OF EMERGENCY

806 KAR 17:120E

This emergency administrative regulation sets forth the processes for certification and revocation of accountable health plans. Pursuant to the July 15, 1994, adoption of KRS 304.17A-070(2), statutory authority was granted to the Kentucky Health Purchasing Alliance, in consultation with the Kentucky Health Policy Board, to promulgate an administrative regulation which specifies the certification and revocation procedures for accountable health plans. This administrative regulation was promulgated and codified as 909 KAR 1:080. The Kentucky Department of Insurance is now responsible for the regulation and enforcement of accountable health plan certification. It is therefore necessary for the Department of Insurance to promulgate a new regulation regarding certification and revocation of accountable health plans as is required by 1996 Ky. Acts ch. 371 § 6(2). The Department of Insurance needs this administrative regulation in place by July 15, 1996, when 1996 Ky. Acts ch. 371 becomes effective in order to implement the statute. This emergency administrative regulation shall be replaced by an ordinary administrative regulation to be filed at a later date.

PAUL E. PATTON, Governor

LAURA M. DOUGLAS, Secretary

GEORGE NICHOLS III, Commissioner

PUBLIC PROTECTION AND REGULATION CABINET

Department of Insurance

806 KAR 17:120E. Accountable health plan certification.

RELATES TO: 1996 Ky. Acts ch. 371 §6

STATUTORY AUTHORITY: 1996 Ky. Acts ch. 371 §6(2)

EFFECTIVE: July 15, 1996

NECESSITY, FUNCTION AND CONFORMITY: 1996 Ky. Acts ch. 371 §6(2) requires the promulgation of administrative regulations relating to the certification of accountable health plans eligible to serve members of the Kentucky Health Purchasing Alliance. This administrative regulation applies to all accountable health plans that seek to offer services to Kentucky Health Purchasing Alliance members.

Section 1. Definitions. (1) "Accountable health plan" or "AHP" has the meaning set forth in 1996 Ky. Acts ch. 371 §1(1).

(2) "Alliance" or "Kentucky Health Purchasing Alliance" has the meaning set forth in 1996 Ky. Acts ch. 371 §1(2).

Section 2. Accountable Health Plan Application Process. (1) An authorized officer of an AHP shall apply for certification by submitting a complete and accurate original application and three (3) copies to the Kentucky Health Purchasing Alliance on the form "Application for Accountable Health Plan Certification" incorporated herein by reference.

(2) The Kentucky Health Purchasing Alliance shall certify accountable health plans in consultation with the Department and the commissioner of Insurance. Applications shall be evaluated in order of their receipt. Within thirty (30) days of receiving an application, the Kentucky Health Purchasing Alliance shall provide the applicant with written notice of its findings. 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 Kentucky Health Purchasing Alliance shall provide a written notice of findings, as described in paragraph (a) of this subsection.

(3) In evaluating and authorizing accountable health plans, the following criteria shall be considered:

(a) The AHP's conformity with the criteria set forth in Section 2 of this administrative regulation;

(b) The adequacy of the financial and organizational resources of the AHP; and

(c) The ability of the AHP to meet the evaluation requirements described in 1996 Ky. Acts ch. 371 §6.

Section 3. Revocation of Accountable Health Plan Certification.

(1) The Kentucky Health Purchasing Alliance may revoke the certification of an accountable health plan at any time if one (1) or more of the following conditions exist:

(a) The AHP does not comply with the provisions of this administrative regulation;

(b) The certificate of authority of a participating insurer or health maintenance organization is suspended or revoked; or

(c) There has been a misrepresentation of a material fact in the AHP application or any subsequent report required of the AHP.

(2) The Kentucky Health Purchasing Alliance shall provide written notice of an intent to revoke certification to the AHP setting forth the basis of the revocation and granting the AHP fifteen (15) days from the date of the notice to make a written response.

(3) After reviewing the response, the Kentucky Health Purchasing Alliance shall issue an order directing the AHP to remedy specific defects, and may revoke the AHP certification or, at the discretion of the alliance, set a time and place for hearing.

Section 4. Examination of Records. The Kentucky Health Purchasing Alliance or the department may make or cause to be made examinations of the books and records of an accountable health plan to ensure compliance with this administrative regulation and the representations made by the AHP on its application for certification or recertification.

Section 5. Incorporation by Reference. The Application for Accountable Health Plan Certification herein incorporated by reference is available for copying at the offices of the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601 between the hours of 8 a.m. and 4:30 p.m. Monday through Friday.

GEORGE NICHOLS III, Commissioner

LAURA M. DOUGLAS, Secretary

APPROVED BY AGENCY: July 11, 1996

FILED WITH LRC: July 15, 1996 at 9 a.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Carla H. Montgomery

(1) Type and number of entities affected: This administrative regulation will apply to all proposed accountable health plans ("AHP"). The number of AHPs which may apply for future certification is indeterminable. However, at the present there are twelve (12) AHPs in existence.

(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 department has not received public comments at this time.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The department has not received public comments at this time.

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

1. First year following implementation: Proposed AHPs must submit an application in order to receive certification in accordance with 1996 Ky. Acts ch. 371 §6.

2. Second and subsequent years: The same application for certification process will be in effect for the second and subsequent years for AHPs proposing to do business in Kentucky.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The Department does not anticipate any effect on costs or savings.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The Kentucky Health Purchasing Alliance ("Alliance") is required to certify the AHPs. 1996 Ky. Acts ch. 371 §6 places the department in a consultation role for the Alliance which will involve review and evaluation responsibilities.

(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 for the Department of Insurance will be used to implement this administrative regulation.

(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 at this time.

(b) Kentucky: No public comments have been received at this time.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This administrative regulation is the best way for an AHP to demonstrate that it meets the qualifications of an AHP as set forth in 1996 Ky. Acts ch. 371 §6(2). The alliance and the department must have this information in order to evaluate and determine if an AHP should be certified.

(8) Assessment of expected benefits: The application for certification process enables the Alliance, in consultation with the department, to make an informed decision regarding certification of each AHP.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The criteria for the uniform certification of AHPs assures that all plans have the ability to offer services to members of the Alliance by requiring proof of certain qualifications as specified in 1996 Ky. Acts ch. 371 §6(2).

(b) State whether a detrimental effect on environment and public health would result if not implemented: If not implemented, neither the

alliance nor the department would be able to properly evaluate the qualifications of an AHP. Consequently, there would be no uniform standards in effect for certification of an AHP without this administrative regulation.

(c) If detrimental effect would result, explain detrimental effect: Same as (b) above.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No conflict.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering is not applied since this proposed administrative regulation applies to all AHPs seeking certification in Kentucky.

STATEMENT OF EMERGENCY

806 KAR 17:130E

In 1996 Ky. Acts ch. 371 §21, the Department of Insurance is charged with the task of promulgating administrative regulations. Authorizing the establishment of pilot projects for twenty-four (24) hour health coverage. This task was previously assigned to the Health Policy Board who had this administrative regulation in place to establish the pilot projects. By adopting this emergency regulation, the Department of Insurance can continue this pilot project without interruption when the statute becomes effective on July 15, 1996. The emergency regulation shall be replaced by an ordinary administrative regulation to be filed at a later date.

PAUL E. PATTON, Governor

LAURA M. DOUGLAS, Secretary

GEORGE NICHOLS III, Commissioner

PUBLIC PROTECTION AND REGULATION CABINET

Department of Insurance

806 KAR 17:130E. Twenty-four (24) Hour Pilot Insurance Program.

RELATES TO: KRS Chapters 342, 1996 Ky. Acts ch. 371 §21

STATUTORY AUTHORITY: 1996 Ky. Acts ch. 371 §21

EFFECTIVE: July 15, 1996

NECESSITY, FUNCTION AND CONFORMITY: 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' Compensation under a twenty-four (24) hour pilot program.

Section 1. Definitions. (1) "Twenty-four (24) Hour Pilot Insurance Program" or "Pilot Insurance Program" means a combined program including health coverage plus the medical portion of worker's coverage, as required by KRS 342.020 providing twenty-four (24) hour coverage and approved by the Department of Insurance.

(2) "Compensable condition" means an injury or disease for which the employer is liable for medical benefits under KRS 342.020.

(3) "Group health plan" means an insurance contract under which medical services for nonwork related conditions are extended to the employees of an employer subject to KRS Chapter 342.

(4) "Pilot Insurance Program administrator" means the entity which provides the day-to-day administration of a Pilot Insurance Program.

Section 2. Prohibitions. (1) An insurer shall not issue an insurance contract providing health care benefits for both compensable and noncompensable conditions unless the contract qualifies as a Twenty-four (24) Hour Pilot Insurance Program under this administrative regulation.

(2) Liabilities or expenses shall not be transferred between or among insurers whose coverages have been combined into a Twenty-four (24) Hour Pilot Insurance Program.

Section 3. Pilot Insurance Programs in General. (1) A Pilot Insurance Program shall deliver twenty-four (24) hour coverage through one (1) or more insurers as defined in KRS 304.17A-010(12). Each insurer shall provide only the type of coverage it is authorized by law to provide. 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 only to the extent each insurer may lawfully provide coverage for the 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, compensable medical coverage for the remainder shall be governed by KRS 342.020 and noncompensable medical coverage for the remainder shall be governed by KRS Chapter 304.

Section 4. Application Process. The Pilot Insurance Program shall apply for authorization to operate the program by submitting an application in quadruplicate to the Department of Insurance on a prescribed form. The Pilot Insurance Program shall provide the following information:

(1) The name, address, and telephone numbers of the Pilot Insurance Program administrator and a description of the administrator's 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 each sponsor's role in funding, insuring, and operating the Pilot Insurance Program. Sponsors shall include the employer or employers' association, workers' compensation insurer and health insurer for the Pilot Insurance Program;

(3) A full description of how the Pilot Insurance Program will operate, including participating and nonparticipating employees, participating and nonparticipating work sites, 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 Pilot Insurance 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 Pilot Insurance Program.

(b) Number of work-related injuries or diseases by ICD-9 code treated under the Pilot Insurance Program and during the twelve (12) month period 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 for the first twelve (12) months of the Pilot Insurance Program and for the twelve (12) month period preceding adoption of the Pilot Insurance Program.

(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 of Workers' Claims and the Department of Insurance shall authorize Twenty-four (24) Hour Pilot Insurance Programs. Applications will be evaluated in order of their receipt. Within thirty (30) days of receiving a complete application, the Department of Insurance shall provide a written notice of findings upon review to the Pilot Insurance 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 of Workers' Claims and the Department of Insurance 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 Programs archives a diversity of participants, program designs and geographic regions;

(b) The potential of the Pilot Insurance Program to mutually benefit workers, employers, medical providers and insurers;

(c) The adequacy of the financial and organizational resources of the Pilot Insurance Program administrator and sponsors;

(d) The ability of the Pilot Insurance Program administrator to meet the evaluation requirements described in KRS 342.352 and 216.2960; and

(e) The availability of resources to monitor the Pilot Insurance Program.

Section 6. Revocation of Pilot Insurance Program Authority. (1) The Department of Insurance and the commissioner of Workers' Claims 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 the Pilot Insurance Program administrator does not comply with the provisions of KRS Chapter 216 or 304;

(b) A participating insurer 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 care 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 or on any subsequent report required of the Pilot Insurance Program administrator or health care services contractor or insurer; or

(e) The successful operation of the Pilot Insurance Program is jeopardized by a weakness in the financial or operations status of the Pilot Insurance Program administrator, program sponsor, or health care services contractor, or insurer.

(2) The Department of Insurance and the Commissioner of Workers' Claims shall provide written notice of an intent to revoke to the Pilot Insurance Program administrator setting forth the basis of the revocation and granting the Pilot Insurance Program administrator fifteen (15) days from the date of the notice to make a written response.

(3) After reviewing the response, the Department of Insurance and the Commissioner of Workers' Claims may issue an order directing the Pilot Insurance Program administrator, the health care services contractor, or the insurer to remedy specific defects; may revoke the authorization to operate a pilot program; or in the discretion of the Commissioner of Workers' Claims and the Department of Insurance may set a time and place for a 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 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, health care services contractor, or insurer 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, health care service contractor, or insurer shall render a written decision upon grievance within thirty (30) days of the filing of the grievance.

(d) The 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 cases, resolution mechanisms shall be expeditious and where treatment matters are at issue reflect the need for resolution.

(3) The twenty-four (24) hour pilot insurance 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 service providers relevant to the grievance, and the health care contractor's name and address;

(b) A description of the administrator's findings, conclusions, and disposition of the grievance; and

(c) Number of grievances filed and summary of action taken.

(4) Any employee or provider dissatisfied with the Pilot Insurance Program administrator's, health care service contractor's, or insurer'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 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 Chapter 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 conditions. Coverage may be restricted in accordance with the provisions of the group health care portion of the program; and

(2) Compensable conditions. Coverage may be restricted in accordance with the provisions of a managed care plan previously approved by the Commissioner of Workers' Claims 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 shall comply with all provisions of KRS Chapter 342. It is the responsibility of the Pilot Insurance Program administrator to ensure that all required medical services are provided for every compensable condition;

(b) Coverage of noncompensable conditions shall comply with the terms of the group health plan portion of the Pilot Insurance Program; 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) Coordinator of medical coverage. Coverage of medical services that are included in the group health portion of a Pilot Insurance Program, but are excluded from coverage under KRS Chapter 342, shall not be denied to Pilot Insurance Program members solely because the plan member claims a compensable injury.

(3) Copayments and deductibles.

(a) Coverage of compensable conditions shall not require any copayment or deductible to be paid by Pilot Insurance Program members. Coverage of noncompensable conditions may require copayments or deductibles to be paid by members;

(b) If any copayment or deductible is paid by a Pilot Insurance Program member 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 condition. Ongoing medical services for an existing compensable condition shall comply with the provisions of KRS Chapter 342.

(5) Payments of premiums.

(a) Premiums for the group health plan portion of a Pilot Insurance Program plan may be shared by the employer and the covered member in accordance with the terms of that portion of the Pilot Insurance Program. Premiums for the workers' compensation portion shall 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 Pilot Insurance 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 conditions in lieu of workers' compensation coverage.

Section 11. Examination of Records. The Department of Insur-

ance and the Commissioner of Workers' Claims may make or cause to be made examinations of the books and records of the administrator of a Pilot Insurance Program to ensure compliance with these rules and the Pilot Insurance Program agreement.

Section 12. Statistical Reporting. (1) The workers' compensation portion of a Pilot Insurance Program. The administrator and sponsors of a Pilot Insurance Program shall provide the reporting required under KRS Chapter 342 for the workers' compensation portion of a Pilot Insurance Program.

(2) The group health portion of a Pilot Insurance Program. The administrators of a Pilot Insurance Program shall report the experience of the group health portion of the Pilot Insurance Program in accordance with the administrative regulations of the Department of Insurance.

GEORGE NICHOLS III, Commissioner

LAURA M. DOUGLAS, Secretary

APPROVED BY AGENCY: July 11, 1996

FILED WITH LRC: July 15, 1996 at 9 a.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Carla H. Montgomery

(1) Type and number of entities affected: Pursuant to 1996 Ky. Acts ch. 371 §21, the total number of participants in the pilot project cannot exceed 5% of all insured persons who are covered by workers' compensation and general health insurance. At this time, two (2) companies are involved in the pilot project.

(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 department has not received public comments at this time.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The department has not received public comments at this time.

(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:

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The department has already been involved in this project with the Health Policy Board and Department of Workers' Claims. Therefore, there should be no additional costs or savings.

2. Continuing costs or savings: Same as above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The department will receive the applications for participation in the pilot project and approve the policies.

(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 for the Department of Insurance will be used to implement this administrative regulation.

(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 at this time.

(b) Kentucky: Same comment as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The Department of Insurance must promulgate an

administrative regulation to fulfill the requirements of 1996 Ky. Acts ch. 371 §21, and this administrative regulation is virtually identical to the administrative regulation promulgated by the Kentucky Health Policy Board.

(8) Assessment of expected benefits: The twenty-four (24) hour pilot project will continue without interruption.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The pilot project will help review its effect on controlling the increasing costs of workers' compensation medical benefits. The project is too new to know the benefits.

(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 government policy which may be in conflict, overlapping, or duplication: No conflict.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering is not applied.

STATEMENT OF EMERGENCY

806 KAR 18:060E

This emergency regulation sets forth requirements for associations to offer group health insurance. 1996 Ky. Acts ch. 371 §13 sets out criteria for associations to be eligible to offer group health insurance and be exempt from using a community rating methodology or a modified community rating methodology. Associations in existence prior to January 30, 1996, but not offering group health insurance prior to January 30, 1996, must file an application on or before September 1, 1996, to obtain approval from the commissioner to offer group health insurance to their members. This emergency regulation is filed in order to be effective by July 15, 1996, when the statute is effective. The department needs the administrative regulation in place to comply with the statutory requirements. This emergency regulation shall be replaced by an ordinary administrative regulation to be filed at a later date.

PAUL E. PATTON, Governor

LAURA M. DOUGLAS, Secretary

GEORGE NICHOLS III, Commissioner

PUBLIC PROTECTION AND REGULATION CABINET

Department of Insurance

806 KAR 18:060E. Filing requirements for associations.

RELATES TO: KRS 304.18-020, 1996 Ky. Acts ch. 371 §9, §13
STATUTORY AUTHORITY: KRS 304.2-110(1), 1996 Ky. Acts ch. 371 §13

EFFECTIVE: July 15, 1996

NECESSITY, FUNCTION AND CONFORMITY: KRS 304.2-110(1) provides that the Commissioner of Insurance may promulgate reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. 1996 Ky. Acts ch. 371 §13 amended KRS 304.18-050 to allow eligible associations to offer group health insurance if approved by the Department of Insurance pursuant to Subtitle 18 and applicable administrative regulations promulgated under that Subtitle.

Section 1. An association in existence prior to January 30, 1996 but not offering group health insurance prior to January 30, 1996 shall demonstrate eligibility and obtain approval from the commissioner to

offer group health insurance.

Section 2. In order to demonstrate eligibility and obtain approval as required by Section 1 of this administrative regulation, each association shall submit for approval an application for exemption on or before September 1, 1996 to the commissioner which shall set forth or be accompanied by:

- (1) The name of the association, location of its principal office, date of organization, purpose of the association, and a description of persons solicited for membership;
- (2) Names and addresses of trustees;
- (3) The association's constitution;
- (4) The association's bylaws;
- (5) The base organizational documents;
- (6) Group insurance policy or proposed group insurance policy;
- (7) Contracts or proposed contracts between association or trustee and insurer;
- (8) Contracts, agreements, and applications between association and members;
- (9) Documents relating to the criteria for membership;
- (10) Documents relating to the eligibility for health benefit plan coverage; and
- (11) Address where books and records of the association will be maintained at all times.

Section 3. If any of the information filed with the department pursuant to Section 2 of this administrative regulation changes or becomes incorrect, the association shall immediately notify the department in writing of the change and immediately give the department the correction.

GEORGE NICHOLS III, Commissioner

LAURA M. DOUGLAS, Secretary

APPROVED BY AGENCY: July 11, 1996

FILED WITH LRC: July 15, 1996 at 9 a.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Carla H. Montgomery

(1) Type and number of entities affected: The department does not have this information on the number of associations affected. Associations under KRS 304.18:020 have never filed anything with the department before this time.

(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 department has not received public comments at this time.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The department has not received public comments at this time. Associations may have a minimal increased cost of doing business, because they would need to prepare the information and send it to the department.

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

1. First year following implementation: Associations would file the information necessary to implement 1996 Ky. Acts ch. 371 §13 by September 1, 1996. Associations would need to pay for copies of the information and the delivery of this information to the department.

2. Second and subsequent years: The only cost to an association would occur if an original filing changed or became incorrect. The association would have to notify the department of any change in the original information.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The department does not anticipate any effect on costs or savings.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The Department will have to review all of the filings made by associations. The department will have to send notice of approval or disapproval to the associations.

(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 normal budget for the Department of Insurance will be used to implement this administrative regulation.

(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 at this time.

(b) Kentucky: Same comment as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This administrative regulation is the best way for associations to demonstrate their eligibility under KRS 304.18-020 and 1996 Ky. Acts ch. 371 §13. The department must have this information to determine if an association is eligible to offer group health insurance.

(8) Assessment of expected benefits: The department will be able to make an informed decision when approving associations to offer group health insurance.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Members of eligible associations will be able to obtain group health insurance from the associations.

(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 government policy which may be in conflict, overlapping, or duplication: No conflict.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering is not applied because the administrative regulation will apply to all associations in existence prior to January 30, 1996, but not offering group health insurance at that time.

STATEMENT OF EMERGENCY

900 KAR 6:010E

1996 Ky. Acts ch. 371 transferred the certificate of need process provisions from the Kentucky Health Policy Board to the Cabinet for Health Services effective July 15, 1996. In order to make the transfer of these provisions effective July 15, 1996, the Cabinet for Health Services is promulgating an emergency regulation to assume the provisions of the certificate of need process. This emergency administrative regulation will be replaced by an ordinary regulation pursuant to KRS Chapter 13A.

PAUL E. PATTON, Governor

JOHN H. MORSE, Secretary

**CABINET FOR HEALTH SERVICES
Office of Certificate of Need**

900 KAR 6:010E. Certificate of need process.

RELATES TO: KRS 216B.010 to 216B.130, 216B.455, 216B.990
STATUTORY AUTHORITY: KRS 13A.350, 216B.040, 216B.075,
Ky. Acts ch. 371, EO 96-862

EFFECTIVE: July 11, 1996

NECESSITY AND FUNCTION: KRS 216B.040 requires the Cabinet for Health Services to promulgate administrative regulations outlining the certificate of need review procedures and to establish criteria for the issuance of certificates of need. Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and creates the Office of Certificate of Need under the Cabinet for Health Services. These administrative regulations set forth the requirements for batching applications, for review of the applications, for the issuance of advisory opinions for public hearings on the applications and for "show cause" hearings on noncompliance.

Section 1. Definitions. (1) "Cost escalation" means an increase in the capital expenditure authorized on a certificate of need which has not been the subject of an obligation as defined in KRS 216B.015(26).

(2) "Defined geographic area" means the area and population the proposal seeks to serve.

(3) "Division of Licensing and Regulation" means the Cabinet for Health Services, Office of the Inspector General, Division of Licensing and Regulation.

(4) "Emergency circumstances" means natural disasters, fire, vandalism, structural or mechanical failure, or other circumstances affecting existing health facilities and services that pose an imminent threat to the life, health, or safety of any citizen of the Commonwealth if not acted upon immediately.

(5) "Improvement" means change or addition to the premises of an existing facility that enhances its ability to deliver the services that it is authorized to offer under its existing license or an approved certificate of need.

(6) "Long-term care beds" means those beds located in a nursing facility, nursing home, skilled nursing beds, intermediate care beds, Alzheimer disease facility beds, and personal care beds.

(7) "Medically underserved" means those populations or geographic areas as designated by the cabinet in the state health plan.

(8) "Proposed service area" means the geographic area and population the applicant proposes to serve.

(9) "Public information channels" means the Office of Communications in the Cabinet for Health Services.

(10) "Show cause hearing" means a hearing before the cabinet or its designee at which a person is required to explain or demonstrate why the person should not be subject to the penalties provided by KRS 216B.990 for specific violations of the provisions of KRS Chapter 216B.

Section 2. Criteria. In determining whether to issue or deny a certificate of need, an applicant shall provide and the cabinet shall utilize the following information:

(1) Consistency with state health plan and any biennial state budget authorizations and limitations directly affecting the proposal.

(2) Need and accessibility.

(a) The defined geographic area's need for the proposed services;

(b) Accessibility of proposed service to the defined population, particularly those with an inability to access such services and those designated in the state health plan as medically underserved;

(c) The extent to which the health professions' schools in the area have access to the services for training purposes;

(3) Interrelationships and linkages.

(a) The relationship of the proposed service with the existing health care system of the defined geographic area and the state;

(b) The relationship, including the organizational relationship, of the proposed health service with ancillary or support services;

(c) The efficiency and appropriateness of the use of similar existing services and facilities to meet identified needs;

(4) Costs, economic feasibility, and resource availability.

(a) The availability of less costly or more effective alternatives to the proposal;

(b) The immediate and long-term financial feasibility of the proposal;

(c) The probable impact of the proposal on:

1. The applicant's costs and charges for providing health services; and

2. The costs and charges of other providers in the defined geographic area.

(d) The availability of resources, including health care personnel, management personnel, and funds for capital and operating needs;

(e) For construction or renovation projects, costs and methods of the project, including the costs and methods of energy provisions;

(f) The effect of competition on the supply of health services being reviewed and whether the approval of the application may unnecessarily increase the cost of health care to the public;

(g) Improvements or innovations in the proposed financing and delivery of health services that foster competition and promote quality and cost effectiveness;

(5) Quality of services.

(a) The quality of care provided by the applicant in the past; or

(b) The qualifications of the persons responsible for the quality of care to be provided;

(c) Any detrimental effects of the proposal on the quality of similar services in the area, including those associated with decreased utilization; and

(d) The ability of the applicant to comply with applicable licensure requirements.

Section 3. Letter of Intent. (1) At least thirty (30) days prior to submitting an application for a certificate of need, an applicant shall file a letter of intent with the cabinet or its designee on Letter of Intent Form Number 1.

(2) A letter of intent shall be valid for one (1) year.

(3) If an application is denied or withdrawn, the applicant shall file a new letter of intent before resubmitting an application.

(4) If an application is withdrawn before a final decision, the applicant shall file a new letter of intent before resubmitting an application.

(5) A letter of intent shall not be required from an applicant requesting nonsubstantive review under the provisions of Section 8 of this administrative regulation.

Section 4. Application for Certificate of Need. (1) Upon receipt of a letter of intent, the cabinet or its designee shall provide the applicant with:

(a) Written acknowledgment of receipt of the letter of intent; and

(b) Copies of:

1. "Certificate of Need Application Form Number 2A"; or

2. "Certificate of Need Application for Ground Ambulance, Air Ambulance and Nonemergency Health Transportation Services Form Number 2B".

(2) The applicant shall file an original and one (1) copy of a certificate of need application together with the prescribed fee set forth in 909 KAR 1:050 with the cabinet or its designee on or before the deadlines established by Section 5 of this administrative regulation.

(3)(a) Fifteen (15) days after receipt of an application, the cabinet or its designee shall:

1. Notify the applicant that the application is completed; or

ADMINISTRATIVE REGISTER - 385

2. Request specific additional information.
- (b) If an application is not complete, the applicant shall:
 1. Complete the application by submitting the requested specific additional information; or
 2. Notify the cabinet that its application shall be processed as submitted.
- (4) Upon receipt of an applicant's response, the cabinet or its designee shall:
 - (a) Declare an application complete; and
 - (b) Notify the applicant of the beginning of the review.
- (5)(a) Public notice of review shall include all applications deemed complete six (6) or more working days before the scheduled date of the applicable public notice.
- (b) After an application has been declared complete, an applicant may not submit additional information to be made part of the public record unless the information is introduced at a hearing.

- (6)(a) Public notice of review shall include:
 1. The schedule for the review; and
 2. The period during which a public hearing may be requested by the applicant and other affected persons.
- (b) The cabinet or its designee shall provide notice through public information channels;
- (c) The cabinet or its designee shall mail notice to mayors, county judge executives, and all known providers of similar services in the proposed service area;
- (d) The applicant shall ensure that notice is published in one (1) newspaper of general circulation in the proposed service area pursuant to KRS 424.120.

Section 5. Review of Certificate of Need Application. (1) Batching review cycles shall be as follows:

Type of Proposal	Applications shall be filed by third Wednesday of:	Month of public notice, ninety (90) days prior to decision date:	Month and day of decision, third Wednesday of:
(a) Hospital, psychiatric, rehabilitation, chemical dependency and psychiatric residential treatment facilities, freestanding ambulatory surgical center, birthing center.	October, January, April, July	November, February, May, August	February, May, August, November
(b) Skilled nursing, nursing home, intermediate care, personal care, nursing facility, and Intermediate Care, Mental Retardation, and Developmentally Disabled facility.	November, May	December, June	March, September
(c) Transplantation, magnetic resonance imaging, lithotripter, radiation therapy, cardiac catheterization, open heart surgery, and new technological developments	December, June	January, July	April, October
(d) Day health care center, ambulatory care clinic, rehabilitation agency, hospice, home health or home health/hospice	October, January, May, July	November, February, June, August	February, May, September, November
(e) Ambulance and air ambulance providers.	November, January, April, June, August	December, February, May, July, September	March, May, August, October, December
(f) All mobile services except those covered under specialized equipment and services	October, December, February, April, June, August	November, January, March, May, July, September	February, April, June, August, October, December
(g) Any proposals not listed above shall be placed in the most			

appropriate cycle as determined by the Cabinet.

- (h) Any proposals granted nonsubstantive review status as specified in KRS 216B.095(3)(a)(b)(c)(d)(e)(f) shall be processed in accordance with KRS 216B.095(1)

(2) The cabinet or its designee shall notify the applicant by certified mail, and any party to the proceeding by regular mail, of the final action on a certificate of need application.

(3) Written notification of approval shall include:

- (a) Verification that the criteria have been met;
- (b) If the application is inconsistent with any criteria, the reasons for approval despite the inconsistency; and
- (c) Notice of appeal rights.

(d) The amount of capital expenditure authorized, where applicable.

(4) Written notification of disapproval shall include:

- (a) The reason for the disapproval; and
- (b) Notice of appeal rights.

(5) An application that is not declared complete within a year from the date of filing shall expire and shall not be reviewed.

(6) An application for certificate of need that is disapproved shall not be refiled for a period of twelve (12) months, absent a showing of significant change in circumstances, as determined by the cabinet.

Section 6. Certificate of Need Hearings. (1) The applicant or any affected person may request a hearing on an application. Notice of hearing shall be mailed by certified mail to the applicant and parties requesting the hearing not less than ten (10) days before the date of the hearing.

(2) The cabinet or its designee shall provide the following notice of the date, time, and location of the hearing:

(a) Members of the public through public information channels; and

(b) Mailed to county judge executives, mayors and all known providers of similar services in the proposed service area.

(3)(a) A hearing request may be withdrawn by written request filed with the cabinet, or its designee and shall be accepted if it is received by the cabinet at least three (3) working days before the scheduled hearing date.

(b) A public hearing shall be canceled if all persons who requested the hearing agree in writing to its cancellation; agreement of other affected persons shall not be required.

(4) Preliminary conference. The cabinet or its designee may convene a preliminary conference. The purposes of the conference are to formulate and simplify the issues, identify additional information and evidence needed for the hearing, and dispose of pending motions. A written summary of the preliminary conference and the orders thereby issued shall be made a part of the record. The cabinet or its designee may tape record the conference or have a stenographer present. During the preliminary conference, the cabinet or its designee may:

(a) Instruct the parties and others who have indicated an intent to participate in the hearing to:

1. Formulate and submit a list of genuine contested issues to be decided at the hearing;

2. Identify potential witnesses using Form Number 3 and the subject matter of their testimony;

3. Serve subparagraphs 1 and 2 of this paragraph on all parties by mail; and

4. Raise and address issues that can be decided before the hearing.

(b) Submit any exhibits and documents that they wish to introduce at the hearing and list them on Form Number 4 and serve them on all

parties to the hearing.

(c) Prescribe the manner and extent of the participation of the parties or persons who shall participate.

(d) Formulate and submit stipulations to facts, laws, and other matters.

(e) Rule on any pending motions for discovery or subpoenas.

(f) Require any additional information relevant to the application requested by the cabinet and any information or evidence to be gathered by discovery shall be filed no less than five (5) days before the hearing and copies shall be served on all known parties.

(g) Schedule dates for the submission of prefiled testimony, further preliminary conferences, and submission of briefs and documents.

(5) Public hearing. A hearing officer designated by the cabinet shall convene the hearing. In no event shall a hearing officer act on any application in which he has a conflict of interest as defined in KRS 45A.340. Any party may file with the cabinet a petition for removal based upon a conflict of interest supported by affidavit.

(6) The hearing officer shall convene the hearing and shall state the purpose and scope of the hearing or the issues upon which evidence shall be heard. Every party appearing shall enter an appearance by stating their name and address. The hearing officer shall rule on preliminary matters appropriate for disposition prior to receipt of any evidence.

(7) Each party shall have the opportunity to present its case, make opening statements, call and examine witnesses, offer documentary evidence into the record and make closing statements. Every party shall also have the opportunity to cross-examine opposing witnesses on matters covered in direct examination and, at the discretion of the hearing officer, upon other matters relevant to the issues. A party that is a corporation shall be represented by an attorney licensed to practice in the Commonwealth of Kentucky.

(a) The hearing officer may allow testimony or other evidence on issues not previously identified in the preliminary order which may arise during the course of the hearing, including any additional petitions for intervention which may be filed. He may act to exclude irrelevant, immaterial or unduly repetitious evidence, and may question any party or witness.

(b) The hearing officer is not bound by the Kentucky rules of evidence and may allow hearsay evidence in his discretion if it is relevant to the issue.

(c) The applicant may be allowed to open and close the presentation of evidence and arguments. The hearing officer shall designate the order of presentations in the preliminary order.

(d) Witnesses may appear through deposition or in person. Witnesses shall be examined under oath or affirmation. If the hearing officer determines that the hearing will be expedited and the interests of the parties will not be prejudiced any part or all of the evidence may be received in written form. Written testimony of a witness in the form of questions and answers or a narrative statement may be received in lieu of direct examination, provided that the witness authenticates the document under oath. The witness shall then be subject to cross-examination.

(e) The hearing officer may accept documentary evidence in the form of copies of excerpts if the original is not readily available, provided that upon request parties shall be given an opportunity to compare the copy with the original. Documents to be considered for acceptance shall be filed with the hearing officer and other parties at

least seven (7) days before the hearing.

(f) A document may not be incorporated into the record by reference without the permission of the hearing officer. Any reference document shall be precisely identified.

(g) The hearing officer may permit a party to offer or request a party to produce additional evidence or briefs of issues as part of the record within a designated time, not to exceed seven (7) days after the conclusion of the hearing. During this period, the hearing record shall remain open, and the conclusion of the hearing shall occur when the additional information is filed.

(8) Within ten (10) days after the conclusion of the hearing, the hearing officer shall forward a copy of the decision by regular mail to each party. The original hearing decision shall be filed in the administrative record maintained by the cabinet.

Section 7. Requests for Reconsideration. (1) The hearing officer shall act upon requests for reconsideration filed pursuant to KRS 216B.090 within thirty (30) days following receipt of a request.

(2) If reconsideration is granted, a hearing before a hearing officer designated by the cabinet shall be held within thirty (30) days of the decision, and a final decision by the hearing officer shall be issued no later than thirty (30) days following the hearing.

Section 8. Maintenance of Administrative Record. The cabinet shall maintain an administrative record of its hearings.

Section 9. Conditions Relative to Nonsubstantive Review. (1) In addition to the projects specified in KRS 216B.095(3)(a) through (f), the following proposals may be granted nonsubstantive review status:

(a) Technical modifications to an approved certificate of need;

(b) Emergency circumstances. An applicant acting under this subsection may proceed to relieve any emergency circumstances as defined in Section 1(4) of this administrative regulation provided the cabinet is notified in writing prior to the action, and an application is submitted within thirty (30) days of the occurrence of the emergency.

(2) Procedures for nonsubstantive review.

(a) The original certificate of need application and three (3) copies with a request for nonsubstantive review shall be submitted to the cabinet.

(b) Within fifteen (15) days of the receipt of the application, the cabinet shall:

1. Notify the applicant that the application is complete; or
2. Request specific additional information.

(c) If an application is not complete, the applicant shall:

1. Complete the application by submitting specific additional information; or
2. Notify the cabinet that its application shall be processed as submitted.

(d) Upon receipt of an applicant's response, the cabinet shall:

1. Declare an application complete; and
2. Notify the applicant of the beginning of the review.

(e) A hearing officer designated by the cabinet shall review all documents submitted by the applicant to determine whether the application conforms to the stated grounds for nonsubstantive review and whether the project is necessary to meet the circumstances thereby described.

(f) No later than ten (10) days after an application has been declared complete, the hearing officer's decision on a request for nonsubstantive review shall be mailed to the applicant. Notice of a decision to conduct a nonsubstantive review shall be given to the third party payors and members of the public through public information channels, and mailed to newspapers, county judge executives, mayors, and other known affected persons in the proposed service area.

(g) A final decision order and supporting documents shall be presented to the cabinet for its approval.

(h) If a certificate of need is denied following a nonsubstantive

review and the applicant requests a formal review, the filing of the request for nonsubstantive review shall be considered to constitute compliance with any requirement for a letter of intent. The applicant shall provide all information requested in the application that pertains to the formal review process no later than the relevant deadline as provided in Section 5 of this administrative regulation.

(i) Any hearing requested by an affected person will be conducted according to Section 6 of this administrative regulation.

Section 10. Conditions Relative to Certificate of Need. (1) Certificates of need issued to an existing facility for purposes other than replacement of the facility may be transferred to the new owner of the facility if the change of ownership occurs prior to implementation of the project for which the certificate of need was issued.

(2) A certificate of need approved for establishment of a new facility or the replacement of an existing facility is valid only for the location stated on the certificate.

(3) Any person found by the cabinet to have violated KRS 216B.0615 shall be subject to the penalties for Class B misdemeanors set forth in KRS 532.090(b), 534.040(2)(b), and 534.050(1) as amended.

(4) A certificate of need holder shall notify the cabinet of any reduction or termination of a health service or a reduction in bed capacity for an approved project no later than the first progress report after the decision to make the change has been determined.

Section 11. Show Cause Hearings. (1) A hearing officer designated by the cabinet may conduct a show cause hearing in order to determine whether there has been a violation of KRS Chapter 216B or these administrative regulations, and may assess penalties if willful violations are found. The accused violator may present evidence to assist the hearing officer in determining whether such a violation has occurred.

(2) Prior to convening a show cause hearing, the cabinet or its designee shall give the certificate of need holder not less than twenty (20) days' notice of its intent to conduct a hearing. The notice shall advise the holder of the allegations against him, of any facts determined to exist which support the existence of the allegation, and the statute or administrative regulation alleged to have been violated.

(3) A hearing officer, shall convene the hearing and shall allow the holder to establish through testimony or other evidence any grounds in support of its position that no action should be taken by the cabinet.

(4) Within ten (10) days of the conclusion of the hearing, the hearing officer shall issue a final decision and order on the matter. A copy of the final decision shall be mailed to the holder or his legal representative with the original hearing decision filed in the administrative record maintained by the cabinet.

Section 12. Cost Escalations. (1) A certificate of need shall be required for an escalation of the capital expenditure authorized by an approved certificate of need if there is a substantial change in the project or the escalation exceeds the following limits:

(a) Twenty (20) percent of the capital expenditure authorized or \$100,000, whichever is greater, if the project's capital expenditure is less than \$500,000;

(b) Twenty (20) percent of the capital expenditure authorized for projects with a capital expenditure of \$500,000 to \$4,999,999;

(c) Ten (10) percent of the amount in excess of \$5,000,000, plus \$1,000,000, for projects with a capital expenditure of \$5,000,000 to \$24,999,999;

(d) Five (5) percent of the amount in excess of \$25,000,000, plus \$3,000,000, for projects with a capital expenditure of \$25,000,000 to \$49,999,999.

(e) Two (2) percent of the amount in excess of \$50,000,000, plus \$4,250,000, for projects with a capital expenditure of \$50,000,000 or more.

(2)(a) Requests for administrative cost escalations shall be submitted to the cabinet or its designee on Form #6 (Cost Escalation).

(b) The requests shall include:

1. Amount of the escalation;
2. Factors causing the escalation; and

3. Information confirming that the scope of the project as originally approved has not changed and that funds have not been obligated in excess of the approved capital expenditure.

(c) The cabinet or its designee shall review all requests for administrative cost escalations and shall notify the certificate of need holder within thirty (30) days of receipt whether the requested escalation meets the requirements of subsection (1) of this section.

(3) The certificate of need holder shall submit any additional certificate of need application fee required by the increased capital expenditure pursuant to the requirements of 909 KAR 1:050.

(4) A hearing officer designated by the cabinet may conduct a show cause hearing in order to determine whether a certificate of need holder has willfully obligated capital expenditure beyond the amount authorized, and may assess penalties if willful obligations are found.

Section 13. Timetables and Standards for Implementation. (1) As a condition for the issuance of a certificate of need, a holder of a certificate of need shall submit progress reports on "Progress Report Form #8" at the six (6) month intervals specified in this section.

(2)(a) A notice specifying the date each progress report is due shall be sent to every holder of a certificate of need whose project is not fully implemented.

(b) The cabinet or its designee shall review a progress report and shall:

1. Determine whether the required elements have been completed; and
2. If the required elements have not been completed, whether sufficient reasons for failure to complete have been provided.

(3) A certificate of need shall be deemed complete when:

- (a) The project has been approved for licensure or occupancy by the Division of Licensing and Regulation;
- (b) A final cost breakdown has been submitted; and
- (c) Documentation that services are being provided to all of the licensed service area has been submitted.

(4) Until a project is deemed complete by the cabinet, the cabinet may require:

- (a) The submission of additional reports; or
- (b) Progress reports in addition to those required at six (6) month intervals under the provisions of this section.

(5)(a) Except for long-term care bed proposals, a certificate of need shall not be revoked for failure to complete the items required during a six (6) month period, if the holder of the certificate of need establishes that the failure was due to emergency circumstances or other causes that could not reasonably be anticipated and avoided by the holder, or were not the result of action or inaction of the holder.

(b) If the cabinet determines that required elements have not been completed for reasons other than those set forth in paragraph (a) of this subsection, it shall notify the holder of the certificate of need, in writing, it has determined to revoke the certificate of need.

(c) The revocation shall become final thirty (30) days from the date of notice of revocation, unless the holder requests a hearing to show cause why the certificate of need should not be revoked.

(6) The first progress report for all projects other than long-term care beds shall include:

- (a) Projects for the purchase of equipment only: a copy of the purchase order;
- (b) Projects involving the acquisition of real property: evidence of an option to acquire the site;
- (c) Construction or renovation projects: evidence that schematic plans have been submitted to the Public Protection and Regulation

Cabinet, Department of Housing, Buildings and Construction and the Division of Licensing and Regulation.

(7) For projects other than long-term care not deemed complete, a second progress report shall include:

(a) Projects converting beds: documentation that all beds are licensed;

(b) Projects for addition of new services or expansion of existing services that do not involve construction, renovation, or the installation of equipment: documentation of approval for licensure and occupancy by the Division of Licensing and Regulation or the Emergency Medical Services Branch; and

(c) Construction or renovation projects: the schedule for project completion, evidence of preliminary negotiation with a financial agency, and evidence of preliminary negotiation with contractors.

(8) For projects other than long-term care not deemed complete, a third progress report shall include:

(a) Construction or renovation projects:

1. Copy of deed or lease of land;
2. Documentation of final enforceable financing agreement, where applicable.

3. Documentation that final plans have been submitted to the Public Protection and Regulation Cabinet, Department of Housing, Buildings and Construction and the Division of Licensing and Regulation; and

4. Enforceable contract with a construction contractor.

(b) Projects for purchase of equipment only: evidence of approval for licensure and occupancy by the Division of Licensing and Regulation.

(9) For projects other than long-term care not deemed complete, a fourth progress report shall include documentation of final plan approval by the Public Protection and Regulation Cabinet, Department of Housing, Buildings and Construction and the Division of Licensing and Regulation and that construction has begun.

(10) For projects other than long-term care not deemed complete, a fifth progress report shall include documentation that construction or renovation is progressing according to schedule.

(11) For projects other than long-term care not deemed complete, a sixth progress report shall include documentation that the project has been approved for licensure or occupancy by the Division of Licensing and Regulation and if required that the appropriate license has been approved for the health care service or facility.

(12) For projects other than long-term care not deemed complete after the sixth progress report, the certificate holder shall, upon request, provide the cabinet or its designee with a written statement showing cause why the certificate should not be revoked. The cabinet may defer revocation action upon a showing by the certificate holder that the project will be completed on a revised schedule. The cabinet or its designee may require additional progress reports.

(13) For projects involving long-term care beds:

(a) The first progress report shall include:

1. Copy of deed or lease of land for projects requiring acquisition of real property;

2. Evidence that final plans have been submitted to the Public Protection and Regulation Cabinet, Department of Housing, Buildings and Construction and the Division of Licensing and Regulation.

(b) For projects involving long-term care beds not deemed complete, a second progress report shall include: documentation that beds in projects for conversion of beds are licensed.

(14) For construction projects:

- (a) Schedule for project completion with projected dates;
- (b) Documentation of final financing;
- (c) Documentation of final plan approval by the Public Protection and Regulation Cabinet, Department of Housing, Buildings and Construction and the Division of Licensing and Regulation; and
- (d) Enforceable construction contract.

(15) For projects involving long-term care beds not deemed complete, a third progress report shall include documentation that

construction or renovation is progressing according to the schedule for project completion;

(16) For projects not involving long-term care beds not deemed complete, a fourth progress report shall include documentation that the project has been appropriately licensed and approved for occupancy by the Division of Licensure and Regulation.

(17) The cabinet or its designee may grant no more than two (2) extensions of six (6) months for good cause shown when the certificate holder of long-term care beds has failed to comply with the above relevant progress report requirements;

(18)(a) Within six (6) months following licensure of a project for which a certificate of need has been issued, the certificate holder shall submit documentation that services are being provided to all of the licensed service area. Failure to provide such documentation shall constitute grounds for revocation of the certificate of need and the license for those areas where service is not being provided.

(b) If the project involves a capital expenditure, a final cost breakdown shall be included in the final progress report.

Section 14. Revocation of Certificates of Need. The cabinet may act to revoke a certificate of need at any time in accordance with the requirements of KRS 216B.086.

Section 15. Biennial Review. (1) Certificate of need holders may be subject to biennial review to determine that they are in compliance with the terms as listed on their certificate of need.

(2) Biennial review may be conducted within sixty (60) days of the second anniversary of the final progress report and at twenty-four (24) month intervals thereafter.

(3) The cabinet or its designee shall provide sixty (60) days' advance written notification to the subject of any biennial review, including the following:

- (a) When the biennial review will be initiated;
 - (b) Request for information necessary for the review to which the cabinet does not have ready access; and
 - (c) A deadline for response to the request for information.
- (4) The cabinet or its designee shall notify the certificate of need holder of any finding that it is not in compliance with the terms of its certificate of need, and shall provide the certificate of need holder with a reasonable period of time in which to demonstrate a good faith effort to remedy the specified deficiencies.

(5) The cabinet may institute disciplinary proceedings, including but not limited to revocation of the certificate of need for willful failure to comply with the terms of a certificate of need as determined by a biennial review.

(6) The cabinet shall notify the Division of Licensing and Regulation of any adverse findings under this subsection.

Section 16. Advisory Opinions. (1) Requests for advisory opinions shall be completed on Form Number 9 (Advisory Opinion).

(2) In rendering an advisory opinion, a proposal shall be considered to constitute an improvement within the definition of a nonclinically related expenditure exempt from review if the proposed expenditure meets the definition of an improvement contained in Section 1 of this administrative regulation.

(3) The cabinet or its designee may require verification of information and request additional documentation.

(4) The cabinet or its designee shall issue a written advisory opinion within thirty (30) days of receipt of a completed request for an opinion or of receipt of additional information.

(5) Public notice of the advisory opinion shall be published in the monthly certificate of need newsletter and disseminated through public information channels.

(6) An affected person may request a public hearing regarding an advisory opinion in writing within thirty (30) days of the public notice of the advisory opinion. If a public hearing is not requested, the advisory opinion shall be the final action of the cabinet. Failure to

request a public hearing shall not constitute a failure to exhaust administrative remedies.

Section 17. Material Incorporated by Reference. (1) The following forms necessary for the administration of the certificate of need program are hereby incorporated by reference:

- (a) Letter of Intent (Form #1).
 - (b) Certificate of Need Application (Form #2A).
 - (c) Certificate of Need Application for Ground Ambulance, Air Ambulance and NonEmergency, Health Transportation (Form 2b).
 - (d) Certificate of Need Application for Change of Location, Replacement, or Cost Escalation (Form #2C).
 - (e) Witness List (Form #3).
 - (f) Exhibit List (Form #4).
 - (g) Notice of Appearance (Form #5).
 - (h) Cost Escalation (Form #6).
 - (i) Six (6) Month Progress Report (Form #7).
 - (j) Advisory Opinion Request (Form #8).
 - (k) Acquisition of a Health Facility, Notice of Intent (Form #9).
- (2) These forms may be inspected and copied at the Cabinet for Health Services, 275 E. Main Street, Frankfort, Kentucky 40621, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

JOHN GRAY, Executive Director

JOHN H. MORSE, Secretary

APPROVED BY AGENCY: July 9, 1996

FILED WITH LRC: July 11, 1996 at 4 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John Gray, Executive Director

(1) Type and number of entities affected: This administrative regulation will affect health care facilities and services associated with the Certification of Need process.

(2) Direct and indirect cost or savings to those affected: This administrative regulation has not substantive changes. It places the responsibility of the Certificate of Need process with the Cabinet for Health Services instead of the Health Care Policy Board.

(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 the Notice of Intent hearing.

(b) Cost of doing business in the geographical areas in which the administrative regulation will be implemented, to the extent available from the public comment received: To be determined after the Notice of Intent hearing.

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

1. First year following implementation: There are no additional compliance, reporting or paperwork requirements.

2. Second and subsequent years: See item #1.

(3) Effects on the promulgating administrative body: There will be additional costs to the cabinet.

(a) Direct and indirect cost or savings:

1. First year: When the Health Policy Board is abolished, appropriated funds will be transferred to the cabinet to cover the costs of this function.

2. Continuing cost or savings: Staff and operating costs will continue.

3. Additional factors increasing or decreasing costs: Costs could vary depending on the number of Certificate of Need applications.

(b) Reporting and paperwork requirements: The Cabinet for Health Services will assume the reporting and paperwork requirements associated with the Certificate of Need process.

(4) Assessment of anticipated effect on state and local revenues: This administrative regulation will not affect state or local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Funds will be transferred from the Health Policy 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: To be determined after the Notice of Intent hearing.

(b) Kentucky: To be determined after the Notice of Intent hearing.

(7) Assessment of alternative methods; reasons why alternatives were rejected: There were no alternative methods assessed. The 1996 General Assembly transferred this function to the Cabinet for Health 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: This administrative regulation will enable the Cabinet for Health Services to carry out its Certificate of need mandates.

(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: Failure to promulgate this administrative regulation would cause the Cabinet to delay the Certificate of Need process.

(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: 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? Tiering was not applied as the Certificate of Need process is applied uniformly for all of those entities that apply.

STATEMENT OF EMERGENCY 900 KAR 6:020E

1996 Ky. Acts ch. 371 transferred the certificate of need application fee schedule process provisions from the Kentucky Health Policy Board to the Cabinet for Health Services effective July 15, 1996. In order to make the transfer of these provisions effective July 15, 1996, the Cabinet for Health Services is promulgating an emergency regulation to assume the provisions of the certificate of need process. This emergency administrative regulation will be replaced by an ordinary regulation pursuant to KRS Chapter 13A.

PAUL E. PATTON, Governor
JOHN H. MORSE, Secretary

CABINET FOR HEALTH SERVICES Office of Certificate of Need

900 KAR 6:020E. Certificate of need application fee schedule.

RELATES TO: KRS 216B.010 to 216B.131, 216B.990(2)

STATUTORY AUTHORITY: KRS 13A.050, 216B.040, Ky. Acts ch. 371, EO 96-862

EFFECTIVE: July 11, 1996

NECESSITY AND FUNCTION: KRS 216B.040 authorizes the Cabinet for Health Services to establish, by administrative regulation, and collect reasonable application fees for certificates of need. Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and creates the Office of Certificate of Need under the Cabinet for Health Services. This administrative regulation provides a fee schedule for certificate of need applications.

Section 1. (1) Certificate of need applications not proposing a

capital expenditure or proposing a capital expenditure of \$0 - \$49,999 shall be assessed an application fee of \$100.

(2) Certificate of need applications which propose a capital expenditure of \$50,000 - \$500,000 shall be assessed an application fee at a rate of .002 of the capital expenditure.

(3) Certificate of need applications which propose a capital expenditure of \$500,001 - \$10,000,000 shall be assessed a base fee of \$1,000 plus an additional fee of .001 of the capital expenditure.

(4) Certificate of need applications which propose a capital expenditure of \$10,000,001 and above shall be assessed a base fee of \$6,000 plus an additional fee of .0005 of the capital expenditure.

Section 2. All fees shall be computed to the nearest dollars. Application fees shall be submitted with the application. Applications shall not be deemed complete until the application fee has been paid. Application fees shall be refunded only if notice of withdrawal of the application is received by the cabinet within five (5) working days of the date the application is received by the Cabinet for Health Services.

JOHN GRAY, Executive Director

JOHN H. MORSE, Secretary

APPROVED BY AGENCY: July 9, 1996

FILED WITH LRC: July 11, 1996 at 4 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John Gray, Executive Director

(1) Type and number of entities affected: This administrative regulation will affect health care facilities and services associated with the Certificate of Need application fee schedule process.

(2) Direct and indirect cost or savings to those affected: This administrative regulation has no substantive changes. It places the responsibility of establishing and collecting application fees for the Certificate of Need process with the Cabinet for Health Services instead of the Health Care Policy Board.

(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 the Notice of Intent hearing.

(b) Cost of doing business in the geographical areas in which the administrative regulation will be implemented, to the extent available from the public comment received: To be determined after the Notice of Intent hearing.

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

1. First year following implementation: There are no additional compliance, reporting or paperwork requirements.

2. Second and subsequent years: See item #1.

(3) Effects on the promulgating administrative body: There will be additional costs to the cabinet.

(a) Direct and indirect cost or savings:

1. First year: When the Health Policy Board is abolished, appropriated funds will be transferred to the cabinet to cover the costs of this function.

2. Continuing cost or savings: Staff and operating costs will continue.

3. Additional factors increasing or decreasing costs: Costs could vary depending on the number of Certificate of Need applications.

(b) Reporting and paperwork requirements: The Cabinet for Health Services will assume the reporting and paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: The effect of this administrative regulation on state revenues depends on the number of applications.

(5) Source of revenue to be used for implementation and

enforcement of administrative regulation: Funds will be transferred from the Health Policy 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: To be determined after the Notice of Intent hearing.

(b) Kentucky: To be determined after the Notice of Intent hearing.

(7) Assessment of alternative methods; reasons why alternatives were rejected: There were no alternative methods assessed. The 1996 General Assembly transferred this function to the Cabinet for Health 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: This administrative regulation will enable the Cabinet for Health Services to collect fees.

(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: Failure to promulgate this administrative regulation would cause the cabinet to delay collecting fees which would affect revenues.

(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: 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? Tiering was not applied as the Certificate of Need process is applied uniformly for all of those entities that apply.

STATEMENT OF EMERGENCY 900 KAR 6:030E

1996 Ky. Acts ch. 371 transferred the certificate of need process provisions from the Kentucky Health Policy Board to the Cabinet for Health Services effective July 15, 1996. In order to make the transfer of these provisions effective July 15, 1996, the Cabinet for Health Services is promulgating an emergency regulation to assume the provisions of the certificate of need expenditure minimums provisions. This emergency administrative regulation will be replaced by an ordinary regulation pursuant to KRS Chapter 13A.

PAUL E. PATTON, Governor
JOHN H. MORSE, Secretary

CABINET FOR HEALTH SERVICES Office of Certificate of Need

900 KAR 6:030E. Certificate of need expenditure minimums.

RELATES TO: KRS 216B.010 to 216B.130, 216B.455, 216B.990(2)

STATUTORY AUTHORITY: KRS 216B.040, 216B.130, Ky. Acts ch. 371, EO 96-862

EFFECTIVE: July 11, 1996

NECESSITY AND FUNCTION: KRS 216B.040 authorizes the Cabinet for Health Services to promulgate administrative regulations. KRS 216B.130 requires the cabinet to annually adjust expenditure minimums provided in KRS Chapter 216B. Executive Order 96 -862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and creates the Office of Certificate of Need under the Cabinet for Health Services. This administrative regulation provides for the adjustment of expenditure minimums for capital expenditures and major medical equipment for the period beginning July 15, 1996 and

ending July 14, 1997.

Section 1. (1) Expenditure minimums or limits provided in KRS Chapter 216B and administrative regulations promulgated pursuant thereto shall be adjusted for the twelve (12) month period beginning July 15, 1996 and ending July 14, 1997 to reflect the changes in the preceding year.

(2) The U.S. Department of Commerce, Bureau of Census Implicit Price Deflator for Construction shall be used in making these adjustments. The change in the deflator for the twelve (12) month period ending January, 1996 represents a four and one-half (4.5) percent increase.

Section 2. The expenditure minimums provided in KRS Chapter 216B shall be increased for the twelve (12) month period from July 15, 1996 to July 14, 1997 as follows:

(1) The expenditure minimum of \$1,500,000 for capital expenditure shall be increased to \$1,567,500.

(2) The expenditure minimum of \$1,500,000 for major medical equipment shall be increased to \$1,567,500.

JOHN GRAY, Executive Director

JOHN H. MORSE, Secretary

APPROVED BY AGENCY: July 9, 1996

FILED WITH LRC: July 11, 1996 at 4 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John Gray, Executive Director

(1) Type and number of entities affected: This administrative regulation will affect health care facilities and services associated with the Certification of Need expenditure minimums.

(2) Direct and indirect cost or savings to those affected: This administrative regulation has not substantive changes. It places the responsibility of adjusting expenditure minimums with the Cabinet for Health Services instead of the Health Care Policy Board. The administrative regulation is intended to contain health care costs.

(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 the Notice of Intent hearing.

(b) Cost of doing business in the geographical areas in which the administrative regulation will be implemented, to the extent available from the public comment received: To be determined after the Notice of Intent hearing.

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

1. First year following implementation: There are no additional compliance, reporting or paperwork requirements.

2. Second and subsequent years: See item #1.

(3) Effects on the promulgating administrative body: There will be additional costs to the cabinet.

(a) Direct and indirect cost or savings:

1. First Year: When the Health Policy Board is abolished, appropriated funds will be transferred to the cabinet to cover the costs of this function.

2. Continuing cost or savings: Staff and operating costs will continue.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Applications will be reviewed to determine whether they exceed minimum expenditure thresholds.

(4) Assessment of anticipated effect on state and local revenues: This administrative regulation will not affect state or local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Funds will be transferred

from the Health Policy Board. Fees will be paid by applicants for Certificates of Need.

(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 the Notice of Intent hearing.

(b) Kentucky: To be determined after the Notice of Intent hearing.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Annual adjustment of expenditure thresholds is required by statute.

(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 administrative regulation will enable the Cabinet for Health Services to adjust the expenditure minimums for capital expenditures and major medical equipment for a set time frame.

(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: Without this administrative regulation, the Cabinet for Health Services would not be allowed to adjust expenditure minimums as required by statute which could have a detrimental effect on services.

(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: 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? Tiering was not applied as the Certificate of Need process is applied uniformly for all of those entities that apply.

STATEMENT OF EMERGENCY 900 KAR 6:040E

1996 Ky. Acts ch. 371 transferred the certificate of need process provisions from the Kentucky Health Policy Board to the Cabinet for Health Services effective July 15, 1996. In order to make the transfer of these provisions effective July 15, 1996, the Cabinet for Health Services is promulgating an emergency regulation to assume the certificate of need licensure hearing provisions. This emergency administrative regulation will be replaced by an ordinary regulation pursuant to KRS Chapter 13A.

PAUL E. PATTON, Governor
JOHN H. MORSE, Secretary

CABINET FOR HEALTH SERVICES Office of Certificate of Need

900 KAR 6:040E. Licensure hearings.

RELATES TO: KRS 216B.105

STATUTORY AUTHORITY: KRS 13A.350, 216B.040, Ky. Acts ch. 371, EO 96-862

EFFECTIVE: July 11, 1996

NECESSITY AND FUNCTION: KRS 216B.040 and 216B.105 authorize the Cabinet for Health Services to provide a due process hearing and issue a final determination on all actions by the Cabinet for Health Services to deny, revoke, modify or suspend a license. Executive Order 96-862 reorganizes the Cabinet for Human Resources and creates the Office of Certificate of Need under the Cabinet for Health Services. This administrative regulation sets forth the hearing procedure for licensure actions.

Section 1. Notice of Action and Request for Hearing. Any applicant or licensee who has been notified of the cabinet's decision to deny, revoke, modify or suspend a license to operate a health facility or health service may request an evidentiary hearing for the purpose of appealing the cabinet's decision. The request must be filed with the cabinet within thirty (30) days of the date of mailing of notice of the cabinet's decision.

Section 2. Notice of Hearing. The cabinet shall provide the appellant with notice of date, time and location of the hearing by certified mail at least thirty (30) days before the date of the hearing.

Section 3. Disqualification of Hearing Officer. No hearing officer shall participate in any hearing in which he or she has had within the past twelve (12) months preceding the hearing, any ownership, employment, staff, fiduciary, contractual, creditor, personal, or consultative relationship with the applicant or licensee.

Section 4. Hearing Procedure. (1) Each party shall have the opportunity to present its case, make opening statements, call and examine witnesses, offer documentary evidence into the record and make closing statements. Every party shall also have the opportunity to cross-examine opposing witnesses on matters covered in direct examination and, at the discretion of the hearing officer, upon other matters relevant to the issues. A party that is a corporation shall be represented by an attorney licensed to practice in the Commonwealth of Kentucky.

(a) The hearing officer may allow testimony or other evidence on issues that may arise during the course of the hearing, including any additional petitions for intervention which may be filed. The hearing officer may act to exclude irrelevant, immaterial or unduly repetitious evidence, and may question any party or witness.

(b) The hearing officer is not bound by the Kentucky rules of evidence and may allow hearsay evidence in his discretion if it is relevant to the issue.

(c) The applicant or licensee may be allowed to open and close the presentation of evidence and arguments. The hearing officer shall designate the order of presentations, in the preliminary order.

(d) Witnesses may appear through deposition or in person. Witnesses shall be examined under oath or affirmation. If the hearing officer determines that the hearing will be expedited and the interests of the parties will not be prejudiced, any part or all of the evidence may be received in written form. Written testimony of a witness in the form of questions and answers or a narrative statement may be received in lieu of direct examination, provided that the witness authenticates the document under oath. The witness shall then be subject to cross-examination.

(e) A written statement from any party, or a statement or resolution of a political subdivision, trade association, civic organization or other organization may be received without cross examination, but will be considered only as argument, and not as proof of any matter addressed in these documents unless the party against whom the document is being offered is allowed to cross-examine the proponent of the document.

(f) The hearing officer may accept documentary evidence in the form of copies of excerpts if the original is not readily available, provided that upon request parties shall be given an opportunity to compare the copy with the original. Documents to be considered for acceptance shall be filed with the hearing officer and other parties at least seven (7) days before the hearing.

(g) A document may not be incorporated into the record by reference without the permission of the hearing officer. Any reference document shall be precisely identified.

(h) The hearing officer may permit a party to offer or request a party to produce additional evidence or briefs of issues as part of the record within a designated time, not to exceed the ten (10) days after the conclusion of the hearing. During this period, the hearing record

shall remain open, and the conclusion of the hearing shall occur when the additional information is filed.

(2) In lieu of an evidentiary hearing, the parties to a proceeding, with the consent of the designated hearing officer, may file written stipulations of relevant facts. The hearing officer may decide the appeal on the basis of such stipulation or may schedule a hearing and take such further evidence as he deems necessary.

(3) The designated hearing officer may, at his discretion, grant a continuance of a hearing in order to secure necessary evidence.

Section 5. Findings and Recommendations. (1) After the hearing, the hearing officer shall prepare written findings of fact and recommendations with a synopsis of the evidence contained in the record on the issues involved. If the applicant or licensee fails to appear and prosecute the appeal, the hearing officer may dismiss or recommend dismissal of the appeal.

(2) The hearing officer shall, within twenty (20) days of the close of the hearing send findings and recommendations by certified mail to the applicant or licensee, to the licensing agency, and to the Secretary of the Cabinet for Health Services. Written exceptions to the recommended decision may be submitted within seven (7) days of receipt.

(3) The Secretary of the Cabinet for Health Services shall make a final decision pursuant to subsection (2) of this section after review of any written exceptions filed.

(4) The decision of the secretary shall be final for purposes of judicial appeal, as set forth in KRS 216B.115.

JOHN GRAY, Executive Director

JOHN H. MORSE, Secretary

APPROVED BY AGENCY: July 9, 1996

FILED WITH LRC: July 11, 1996 at 4 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John Gray, Executive Director

(1) Type and number of entities affected: This administrative regulation will affect day health care programs, health care facilities and services associated with the Certification of Need licensure hearings.

(2) Direct and indirect cost or savings to those affected: This administrative regulation has not substantive changes. It places the responsibility of the Certificate of Need licensure hearings with the Cabinet for Health Services instead of the Health Care Policy Board.

(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 the Notice of Intent hearing.

(b) Cost of doing business in the geographical areas in which the administrative regulation will be implemented, to the extent available from the public comment received: To be determined after the Notice of Intent hearing.

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

1. First year following implementation: There are no additional compliance, reporting or paperwork requirements.

2. Second and subsequent years: See item #1.

(3) Effects on the promulgating administrative body: There will be additional costs to the cabinet.

(a) Direct and indirect cost or savings:

1. First year: When the Health Policy Board is abolished, appropriated funds will be transferred to the cabinet to cover the costs of this function.

2. Continuing cost or savings: Staff and operating costs will continue.

3. Additional factors increasing or decreasing costs: Costs could

vary depending on the number of Certificate of Need hearings conducted.

(b) Reporting and paperwork requirements: The Cabinet for Health Services will assume the reporting and paperwork requirements associated with the Certificate of Need process.

(4) Assessment of anticipated effect on state and local revenues: The effect on state and local revenues depends on the number of licenses denied, revoked, modified or suspended.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Funds will be transferred from the Health Policy Board to the Cabinet for Health Services.

(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 the Notice of Intent hearing.

(b) Kentucky: To be determined after the Notice of Intent hearing.

(7) Assessment of alternative methods; reasons why alternatives were rejected: There were no alternative methods assessed. The 1996 General Assembly transferred this function to the Cabinet for Health 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: This administrative regulation will enable the Cabinet for Health Services to provide due process hearings which will improve health care delivery and help contain costs.

(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 due process hearings were not conducted health care costs could escalate and the quality of health care would suffer.

(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: 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? Tiering was not applied as the Certificate of Need due process will be available to all regulated entities.

STATEMENT OF EMERGENCY

902 KAR 16:011E

The administrative regulation 902 KAR 16:011E repeals 902 KAR 16:010 in order that Executive Order 96-862 can be implemented to transfer the Disability Determinations Program to the Department for Social Insurance. As a result of Executive Order 96-862, authority over this program is transferred from the Cabinet for Health Services to the Cabinet for Families and Children. This administrative regulation is needed to comply with Executive Order 96-862 which transfers the Disability Determinations Program to the Department for Social Insurance from the Department for Health Services. It is necessary to promulgate this emergency administrative regulation to prevent the possible loss of federal funding (100 percent) due to the change in the authority over the administration of the program from the Cabinet for Health Services to the Cabinet for Families and Children. An ordinary regulation will not be filed as the Department for Social Insurance will file a new regulation which will be promulgated as an ordinary administrative regulation for public comments.

PAUL E. PATTON, Governor

JOHN H. MORSE, Secretary

**CABINET FOR HEALTH SERVICES
Department for Health Services
Division of Disability Determinations**

902 KAR 16:011E. Repeal of 902 KAR 16:010.

RELATES TO: KRS 194.030(8), 205.200, 205.245
STATUTORY AUTHORITY: KRS 194.050, EO 96-862
EFFECTIVE: July 12, 1996

NECESSITY AND FUNCTION: 902 KAR 16:010 is no longer required because the authority to carry out the function and duties of the Disability Determinations Program has been transferred from the Cabinet for Health Services, Department for Health Services, to the Cabinet for Families and Children, Department for Social Insurance.

Section 1. 902 KAR 16:010, Disability Determinations Program, is hereby repealed.

JOHN H. MORSE, Secretary
RICE C. LEACH, M.D., Commissioner
APPROVED BY AGENCY: July 12, 1996
FILED WITH LRC: July 12, 1996 at 4 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Genne Mills

(1) Type and number of entities affected: The Disability Determinations Division operates as mandated by Federal guidelines and is being relocated to the Department for Social Insurance of the Cabinet for Families and Children. No other changes will occur in this service due to this regulation.

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

(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

(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

(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 if 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: None

(8) Assessment of expected benefits: None

(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? No. Tiering was not applied due to the number of facilities, the size of the facilities, and the generic operations of the facilities. The Disability Determinations Program is a federal mandated program administered by the state to determine if an individual is or is not disabled.

**STATEMENT OF EMERGENCY
902 KAR 17:030E**

1996 Ky. Acts ch. 371 transferred the provisions of the State Health Plan from the Kentucky Health Policy Board to the Cabinet for Health Services effective July 15, 1996. In order to make the transfer of these provisions effective July 15, 1996, the Cabinet for Health Services is promulgating an emergency administrative regulation to assume the provisions of the certificate of need process. This emergency administrative regulation will be replaced by an ordinary administrative regulation pursuant to KRS Chapter 13A.

PAUL E. PATTON, Governor
JOHN H. MORSE, Secretary

**CABINET FOR HEALTH SERVICES
Department for Health Services**

902 KAR 17:030E. State Health Plan.

RELATES TO: KRS 216B.010 to 216B.130

STATUTORY AUTHORITY: KRS 216B.015(18), 1996 Ky. Acts ch. 371

EFFECTIVE: July 11, 1996

NECESSITY AND FUNCTION: KRS 216B.015(18) requires the Cabinet for Health Services to oversee development and annual updating of the State Health Plan. The State Health Plan is a critical element of the certificate of need process for which the cabinet is given responsibility in 1996 Ky. Acts ch. 371.

Section 1. Incorporation by Reference. (1) The 1996-1998 Kentucky State Health Plan is hereby incorporated by reference.

(2) This document may be inspected, copied, or obtained at the Cabinet for Health Services, 275 East Main Street, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m. Monday through Friday.

RICE LEACH, MD, Commissioner
JOHN H. MORSE, Secretary
APPROVED BY AGENCY: July 8, 1996
FILED WITH LRC: July 11, 1996 at 4 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dee Swain, Administrative Regulation Coordinator

(1) Type and number of entities affected: This administrative regulation will affect all state agencies and entities that may contribute to preparing the State Health Plan.

(2) Direct and indirect cost or savings to those affected: There should be no direct costs or savings to those affected as the administrative regulation merely changes responsibility for preparing the State Health Plan from the Kentucky Health Policy Board to the Cabinet for Health Services.

(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 the Notice of Intent hearing.

(b) Cost of doing business in the geographical areas in which the administrative regulation will be implemented, to the extent available from the public comment received: To be determined after the Notice of Intent hearing.

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

1. First year following implementation: There are no additional compliance, reporting or paperwork requirements.

2. Second and subsequent years: See item #1.

(3) Effects on the promulgating administrative body: There will be additional costs to the cabinet.

(a) Direct and indirect cost or savings:

1. First year: When the Health Policy Board is abolished, appropriated funds will be transferred to the cabinet to cover the costs of this function.

2. Continuing cost or savings: Staff and operating costs will continue.

3. Additional factors increasing or decreasing costs: Costs could vary as future decisions are made concerning content and scope of the State Health Plan.

(b) Reporting and paperwork requirements: The Cabinet for Health Services will assume the reporting and paperwork requirements associated with the Certificate of Need process.

(4) Assessment of anticipated effect on state and local revenues: This administrative regulation will not affect state of local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Funds will be transferred from the Health Policy Board to the Cabinet for Health Services.

(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 the Notice of Intent hearing.

(b) Kentucky: To be determined after the Notice of Intent hearing.

(7) Assessment of alternative methods; reasons why alternatives were rejected: There were no alternative methods assessed. The 1996 General Assembly transferred this function to the Cabinet for Health 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: This administrative regulation will enable the Cabinet for Health Services to carry out its health planning mandates and to ensure that policy concerns relating to statewide public and environmental health are addressed.

(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: Failure to promulgate this administrative regulation would cause the cabinet to delay developing a state health plan. In addition, the 1996 General Assembly requires this transition to be effective July 15, 1996.

(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: 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? Tiering was not applied as all regulated entities will be required to abide by the guidelines of the State Health Plan.

STATEMENT OF EMERGENCY
902 KAR 17:040E

1996 Ky. Acts ch. 371 transferred the provisions on data reporting by health care providers from the Kentucky Health Policy Board to the Cabinet for Health Services effective July 15, 1996. In order to make the transfer of these provisions effective July 15, 1996, the Cabinet for Health Services is promulgating an emergency administrative regulation to assume the provisions on data reporting by health care providers. This emergency administrative regulation will be replaced by an ordinary administrative regulation pursuant to KRS Chapter 13A.

PAUL E. PATTON, Governor
JOHN H. MORSE, Secretary

CABINET FOR HEALTH SERVICES
Department for Health Services

902 KAR 17:040E. Data reporting by health care providers.

RELATES TO: KRS 216.2920 to 216.2929

STATUTORY AUTHORITY: 216.2925; Ky. Acts ch. 371

EFFECTIVE: July 11, 1996

NECESSITY AND FUNCTION: KRS 216.2925 and 1996 Ky. Acts ch. 371 mandate the Cabinet for Health Services to promulgate administrative regulations requiring specified health care providers to provide the cabinet 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 cabinet requires to carry out this mandate.

Section 1. Definitions. (1) "Cabinet" means the Cabinet for Health Services.

(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) "Selected 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 cabinet 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 cabinet may contract pursuant to carrying out its statutory mandates and may designate to act on behalf of the cabinet 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 cabinet 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 cabinet, every major ambulatory procedure and mammogram they provide, and shall from every record copy and provide to the cabinet 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 cabinet, the major ambulatory procedures and mammograms they provide, except that reporting of surgeries shall be limited to selected ambulatory surgeries as defined in this administrative regulation, and shall from every record copy and provide to the cabinet 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 cabinet 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 cabinet on grounds that it remains subject to adjudication by a payor.

(b) Data on hospitalizations shall not be submitted to the cabinet 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 cabinet 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 cabinet. 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 cabinet 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 cabinet or its agent shall be uniformly completed and formatted according to coding and transmission specifications issued by the cabinet.

(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 cabinet, 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 cabinet 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 cabinet, 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 cabinet.

(b) The cabinet 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 cabinet 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 cabinet not later than forty-five (45) days after the last day of the quarter.

(a) If the 45th 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 date for the first required data submission under this administrative regulation shall be, for quarterly data collected after January 1, 1995, sixty (60) days following official release of the cabinet's coding and transmission specifications.

(2) Submissions more frequent than quarterly. Providers may

ADMINISTRATIVE REGISTER - 397

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 cabinet 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 cabinet's coding and transmission specifications.

(2) Time permitted for corrections. The cabinet shall allow providers thirty (30) days in which to submit corrected copies of initially submitted data the cabinet 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 cabinet'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 cabinet or its agent shall be uniformly completed and formatted according to the cabinet's coding and transmission specifications.

(d) During the start-up months between January 1, 1995 and September 30, 1995, the cabinet may in its discretion grant a provider an extension of time to submit corrections, provided that the provider has informed the cabinet 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 cabinet 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 submitted, the cabinet or its agent shall check for an error rate in each field of no greater than two (2) percent of the total data elements.

(c) The cabinet 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 in each field of the data elements.

(d) For the first data submission, the cabinet shall not count as errors any data for patients admitted prior to thirty (30) days following official release of coding and transmission specifications.

(4) Postsubmission data changes. A provider shall initiate, as a correction, a resubmission of data previously submitted to the cabinet 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 cabinet 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 cabinet 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 cabinet.

Section 7. Required Data Elements. (1) UB-92 data. Providers shall ensure that each copy of UB-92 data submitted to the cabinet 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 cabinet'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 Birth date
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
77	External Cause of Injury Code (E-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 cabinet 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 cabinet's coding and transmission specifications.

Field #	Data Element Label
1	* Payor Identification
3	* Patient Birth date 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

ADMINISTRATIVE REGISTER - 398

- 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. 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 Cabinet for Health Services, 275 East Main Street, Frankfort, Kentucky, 40601, from 8 a.m. to 4:30 p.m., Monday through Friday except holidays.

RICE LEACH, MD, Commissioner

JOHN H. MORSE, Secretary

APPROVED BY AGENCY: July 8, 1996

FILED WITH LRC: July 11, 1996 at 4 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dee Swain, Administrative Regulation Coordinator

(1) Type and number of entities affected: This administrative regulation will affect hospitals, freestanding or mobile facilities providing major ambulatory procedures, and physicians providing major ambulatory procedures in their offices.

(2) Direct and indirect cost or savings to those affected: This administrative regulation has not substantive changes. It places the responsibility of collecting data from specified health care providers with the Cabinet for Health Services instead of the Health Care Policy Board.

(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 the Notice of Intent hearing.

(b) Cost of doing business in the geographical areas in which the administrative regulation will be implemented, to the extent available from the public comment received: To be determined after the Notice of Intent hearing.

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

1. First year following implementation: There are no additional compliance, reporting or paperwork requirements.

2. Second and subsequent years: See item #1.

(3) Effects on the promulgating administrative body: There will be additional costs to the cabinet.

(a) Direct and indirect cost or savings:

1. First year: When the Health Policy Board is abolished, appropriated funds will be transferred to the cabinet to cover the costs of this function.

2. Continuing cost or savings: Cost of staff and computer system will continue.

3. Additional factors increasing or decreasing costs: Quantity of data received and nature and quantity of reports produced will affect staff costs.

(b) Reporting and paperwork requirements: The cabinet for Health Services will assume the reporting and paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: This administrative regulation will not affect state of local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Funds will be transferred from the Health Policy 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: To be determined after the Notice of Intent hearing.

(b) Kentucky: To be determined after the Notice of Intent hearing.

(7) Assessment of alternative methods; reasons why alternatives were rejected: There were no alternative methods assessed. The 1996 General Assembly transferred this function to the Cabinet for Health 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: Collection and publication of health care data should improve affordability of access to health care and improve the public health status of Kentucky citizens statewide.

(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: Nonavailability of comparative health data for consumers is detrimental to the informed selection of health care services.

(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: 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? Tiering was not applied as the requirement of data reporting will be required by all health care providers who meet the criteria in this administrative regulation.

STATEMENT OF EMERGENCY

902 KAR 20:320E

This emergency administrative regulation amends 902 KAR 20:320 to permit two (2) freestanding psychiatric residential treatment facilities (PRTF) to be located on a common campus. This action must be taken on an emergency basis to increase the accessibility of PRTF services to children and adolescents. Failure to enact this administrative regulation on an emergency basis would pose an imminent threat to public health, safety or welfare. 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 Regulations Compiler for the July 15, 1996, filing.

PAUL E. PATTON, Governor

JOHN MORSE, Secretary

CABINET FOR HEALTH SERVICES Office of Inspector General

902 KAR 20:320E. Psychiatric residential treatment facility operation and services.

RELATES TO: KRS 216B.010 to 216B.130, 216B.450 to 216B.459, 216B.990

STATUTORY AUTHORITY: KRS 216B.042, 216B.105, 216B.450 to 216B.459, EO 95-79

EFFECTIVE: June 19, 1996

NECESSITY AND FUNCTION: KRS 216B.042, 216B.105 and 216B.450 to 216B.459 mandate that the Kentucky Cabinet for Health Services ~~[Human Resources]~~ regulate health facilities and services. This administrative regulation provides minimum licensure requirements regarding the operation of and services provided in psychiatric residential treatment facilities. Executive Order 95-79, effective December 28, 1995, reorganizes the Cabinet for Human Resources and places the Office of Inspector General and its programs under the Cabinet for Health Services.

Section 1. Definitions. (1) "Clinical privileges" means authorization by the governing body to provide certain resident care and treatment services in the facility specified by the governing body within well-defined limits, based on the individual's license, education, training, experience, competence, and judgment.

(2) "Direct-care staff" means residential or child-care workers who directly supervise residents.

(3) "Freestanding" means a completely detached ~~[and separate]~~ building, ~~[street access, telephone service, dining, and street address].~~

(4) "Full-time equivalent (FTE)" for this administrative regulation means one (1) employee working thirty-seven and one-half (37.5) hours per week or a combination of the hours worked by more than one (1) part-time employee totaling thirty-seven and one-half (37.5) hours per week.

(5) "Governing body" means the individual, agency, partnership, or corporation, in which the ultimate responsibility and authority for the conduct of the facility is vested.

(6) "Holding" means forced positioning of a resident by staff without use of mechanical devices.

(7) "Licensure agency" means the Division of Licensing and Regulation in the Office of the Inspector General, Cabinet for Health Services ~~[Human Resources]~~.

(8) "Living unit" means the area that is supplied by the facility for daily living and therapeutic interaction of the residents. There shall be a maximum of eight (8) residents per living unit.

(9) "Mental health associate" is an individual with a minimum of a bachelor's degree in a mental health related field.

(10) ~~(40)~~ "Professional staff" means a psychiatrist; a psychologist with Ph.D. or master's degree and autonomous functioning, or master's degree under the supervision of a Ph.D.; a social worker with master's degree; a registered nurse with two (2) years' supervised experience in a mental health setting; a recreation therapist with a master's degree, or bachelor's degree and two (2) years' experience in a residential or mental health setting for children, or adolescents; and other professionals from disciplines related to the treatment of mental illness, such as a certified marriage and family therapist, occupational, or expressive therapist, with a master's degree in that discipline and specialized training or experience in the treatment of mental illness.

(11) ~~(40)~~ "Psychiatric residential treatment facility (PRTF)" is defined in KRS 216B.450(4). ~~[means a freestanding facility (other than a psychiatric inpatient hospital) with a maximum of eight (8) beds, except for those facilities licensed prior to April 9, 1992, which provides inpatient psychiatric residential treatment to residents age six (6) to twenty-one (21) who are capable of self-preservation during an internal disaster. Any entity which has obtained approval for a certificate of need for a sixteen (16) bed facility prior to March 26, 1992, may be licensed by the cabinet as two (2) eight (8) bed facilities located on a common campus. After the effective date of this administrative regulation, no PRTF shall be licensed to be located on property which is contiguous with another licensed PRTF or psychiatric hospital, except as provided for in this subsection.]~~

(12) ~~(44)~~ "Restraint" means the use of a mechanical device to involuntarily restrain movement of the whole or a portion of a resident's body as a means of controlling a resident's physical

activities to protect the resident or others from injury or the use of intravenous, intramuscular, or subcutaneous administration of any pharmacologic or chemical agent to the resident with the sole or primary purpose of controlling or limiting the physical activities of the resident. Restraint is differentiated from mechanisms usually and customarily employed during medical, diagnostic, or surgical procedures.

(13) ~~(42)~~ "Seclusion" means the involuntary confinement of a resident in a room, which the resident is physically prevented from leaving, for any period of time.

(14) ~~(43)~~ "Special treatment procedures" means any procedure such as restraint or seclusion and holding which may have abuse potential or be life threatening.

(15) ~~(44)~~ "Unusual treatment" means any procedure not readily accepted as a standard method of treatment by the relevant professional.

Section 2. Applicability. (1) A psychiatric residential treatment facility shall be a freestanding eight (8) bed facility.

(a) An entity which was licensed as a PRTF prior to April 9, 1992, may be licensed within a single building for a maximum of sixteen (16) beds, but shall have a minimum of two (2) separate living units. A living unit in a sixteen (16) bed PRTF shall have no more than eight (8) beds.

(b) An entity which has obtained approval for a certificate of need for a sixteen (16) bed PRTF prior to March 26, 1992, may be licensed by the cabinet as two (2) freestanding eight (8) bed PRTFs located on a common campus.

(c) An eight (8) bed PRTF may be located on a common campus with an existing PRTF, but each shall be freestanding. ~~[A certificate of need shall be required for all psychiatric residential treatment facilities.]~~

(2) If a psychiatric residential treatment facility is located on grounds shared by another licensed facility other than a PRTF, the following shall apply:

(a) The residents of the PRTF ~~[residential treatment facility]~~ and the licensed facility with which it shares grounds shall not have any joint activities or interactions, except for organized education activities conducted by a school operated by the local educational authority for residents for whom it is determined by the local educational authority that the program provided by the school is appropriate for all residents in the program and is provided in accordance with Section 12(6) of this administrative regulation, or organized recreational activities;

(b) The program director and direct-care staff shall not serve both the licensed facility with which it shares grounds and the PRTF ~~[residential treatment facility];~~

(c) If the provisions of paragraph (a) of this subsection are met, the only services or components of the physical plant that may be shared are those related to housekeeping, maintenance, dietary and recreational facilities or grounds.

(3) PRTF's that are located on the same grounds in accordance with subsection (1) of this section ~~[Section 1(10) of this administrative regulation]~~ may share joint activities and staff.

Section 3. Licensure. The psychiatric residential treatment facility shall comply with all the conditions for licensure contained in 902 KAR 20:008.

Section 4. Governing Body. Each facility shall have a governing body with overall authority and responsibility for the facility's operation.

(1) The governing body shall be a legally constituted entity in the Commonwealth of Kentucky by means of a charter, articles of incorporation, partnership agreement, franchise agreement, or legislative or executive act.

(2) A facility that is part of a multifacility system or is operated by

a government agency shall have a written description of the system's administrative structure and lines of authority.

(3) The authority and responsibility of any person designated to function as the governing body shall be specified in writing.

(4) If a business relationship exists between a governing body member(s) and the organization, there shall be a conflict-of-interest policy that governs the member's participation in decisions influenced by the business interest.

(5) The responsibilities of the governing body shall be stated in writing and shall include at least the following:

(a) Adopting bylaws that describe how the governing body, through the program director, shall develop policies and procedures and make sufficient resources available (e.g., funds, staff, equipment, supplies, and facilities) to assure that the facility is capable of providing appropriate and adequate services to residents;

(b) Overseeing the system of financial management and accountability;

(c) Adopting a program to monitor and evaluate the quality of all care provided and to appropriately address identified problems in care;

(d) Electing, appointing, or employing the program director, clinical director, and other supervisors or administrators to direct the clinical and administrative activities of the facility, and defining the qualifications, authority, responsibility, and function of such positions;

(e) Establishing an organization table and establishing bylaws, rules or policies and procedures to guide the relationships between itself, the administrative staff, the direct-care staff, the professional staff, and the community. The bylaws, rules or policies and procedures shall define the means by which the administrative, direct-care, and professional staffs cooperatively function, participate in the development of policies concerning program management and resident care, and report to the governing body. The bylaws, rules or policies and procedures shall be reviewed at least every two (2) years and revised as necessary; and

(f) Approving appointments to the professional staff and granting or revising clinical privileges upon the documented recommendation of the clinical director.

(6) The governing body shall meet as a whole at least quarterly and keep records that demonstrate the ongoing discharge of its responsibilities.

(7) When a facility is a component of a larger organization, the facility staff, subject to the overall authority of the governing body, shall be given the necessary authority to plan, organize, and operate the program.

Section 5. Program Director. (1) The program director shall be employed by the governing body and shall be responsible for the day-to-day management and ongoing direction of the facility's program. In the event of the program director's absence, he shall designate a person who shall be responsible for the day-to-day management of the facility.

(2)(a) The program director shall be qualified by training and experience to direct a treatment program for children and adolescents with emotional problems.

(b) Minimum qualifications shall be those defined as professional staff in Section 1 of this administrative regulation, or at least a master's degree in education with appropriate licenses.

(c) The program director shall have two (2) years experience in services to children or adolescents including administrative responsibility in an organization for children and adolescents; three (3) professional references; two (2) personal references; and a police record check.

(d) If there is a prior crime conviction or pleas of guilty pursuant to KRS 17.165 or a Class A felony, the applicant shall not be employed.

(3) The program director shall be responsible to the governing body in accordance with the bylaws, rules or policies for the following:

(a) Overseeing the overall operation of the facility, including the control, utilization, and conservation of its physical and financial assets and the recruitment and direction of staff;

(b) Hiring and direction of personnel;

(c) Assuring that sufficient staff meeting minimum standards under appropriate supervision are on duty to meet the needs of the residents at all times;

(d) Approving purchases and payroll;

(e) Assuring that treatment planning, medical supervision, and quality assurance occur as specified in this administrative regulation;

(f) Advising the governing body of all significant matters bearing on the facility's licensure and operations;

(g) Preparation of reports or items necessary to assist the governing body in formulating policies and procedures to assure that the facility is capable of providing appropriate and adequate services to residents;

(h) Preparation of a written manual that defines policies and procedures which is regularly revised and updated; and

(i) Assuring that all written facility policies, plans, and procedures are followed.

(4) The program director shall attend and maintain documentation of attendance and participation of staff in continuing education programs.

Section 6. Administration and Operation. (1) Written plan.

(a) The governing body shall formulate and specify the facility's goals and objectives and describe its programs in a written plan so that the facility's performance can be measured.

(b) A copy of the written plan shall be given to all professional staff and to the program director.

(c) The written plan shall be reviewed at least annually and revised as necessary, in accordance with the changing needs of the residents and the community and with the overall objectives and goals of the facility when reviewed or revised. Revisions in the plan shall incorporate, as appropriate, relevant findings from the facility's quality assurance and utilization review programs.

(d) The written plan shall include the following:

1. An organizational chart that includes position titles and the name of the person occupying the position, and that shows the chain of command;

2. A service philosophy with clearly defined assumptions and values;

3. Estimates of the clinical needs of the children and adolescents in the area served by the facility;

4. The services provided by the facility in response to needs;

5. The population served, including age groups and other relevant characteristics of the resident population;

6. The intake or admission process, including how the initial contact is made with resident and the family or significant others;

7. The assessment and evaluation procedures provided by the facility;

8. The methods used to deliver services to meet the identified clinical needs of the residents served;

9. The methods used to deliver services to meet the basic needs of residents in a manner as consistent with normal daily living as possible;

10. The methods used to create a home-like environment for all residents;

11. The methods, means and linkages by which the facility will involve all residents in community activities, organization, and events;

12. The treatment planning process and the periodic review of therapy;

13. The discharge and aftercare planning processes;

14. The organizational relationships of each of the facility's therapeutic programs, including channels of staff communication, responsibility, and authority, as well as supervisory relationships;

15. How all professional services will be supervised by qualified,

experienced personnel;

16. How all members of the professional and direct-care staff who have been assigned specific treatment responsibilities are qualified by training or experience and demonstrated competence and have appropriate clinical privileges; or are supervised by professional staff members who are qualified by experience to supervise such treatment;

17. How the facility will be linked to regional interagency councils, psychiatric hospitals, community mental health centers, Department for Social Services offices and facilities, and school systems in the facility's service area; and

18. The means by which the facility provides, or makes arrangements for the provision of:

a. Emergency services and crisis stabilization;

b. Discharge and aftercare planning, that promotes continuity of care; and

c. Education and vocational services, whether provided by the facility or by agreement. Educational services to be provided by local education agency or a private agency, at a minimum, shall be arranged for sixty (60) days prior to the need for the service to be provided.

(2) Professional staff.

(a) The facility shall employ sufficient appropriately qualified professional staff to meet the treatment needs of residents and the goals and objectives of the facility.

(b) Professional staff shall meet all requirements in the licensing, registration, or certification laws relating to their respective professions.

(c) Staffing. The facility shall meet the following specific requirements with regard to staffing:

1. A board-eligible or board-certified child psychiatrist or board-certified adult psychiatrist shall be employed to meet the treatment needs of the residents and the functions which shall be performed by a psychiatrist specified within this administrative regulation. If a facility has residents ages twelve (12) and under, the psychiatrist shall be board-eligible or board-certified in child psychiatry.

2. A recreational therapist with a master's degree, or bachelor's degree and two (2) years' experience in a residential, or mental health setting for children and adolescents shall be employed to meet the treatment needs of the residents and the functions which shall be performed by a recreational therapist specified within this administrative regulation.

3. A total of at least one (1) full-time staff shall be employed from one (1) of the following professions:

a. Psychologist with Ph.D. or master's degree and autonomous functioning, or master's degree under supervision of a Ph.D.;

b. Social worker with master's degree with two (2) years of inpatient or outpatient clinical experience in psychiatric social work, or a person who meets the qualifications of the professional staff referenced in Section 1(10) [(9)] of this administrative regulation with two (2) years of experience in a residential setting for children; or

c. Registered nurse with two (2) years' supervised experience in a mental health setting.

4. Staff for the profession listed in subparagraph 3 of this paragraph who is not employed on a full-time basis, shall be employed or employed under contract at least ten (10) percent of full-time equivalency.

5. A member of the professional staff shall be on the unit or otherwise interacting with residents, in addition to planned verbal therapies, setting the tone of the therapeutic milieu at least two (2) hours each weekday and four (4) hours one (1) day each weekend during a nonschool waking-hour shift.

6. Appropriate professional staff shall be available to assist on-site in emergencies on at least an on-call basis at all times.

7. A physician shall be available on at least an on-call basis at all times.

(d) Clinical director. The governing body shall designate one (1)

member of the full-time professional staff as clinical director.

1. In addition to the requirements related to his profession, the clinical director shall have at least a master's degree in a field related to the treatment of mental illness and two (2) years' supervisory experience in a program for children or adolescents with emotional problems.

2. The governing body shall define the authority and duties of the clinical director in its bylaws.

3. The clinical director may be the program director if the qualifications of both positions are met.

4. The clinical director shall supervise professional staff and be responsible for the maintenance of the facility's therapeutic milieu.

(e) The clinical director, in consultation with professional staff, shall develop written policies and procedures approved by the governing body that specify the following:

1. The clinical privileges of professional staff;

2. The responsibility of professional staff for supervising and directing individuals who require supervision or direction in the provision of resident care services;

3. The responsibilities of physicians in relation to nonphysician members of the professional staff; and

4. The responsibility of professional staff for accounting to the governing body for the quality of clinical care provided to the residents, and for its ethical conduct and professional practice.

(3) Direct-care staff.

(a) The facility shall employ adequate direct-care staff to ensure the continuous provision of sufficient regular and emergency supervision of all residents twenty-four (24) hours a day.

(b) Direct-care staff shall be a mental health associate or hold a high school diploma or equivalency and have two (2) years' experience in a program in the mental health field serving children or adolescents. Completion of a twenty-hour (24) hour training curriculum meeting the requirements of subsection (8)(f) within one (1) month of employment may be substituted for experience, except that no direct-care staff so qualified shall be given clinical privileges in his first year of employment.

(c) In order to assure that the residents are adequately supervised and are cared for in a safe and therapeutic manner, the direct-care staffing plan shall meet each of the following requirements:

1. At least one (1) direct-care staff member who is a mental health associate shall be assigned direct-care responsibilities for every eight (8) residents at all times when residents awake and are not in school;

2. At least three (3) direct-care staff members shall be assigned to direct-care responsibilities during normal waking hours when the residents are on-site; however, if the number of residents present on-site is six (6) or fewer, the number of direct-care staff members may be reduced to two (2);

3. At least one (1) direct-care staff member shall be assigned to direct-care responsibilities for each three (3) residents who are twelve (12) and under and one (1) for each four (4) adolescents who are over twelve (12) during all hours the residents are awake, not on the living unit, and not in school;

4. At least one (1) direct-care staff member shall be assigned direct-care responsibilities, be awake, and be continuously available on each living unit during all hours the residents are asleep. A minimum of one (1) additional direct-care staff member who is a mental health associate shall be immediately available on-site to assist with emergencies or problems which might arise;

5. If a member of the professional staff is directly involved in an activity with a group of residents, he may meet the requirement for a direct-care staff member; and

6. The direct-care staff member who is supervising residents shall know the whereabouts of each resident at all times.

(d) The clinical director, in consultation with professional staff, shall develop written policies and procedures approved by the governing body "that:

1. Specify the clinical privileges, if any, of each member of the direct-care staff;

2. Provide for the supervision of the direct-care staff; and

3. Describe the responsibilities of direct-care staff in relation to professional staff.

(4) Support staff.

(a) Environmental services. There shall be an adequate number of domestic and maintenance staff to maintain the facility's buildings and grounds in a healthful, comfortable condition and in good repair. Such services may be provided by contractual agreement.

(b) Clerical staff. The facility shall employ a sufficient number of clerical staff qualified by high school diploma or equivalency to maintain correspondence, records, reports and files.

(5) Student field placements/internships. The facility shall ensure that student interns are supervised directly by an appropriate paid staff member who will act as a liaison between the facility and the school making placements.

(6) Volunteers.

(a) The facility may use volunteers to help meet residents' basic needs for social interaction, self-esteem, and self-fulfillment.

(b) The governing body shall adopt written policies and procedures which address screening, selection, and supervision of all volunteers.

(c) Volunteers used within the program shall meet the qualifications for the positions for which they volunteer.

(d) Volunteers shall not be used in place of required staff.

(e) Volunteers shall be oriented to the facility's goals and services and given appropriate clinical background regarding the facility's residents.

(7) Part-time employees. Part-time employees shall meet minimum qualifications of full-time staff and shall not be utilized to the extent that continuity in resident care is disrupted by frequent shift changes or changes in personnel from day-to-day.

(8) Staff development.

(a) Appropriate staff development programs shall be provided for administrative, professional, direct-care, and support staff under the supervision and direction of the program director or designee(s). Responsibility for any part of the staff development program may be delegated to appropriately qualified individuals.

(b) The participation of the program director and professional, direct-care, and support staff in staff development programs shall be documented.

(c) Professional and direct-care staff shall meet the continuing education requirements of their profession or be provided with twenty (20) hours per year of in-service training by the facility.

(d) Library services shall be made available to meet the professional and technical needs of the facility staff. A facility which does not maintain a professional library shall have arrangements with a library or institution for use of its professional library.

(e) The facility shall communicate and collaborate, as appropriate, with national, state, and local mental health professional organizations in planning and providing ongoing training.

(f) The program director shall require that each staff member working directly with residents demonstrate basic knowledge in the following areas:

1. Child and adolescent growth and development;
2. Therapeutic principles and modalities used in the facility;
3. Building and maintaining a positive therapeutic milieu on the living unit;
4. Techniques of group and child management; and
5. Detection and reporting of child abuse and neglect.

(9) Employment practices.

(a) The facility shall have employment and personnel policies and procedures designed, established, and maintained to promote the objectives of the facility, to ensure that an adequate number of qualified personnel under appropriate supervision is provided during all hours of operation, and to support quality of care and functions of

the facility.

(b) The policies and procedures shall be written, systematically reviewed, and approved on an annual basis by the governing body, and dated to indicate the time of last review.

(c) The policies and procedures shall provide for the recruitment, selection, promotion, and termination of staff.

(d) The facility shall maintain job descriptions approved by the governing body for all positions specifying the qualifications, duties, and supervisory relationship of the position. Job descriptions shall accurately reflect the actual job situation and shall be revised whenever a change is made in the required qualifications, duties, supervision, or any other major job-related factor. In addition, salary range for each position shall be provided.

(e) The personnel policies and procedures shall be available and apply to all employees and shall be discussed with all new employees. The governing body shall establish a mechanism for notifying employees of changes in the policies and procedures.

(f) Information on the following shall be included in the policies and procedures:

1. Employee benefits;
2. Recruitment;
3. Promotion;
4. Training and staff development;
5. Employee grievances;
6. Safety and employee injuries;
7. Relationships with employee organizations;
8. Disciplinary systems;
9. Suspension and termination mechanisms;
10. Rules of conduct;
11. Lines of authority;
12. Performance appraisals;
13. Wages, hours and salary administration; and
14. Equal employment opportunity and, when required, affirmative action policies.

(g) The personnel policies and procedures shall describe methods and procedures for supervising all personnel, including volunteers.

(h) The policies and procedures shall require appropriate criminal history and police record checks for all staff and volunteers to assure that only persons whose presence does not jeopardize the health, safety, and welfare of residents are employed and used.

(i) The policies and procedures shall provide for reporting and cooperating in the investigation of suspected cases of child abuse and neglect by facility personnel.

(j) A personnel record shall be kept on each staff member and shall contain the following items:

1. Application for employment;
2. Written references and a record of verbal references;
3. Verification of all training and experience and of licensure, certification, registration, or renewals;
4. Wage and salary information, including all adjustments;
5. Performance appraisals;
6. Counseling actions;
7. Disciplinary actions;
8. Commendations;
9. Employee incident reports; and
10. Initial and subsequent health clearances.

(k) The policies and procedures shall assure the confidentiality of personnel records and specify who has access to various types of personnel information.

(l) Performance appraisals shall relate job description and job performance and shall be written. The criteria used to evaluate job performance shall be objective.

Section 7. Resident Rights. (1) The facility shall support and protect the basic human, civil, and constitutional rights of the individual resident.

(2) Written policy and procedure approved by the governing body

shall provide a description of the resident's rights and the means by which these rights are protected and exercised.

(3) At the point of admission, the facility shall provide the resident and parent, guardian, or custodian with a clearly written and readable statement of rights and responsibilities. The statement shall be read to the resident or parent, guardian, or custodian if either cannot read and shall cover, at a minimum:

(a) Each resident's access to treatment, regardless of race, religion, or ethnicity;

(b) Each resident's right to recognition and respect of his personal dignity in the provision of all treatment and care;

(c) Each resident's right to be provided treatment and care in the least restrictive environment possible;

(d) Each resident's right to an individualized treatment plan;

(e) Each resident's and family's participation in planning for treatment;

(f) The nature of care, procedures, and treatment that he shall receive;

(g) The risks, side effects, and benefits of all medications and treatment procedures used; and

(h) The right, to the extent permitted by law, to refuse the specific medications or treatment procedures and the responsibility of the facility when the resident refuses treatment, to seek appropriate legal alternatives or orders of involuntary treatment, or, in accordance with professional standards, to terminate the relationship with the resident upon reasonable notice.

(4) The rights of residents shall be written in language which is understandable to the resident, his parents, custodians, or guardians and shall be posted in appropriate areas of the facility.

(5) The policy and procedure concerning resident rights shall assure and protect the resident's personal privacy within the constraints of his treatment plan. These rights to privacy shall at least include:

(a) Visitation by the resident's family or significant others in a suitable private area of the facility;

(b) Sending and receiving mail without hindrance or censorship; and

(c) Telephone communications with the resident's family or significant others at a reasonable frequency.

(6) If any rights to privacy must be limited, the resident and his parent, guardian, or custodian shall receive a full explanation. Limitations shall be documented in the resident's record and their therapeutic effectiveness shall be evaluated and documented by professional staff every seven (7) days.

(7) The right to initiate a complaint or grievance procedure and the means for requesting a hearing or review of a complaint shall be specified in a written policy approved by the governing body and made available to residents, parents, guardians, and custodians responsible for the resident. The procedure shall indicate:

(a) To whom the grievance is to be addressed; and

(b) Steps to be followed for filing a complaint, grievance, or appeal.

(8) The resident and his parent, guardian, or custodian shall be informed of the current and future use and disposition of products of special observation and audio-visual techniques such as one (1) way vision mirrors, tape recorders, television, movies, or photographs.

(9) The policy and procedure regarding resident's rights shall ensure the resident's right to confidentiality of all information recorded in his record maintained by the facility. The facility shall ensure the initial and continuing training of all staff in the principles of confidentiality and privacy.

(10) The resident shall be allowed to work for the facility only under the following conditions:

(a) The work is part of the individual treatment plan;

(b) The work is performed voluntarily;

(c) The patient receives wages commensurate with the economic value of the work;

(d) The work project complies with applicable law and administrative regulation; and

(e) The performance of tasks related to the responsibilities of family-like living, such as laundry and housekeeping, shall not be considered work for the facility and need not be compensated or voluntary.

(11) Written policy and procedure developed in consultation with professional and direct care staff and approved by the governing body shall provide for the measures utilized by the facility to discipline residents. These measures shall be fully explained to each resident and the resident's parent, guardian, or custodian.

(12) The facility shall prohibit all cruel and unusual disciplinary measures including the following:

(a) Corporal punishment;

(b) Forced physical exercise;

(c) Forced fixed body positions;

(d) Group punishment for individual actions;

(e) Verbal abuse, ridicule, or humiliation;

(f) Denial of three (3) balanced nutritional meals per day;

(g) Denial of clothing, shelter, bedding, or personal hygiene needs;

(h) Denial of access to educational services;

(i) Denial of visitation, mail, or phone privileges for punishment;

(j) Exclusion of the resident from entry to his assigned living unit; and

(k) Restraint or seclusion as a punishment or employed for the convenience of staff.

(13) Written policy shall prohibit residents from administering disciplinary measures upon one another and shall prohibit persons other than professional or direct-care staff from administering disciplinary measures to residents.

(14) Written rules of resident conduct shall be developed in consultation with the professional and direct-care staff and be approved by the governing body. Residents shall participate in the development of the rules to a reasonable and appropriate extent. These rules shall be based on generally acceptable normal and natural behavior for the resident population served.

(15) The application of disciplinary measures shall relate to the violation of established rules.

Section 8. Resident Records. (1) The facility shall have written policies or procedures concerning resident records developed in consultation with professional staff and a registered records administrator and approved by the governing body.

(2) The facility shall maintain a written resident record on each resident, to be directly accessible to staff members caring for the resident.

(3) The resident record shall contain at a minimum:

(a) Basic identifying information;

(b) Appropriate court orders or consent of appropriate family members or guardians for admission, evaluation, and treatment;

(c) A provisional or admitting diagnosis which includes a physical diagnosis, if applicable, as well as a psychiatric diagnosis;

(d) The report by the parent, guardian, or custodian of the patient's immunization status;

(e) A psychosocial assessment of the resident and his family, including:

1. An evaluation of the effect of the family on the resident's condition and the effect of the resident's condition on the family; and

2. A summary of the resident's psychosocial needs.

(f) An evaluation of the resident's growth and development, including physical, emotional, cognitive, educational, and social development; and needs for play and daily activities;

(g) The resident's legal custody status, when applicable;

(h) The family's, guardian's, or custodian's expectations for, and involvement in, the assessment, treatment, and continuing care of the resident;

(i) Physical health assessment, including evaluations of the following:

1. Motor development and functioning;
2. Sensorimotor functioning;
3. Speech, hearing, and language functioning;
4. Visual functioning; and
5. Immunization status.

(4) The resident record shall also include:

(a) Physician's notes which shall include an entry made at least weekly by the staff psychiatrist regarding the condition of the resident.

(b) Professional progress notes which shall be completed following each professional service except when the service is provided daily to groups of residents, when weekly summaries may be used. Professional progress notes shall be signed and dated by the professional who provided the service.

(c) Direct-care progress notes which shall record implementation of all treatment and any unusual or significant events which occur for the residents. Direct-care progress notes shall be completed at least by the end of each direct-care shift and summarized weekly. Direct-care notes shall be signed and dated by the direct-care staff making the entry.

(d) Special clinical justifications for the use of special and unusual treatment procedures and reports.

(e) Discharge summary.

(f) If a patient dies, the resident record shall include a summation statement in the form of a discharge summary, including events leading to the death, signed by the attending physician.

(5) The facility shall maintain confidentiality of resident records. Resident information shall be released only on written consent of the resident or his parent, guardian, or custodian or as otherwise authorized by law. The written consent shall contain the following information:

(a) The name of the person, agency, or organization to which the information is to be disclosed;

(b) The specific information to be disclosed;

(c) The purpose of disclosure; and

(d) The date the consent was signed and the signature of the individual witnessing the consent.

Section 9. Quality Assurance. (1) The facility shall have an organized quality assurance program designed to enhance resident treatment and care through the ongoing objective assessment of important aspects of resident care and the correction of identified problems.

(2) The facility shall prepare a written quality assurance plan designed to ensure that there is an ongoing quality assurance program that includes effective mechanisms for reviewing and evaluating resident care, and that provides for appropriate response to findings. The written quality assurance plan shall be approved by the governing body and shall:

(a) Assign responsibility for the monitoring and evaluation activities;

(b) Delineate scope of care provided by the facility;

(c) Identify the aspects of care that the facility provides;

(d) Identify indicators (and appropriate clinical criteria) that can be used to monitor these aspects of care;

(e) Establish thresholds for the indicators at which further evaluation of the care is triggered;

(f) Collect and organize the data for each indicator;

(g) Evaluate the care when the thresholds are reached in order to identify problems or opportunities to improve care;

(h) Take actions to correct identified problems or to improve care;

(i) Assess the effectiveness of the actions and document the improvement in care; and

(j) Communicate relevant information to other individuals, departments, or services and to the facility-wide quality assurance program.

(3) The facility shall record all incidents or accidents that present a direct or immediate threat to the health, safety or security of any resident or staff member. Examples of incidents to be recorded include the following: physical violence, fighting, absence without leave, use or possession of drugs or alcohol, or inappropriate sexual behavior. The record should be kept on file and retained at the facility and shall be made available for inspection by the licensure agency.

Section 10. Admission Criteria. (1) The facility shall have written admission criteria approved by the governing body and which are consistent with the facility's goals and objectives.

(2) Admission criteria shall be made available to referral sources and to parents, guardians, or custodians and shall include:

(a) Types of admission (crisis stabilization, long-term treatment);

(b) Age and sex of accepted;

(c) Criteria that preclude admission;

(d) Clinical needs and problems typically addressed by the facility's programs and services;

(e) Criteria for discharge; and

(f) Any preplacement requirements of the resident, his parents, guardians, custodians, or the placing agency.

(3) A facility may only admit children with an emotional disability as defined in KRS 200.503(1) or a severe emotional disability as defined in KRS 200.503(2) (this does not preclude the facility from admitting a child with multiple diagnoses) who meet its written admission criteria and for whom the facility finds:

(a) Less-restrictive treatment resources accessible and available in the resident's community will not meet his treatment needs;

(b) Proper treatment of the resident's psychiatric condition requires care and treatment under the direction of a psychiatrist within a psychiatric residential treatment facility;

(c) Proper treatment of the resident's psychiatric condition requires twenty-four (24) hour care in a facility which provides comprehensive and structured therapeutic mental health treatment in a less structured environment than an inpatient hospital; and

(d) Care and treatment in a psychiatric residential treatment facility can reasonably be expected to improve the resident's condition or prevent further regression so that residential treatment facility services will no longer be needed, provided that a poor prognosis shall not in itself constitute grounds for a denial of admission if treatment can be expected to effect a positive change in prognosis.

(4) Residents admitted to the facility shall have obtained age six (6), but not attained age eighteen (18). Residents may remain in care until age twenty-one (21) if admitted by their 18th birthday. Admission criteria related to age at admission shall be determined by the age grouping of children currently in residence and shall reflect a range no greater than five (5) years in a living unit.

(5) Children and adolescents who are a danger to self or others for whom the facility is unable to develop a risk-management plan shall not be admitted.

Section 11. Resident Management. (1) Intake.

(a) The facility shall have written policies and procedures approved by the governing body for the intake process which addresses at a minimum the following:

1. Referral, records, and statistical data to be kept regarding applicants for residence;

2. Criteria for determining the eligibility of individuals for admission;

3. Methods used in the intake process which shall be based on the services provided by the facility and the needs of residents; and

4. Procurement of appropriate consent forms. This may include the release of educational and medical records.

(b) The intake process shall include an initial assessment of the resident performed by the professional staff. The results of the assessment shall be explained to the parent or guardian or custodian if appropriate, and to the resident. As a condition at admission, the

assessment shall conclude that:

1. The treatment required by the resident is appropriate to the intensity and restrictions of care provided by the facility; and
2. Alternatives for less intensive and restrictive treatment are not available or accessible to the resident.

(c) The intake process shall be designed to provide at least the following information:

1. Identification of agencies who have been involved in the treatment of the resident in the community and the anticipated extent of involvement of those agencies during and after the resident's stay in the facility;

2. Temporary treatment plan including the proposed initial level of intervention with the resident, the health and safety needs, the education and activity plan, and legal, custody and visitation orders; and

3. Proposed discharge plan and anticipated length of stay.

(d) The intake process shall include an orientation for the parent, guardian, or custodian as appropriate and the resident which includes the following:

1. The rights and responsibilities of residents, including the rules governing resident conduct and the types of infractions that can result in disciplinary action or discharge from the facility;

2. Rights, responsibilities, and expectations of the parent, guardian, or custodian; and

3. Preparation of the staff and residents of the facility for the new resident.

(e) Upon admission each resident of school age shall have been certified or be referred for assessment as a child with a disability pursuant to 20 USC 1400.

(f) The temporary treatment plan shall be reviewed by all staff involved in the resident's treatment, approved by the clinical director and psychiatrist, and implemented upon admission.

(2) Assessment.

(a) A complete evaluation and assessment shall be performed for each resident which includes, but is not necessarily limited to, physical, emotional, behavioral, social, recreational, educational, legal, vocational, and nutritional needs.

(b) The physical examination of each resident shall be initiated within twenty-four (24) hours after admission and shall include, but not be limited to, evaluations of the following:

1. Motor development and functioning;
2. Sensorimotor functioning;
3. Speech, hearing, and language functioning;
4. Visual functioning; and

5. Immunization status. If a resident's immunization is not complete as defined in the report of the Committee on Infectious Diseases of the American Academy of Pediatrics, the facility shall be responsible for its completion and shall begin to complete any immunizations which are outside of the set periodicity schedule within thirty (30) days of admission or the physical examination, whichever is later.

(c) If the resident has had a complete physical examination by a qualified physician within the previous three (3) months which includes the requirements of subsection (b) of this section and if the facility obtains complete copies of the record, that examination may be used to meet the requirement for a physical examination in subsection (b) of this section.

(d) A physician shall be responsible for assessing each resident's physical health, his need for a current examination in spite of one done in the prior three (3) months, and his need for special clinical examinations and tests within twenty-four (24) hours of admission.

(e) Facilities shall have all the necessary diagnostic tools and personnel available or have written agreements with another organization to provide physical health assessments, including electroencephalographic equipment, a qualified technician trained in dealing with children and adolescents, and a properly qualified physician to interpret electroencephalographic tracing of children and

adolescents.

(f) An emotional and behavioral assessment of each resident that includes an examination by a psychiatrist shall be completed and entered in the resident's record. The emotional and behavioral assessment shall include the following:

1. A history of previous emotional, behavioral, and substance abuse problems and treatment;

2. The resident's current emotional and behavioral functioning;

3. A direct psychiatric evaluation;

4. When indicated, psychological assessments, including intellectual, projective, and personality testing;

5. When indicated, other functional evaluations of language, self-care, and social-affective and visual-motor functioning; and

6. An evaluation of the developmental age factors of the resident.

(g) The facility shall have an assessment procedure for the early detection of mental health problems that are life threatening, are indicative of severe personality disorganization or deterioration, or may seriously affect the treatment or rehabilitation process.

(h) A social assessment of each resident shall be undertaken and include:

1. Environment and home;

2. Religion;

3. Childhood history;

4. Financial status;

5. The social, peer-group, and environmental setting from which the resident comes; and

6. The resident's family circumstances, including the constellation of the family group; the current living situation; and social, ethnic, cultural, emotional, and health factors, including drug and alcohol use.

(i) The social assessment shall include a determination of the need for participation of family members or significant others in the resident's treatment.

(j) An activities assessment of each resident shall include information relating to the individual's current skills, talents, aptitudes, and interest.

(k) An assessment shall be performed to evaluate the resident's potential for involvement in community activity, organizations, and events.

(l) For adolescents age sixteen (16) and older, a vocational assessment of the resident shall be done which includes the following:

1. Vocational history;

2. Education history, including academic and vocational training; and

3. A preliminary discussion, between the resident and the staff member doing the assessment, concerning the resident's past experiences with and attitude toward work, present motivations or areas of interest, and possibilities for future education, training, and employment.

(m) When appropriate, a legal assessment of the resident shall be undertaken and shall include the following:

1. A legal history; and

2. A preliminary discussion to determine the extent to which the legal situation will influence his progress in treatment and the urgency of the legal situation.

(3) Treatment plans.

(a) Within seventy-two (72) hours following admission, the clinical director or a member of the professional staff designated by him shall develop an initial treatment plan that is based at least on an assessment of the resident's presenting problems, physical health, and emotional and behavioral status. Appropriate therapeutic efforts shall begin before a master treatment plan is finalized.

(b) A master treatment plan shall be developed by a multidisciplinary team conference within ten (10) days of admission for any resident remaining in treatment. It shall be based on the comprehensive assessment of the resident's needs completed pursuant to subsection (2) c⁴ this section, include a substantiated diagnosis and

the short-term and long-range treatment needs, and address the specific treatment modalities required to meet the resident's needs.

1. The treatment plan shall contain specific and measurable goals for the resident to achieve.

2. The treatment plan shall describe the services, activities, and programs to be provided to the resident, and shall specify staff members assigned to work with the resident and the time or frequency for each treatment procedure.

3. The treatment plan shall specify criteria to be met for termination of treatment.

4. The treatment plan shall include any referrals necessary for services not provided directly by the facility.

5. The resident shall participate to the maximum extent feasible in the development of his treatment plan, and such participation shall be documented in the resident's record.

6. The treatment plan shall specify the ways in which the resident will participate in community activities, organizations, and events.

7. The treatment plan shall address ways in which the environment for the resident is normalized.

8. A specific plan for involving the resident's family or significant others shall be included in the treatment plan. The parent, guardian, or custodian shall be given a copy of the resident's master treatment plan. The master treatment plan shall identify the professional staff member who is responsible for coordinating and facilitating the family's involvement throughout treatment.

9. The treatment plan shall be reviewed and updated through multidisciplinary team conferences as clinically indicated, but in no case shall this review and update be completed later than thirty (30) days following the first ten (10) days of treatment and every sixty (60) days thereafter.

10. Following one (1) year of continuous treatment, the review and update may be conducted at three (3) month intervals.

(c) The master treatment plan and each review and update shall be signed by the participants in the multidisciplinary team conference that developed it, and approved by the clinical director.

(4) Progress notes.

(a) Progress notes shall be entered in the resident's records, be used as a basis for reviewing the treatment plan, signed and dated by the individual making the entry and shall include the following:

1. Documentation of implementation of the treatment plan;

2. Chronological documentation of all treatment provided to the resident and documentation of the resident's clinical course; and

3. Descriptions of each change in each of the resident's conditions.

(b) All entries involving subjective interpretation of the resident's progress shall be supplemented with a description of the actual behavior observed.

(c) Efforts shall be made to secure written progress reports for residents receiving services from outside sources and, when available, to include them in the resident record.

(d) The resident's progress and current status in meeting the goals and objectives of his treatment plan shall be regularly recorded in the resident record.

(5) Discharge planning. The facility shall have written policies and procedures for discharge of residents.

(a) Discharge planning shall begin at admission and be documented in the resident's record. At least ninety (90) days prior to the planned discharge of a resident from the facility, or within ten (10) days after admission if the anticipated length of stay is under ninety (90) days, the multidisciplinary team shall formulate a discharge and aftercare plan. This plan shall be maintained in the resident's record and reviewed and updated with the master treatment plan.

(b) All discharge recommendations shall be determined through a conference, including the appropriate facility staff, the resident, the resident's parents, guardian, or custodian and, if indicated, the representative of the agency to whom the resident may be referred for aftercare service(s), and the affected local school districts. All

aftercare plans shall delineate those parties responsible for the provision of aftercare services.

(c) If the aftercare plan involves placement of the resident in another licensed program following discharge, facility staff shall share resident information with representatives of the aftercare program provider if authorized by written consent of the parent, guardian, or custodian.

(d) A facility deciding to release a resident on an unplanned basis shall:

1. Have reached the decision to release at a multidisciplinary team conference chaired by the clinical director that determined, in writing, that services available through the facility cannot meet the needs of the resident;

2. Provide at least ninety-six (96) hours notice to the resident's parent, guardian, or custodian and the agency which will be providing aftercare services. If authorized by written consent of the parent, guardian, or custodian, the facility shall provide to the receiving agency(ies) copies of the resident's records and discharge summary.

3. Consult with the receiving agency in situations involving placement for the purpose of ensuring that such placement reasonably meets the needs of the resident; and

4. Provide a written statement explaining the reasons for discharge to the receiving agency.

(e) Within fourteen (14) days of a resident's discharge from the facility, the facility shall compile and complete a written discharge summary for inclusion in the resident's record. The discharge summary shall include:

1. Name, address, phone number, and relationship of the person to whom the resident was released;

2. Description of circumstances leading to admission of the resident to the facility;

3. Significant problems of the resident;

4. Clinical course of the resident's treatment;

5. Assessment of remaining needs of the resident and alternative services recommended to meet those needs;

6. Special clinical management requirements including psychotropic drugs;

7. Brief descriptive overview of the aftercare plan designed for the resident; and

8. Circumstances leading to the unplanned or emergency discharge of the resident, if applicable.

(6) The facility shall request periodic follow-up reports from each agency providing services to the resident in accordance with the aftercare plan, and shall be responsible for documenting the outcome of the aftercare plan as possible.

Section 12. Services. The facility shall provide the following services in a manner which takes into account and addresses the social life; emotional, cognitive, and physical growth and development; and the educational needs of the resident.

(1) Mental health services.

(a) Mental health assessments and evaluations shall be provided as required in Section 11 of this administrative regulation.

(b) The mental health services available through the residential treatment facility shall include the services listed below. These mental health services shall be provided directly by the residential treatment facility:

1. Case coordination services to assure the full integration of all services provided to each resident. Case coordination activities include monitoring the resident's daily functioning to assure the continuity of service in accordance with the resident's treatment plan and ensuring that all staff responsible for the care and delivery of services actively participate in the development and implementation of the resident's treatment plan.

2. Planned verbal therapies including formal individual, family, and group therapies. These therapies shall be provided on site. These therapies include psychotherapy and other face-to-face verbal

contacts between staff and the resident which are planned to enhance the resident's psychological and social functioning as well as to facilitate the resident's integration into a family unit. Verbal contacts that are incidental to other activities are excluded from this service.

3. Task and skill training to enhance a resident's age appropriate skills necessary to facilitate the resident's ability to care for himself and to function effectively in community settings. Task and skill training activities include homemaking, housekeeping, personal hygiene, budgeting, shopping, and the use of community resources.

(2) Physical health services.

(a) The physical health services available through the residential treatment facility shall include the services listed below. Physical health services may be provided directly by the facility or may be provided by written agreement.

1. Assessments and evaluations as required in Section 11 of this administrative regulation;

2. Diagnosis, treatment, and consultation for acute or chronic illnesses occurring during the resident's stay at the facility or for problems identified during an evaluation;

3. Preventive health care services to include periodic assessments in accordance with the periodicity schedule established by the American Academy of Pediatrics;

4. A dental examination within six (6) months of admission, periodic assessments in accordance with the periodicity schedule established by the American Dental Association, and treatment as needed;

5. Health and sex education;

6. An ongoing immunization program; and

7. A physical examination within five (5) days of the client's planned date of discharge from the facility.

(b) When physical health services are provided by written agreement with a provider of services other than the facility, the written agreement shall, at a minimum, address:

1. Referral of residents;

2. Qualifications of staff providing services;

3. Exchange of clinical information; and

4. Financial arrangements.

(3) Dietary services.

(a) The facility shall have written policies and procedures approved by the governing body for the provision of dietetic services for staff and residents which may be provided directly by the facility staff or through written contractual agreement.

(b) Adequate staff, space, equipment, and supplies shall be provided for safe sanitary operation of the dietetic service, the safe and sanitary handling and distribution of food, the care and cleaning of equipment and kitchen area, and the washing of dishes.

(c) The nutritional aspects of resident's care shall be planned, reviewed, and periodically evaluated by a qualified dietician registered by the Commission on Dietetic Registration and employed by the facility as a staff member or consultant.

(d) The food shall be served to residents and staff in a common eating place and:

1. Shall account for the special food needs and tastes of residents;

2. Shall not be withheld as punishment; and

3. Shall provide for special dietary need of residents such as those relating to problems, such as diabetes and allergies.

(e) Residents shall participate in the preparation and serving of food as appropriate.

(f) At least three (3) meals per day shall be served with not more than a fifteen (15) hour span between the substantial evening meal and breakfast. The facility shall arrange for and make provision for between-meal and unscheduled snacks.

(g) Except for school lunches and meals at restaurants, all members of a living unit shall be provided their meals together as a therapeutic function of the living unit.

(4) Emergency services.

(a) The facility shall provide for the prompt notification of the resident's parents, guardian, or custodian in case of serious illness, injury, surgery, or death.

(b) The facility shall provide or arrange for the training of all direct-care and professional staff in first aid and CPR.

(c) All staff shall be knowledgeable of a written plan and procedure for meeting potential disasters and emergencies such as fires or severe weather. The plan shall be posted. Staff shall be trained in properly reporting a fire, extinguishing a small fire, and in evacuation from the building. Fire drills shall be practiced in accordance with state fire administrative regulations.

(d) The facility shall have written procedures to be followed by staff in the event of a psychiatric, medical, or dental emergency of a resident that specifies:

1. Notification of designated member of the facility's chain of command;

2. Designation of staff person who shall decide to refer resident to outside treatment resources;

3. Notification of resident's parent, guardian, or custodian;

4. Transportation to be used;

5. Staff member to accompany resident;

6. Necessary consent and referral forms to accompany resident; and

7. Name, location, and telephone of designated treatment resources.

(e) The facility shall have designated treatment resources who shall have agreed to accept a resident for emergency treatment. At a minimum the resources shall include:

1. Licensed physician and an alternate designee;

2. Licensed dentist and an alternate designee;

3. Licensed hospital; and

4. Licensed hospital with an accredited psychiatric unit.

(5) Pharmacy services. The facility shall have written policies and procedures approved by the governing body for proper management of pharmaceuticals that are consistent with the following requirements:

(a) Medications shall be administered by a registered nurse, physician, or dentist, except in the case of a licensed practical nurse, certified medication aide, or mental health associate under the supervision of a registered nurse. A mental health associate shall have successfully completed the medicine administration course approved by the Kentucky Board of Nursing for use in child caring facilities;

(b) Medications shall not be given without a written order signed by a physician, or dentist when applicable. Telephone orders for medications shall be given only to registered nurses or a pharmacist and signed by the physician or dentist within twenty-four (24) hours from the time the order is given;

(c) Psychotropic medications shall be prescribed only when clinically indicated as one (1) facet of a program of therapy. The facility shall ensure that no stimulant or psychotropic medication is administered solely for the purpose of program management or control, and that no medication is prescribed for the purposes of experimentation or research;

(d) All medications shall require "stop orders";

(e) All prescriptions shall be reevaluated by the prescriber prior to its renewal;

(f) There shall be a systematic method for prescribing, ordering, receipting, storing, dispensing, administering, distributing and accounting for all medications;

(g) The facility shall provide maximum security storage of and accountability for all legend medications, syringes, and needles;

(h) Self-administration of medication shall be permitted only when specifically ordered by the responsible physician and supervised by a member of the professional staff or a mental health associate. Drugs to be self-administered shall be stored in a secured area and

be made available to the resident at the time of administration;

(i) Residents permitted to self-administer drugs shall be counseled regarding the indications for which the drugs are to be used, the primary side effects, and the physical dosage forms which are to be administered;

(j) Drugs brought into the facility by residents shall not be administered unless they have been identified and unless written orders to administer these specific drugs are given by the responsible physician. Otherwise these drugs are to be packaged, sealed, and stored, and, if approved by the responsible physician, returned to the resident, parent, guardian, or custodian at the time of discharge.

(6) Education/vocational services.

(a) Educational and vocational services available through the facility shall include the minimum requirements of Kentucky Revised Statutes and federal laws and regulations regarding regular education, vocational education, and special education as appropriate to meet the needs of the residents.

1. Educational services may be provided directly by the facility, or may be provided by written agreement with the local school district in which the facility is located or with a nonpublic school program which is specially accredited by the Kentucky Department of Education (KDE) and is approved by the KDE to provide special education services to students with disabilities.

2. If the educational services are provided by the facility, the school program must be specially accredited by the KDE and be approved by the KDE to provide special education services to students with disabilities.

3. Educational services provided by a local school district may be provided within the facility or within the local school district.

4. The facility's multidisciplinary team shall make a recommendation concerning the delivery site of educational services provided by a local school district that is based on least restrictive environment determinations for individual residents.

5. In any case, education services approved by the Department of Education shall be available either on the same site or in close physical proximity to the residential treatment facility.

(b) When the education services are not provided directly by the facility, there shall be a written agreement between the provider of education services and the facility. The provider shall be a state education department-approved program. The written agreement shall, at a minimum, address:

1. Qualifications of staff providing services;

2. Participation of educational and vocational staff in the treatment planning process;

3. Access by staff of the facility to educational and vocational programs and records; and

4. Financial and service arrangements.

(c) The facility shall ensure that residents have opportunities to be educated in the least restrictive environment consistent with the treatment needs of the resident as determined by the multidisciplinary team and reflected in the resident's master treatment plan.

(d) Upon admission each resident of school age shall have been certified or be referred for assessment as a child with a disability pursuant to 20 USC 1400.

(e) The facility shall ensure that education services are developed and implemented in conjunction with the master treatment plan and meet the following requirements:

1. The resident's teacher shall be a member of the multidisciplinary team, when possible.

2. Each resident's master treatment plan shall include formal academic goals for remediation and continuing education.

3. Each resident eligible for special education services to the handicapped shall have treatment activities developed by the multidisciplinary team, which may be incorporated into the individualized treatment plan (ITP) developed by the local school district. The multidisciplinary team shall develop treatment activities which extend into the classroom as appropriate. The program director or designee

shall request an invitation to attend all ITP meetings. If allowed, the program director or designee shall attend all ITP meetings.

4. To avoid unnecessary duplication and make maximum use of resources, the services provided by the education and treatment components for children with disabilities pursuant to 20 USC 1400 shall be developed with the opportunity for input from both parties.

(f) The facility shall provide or arrange for vocational services for residents, as is age appropriate and is in accordance with the master treatment plan. The services shall be planned, implemented and supervised by a vocational counselor or appropriate therapist who may be a full- or part-time employee of the facility or a consultant.

(g) Residents may be permitted to accumulate earnings in a bank account established with the resident by the facility.

(7) Activity services.

(a) The recreational therapist shall prepare a daily schedule of planned recreational activities for the approval of the clinical director prior to implementation of the schedule.

1. The schedule shall be for normal waking hours that residents are not in school, or in active treatment.

2. The schedule shall include a full range of activities including physical recreation, team sports, art, and music; attendance at recreational and cultural events in the community; and individualized, directed activities like reading and crafts.

3. Nondirected leisure time shall be limited to two (2) one-half (1/2) hour periods on school days and three (3) one-half (1/2) hour periods on nonschool days.

4. The activity schedule shall identify the professional or direct-care staff who will lead and support each activity.

5. Changes made to the schedule as the schedule is implemented shall be indicated on a copy of each daily schedule maintained as a permanent record by the clinical director.

(b) The recreational therapist shall direct, consult with, and train staff responsible for leading the scheduled activities.

(c) The recreational therapist shall evaluate the effectiveness of the activity services.

(d) Appropriate time, space, and equipment shall be provided by the facility for leisure activity and free play.

(e) The facility shall provide the means of observing holidays and personal milestones in keeping with the cultural and religious background of the residents.

(8) Speech, language, and hearing services. The facility shall provide or arrange for speech, language, and hearing services to meet the identified needs of residents. These services shall be provided by the facility or through written agreement with a qualified speech-language and hearing clinician. The written agreement shall, at a minimum, address:

(a) Referral of residents;

(b) Qualifications of staff providing services;

(c) Exchange of clinical information; and

(d) Financial arrangements.

Section 13. Special Treatment Procedures. (1) Special treatment procedures include procedures such as restraint or seclusion and holding which may have abuse potential or be life threatening. Special treatment shall be used only as a means to prevent a resident from injuring himself or others or to prevent serious disruption of the therapeutic environment.

(2) Special treatment procedures shall not be used as punishment or as a convenience of staff.

(3) Special treatment procedures may be used only by trained, clinically-privileged staff.

(4) The facility shall have a written plan approved by the governing body for the use of special treatment procedures which at a minimum meet the following requirements:

(a) Any use of special treatment procedures requires clinical justification;

(b) A rationale and the clinical indications for the use of special

treatment procedures shall be clearly stated in the resident's record for each occurrence. The rationale shall address the inadequacy of less restrictive intervention techniques;

(c) The plan shall specify the length of time for which a specific approval remains effective; and

(d) The plan shall specify the length of time the special treatment procedure may be utilized.

(5) Restraint or seclusion may be ordered or carried out only after the physician who is authorizing the use of the procedure has conducted a clinical assessment or has consulted with a member of the clinical staff who has conducted a clinical assessment of the resident.

(6) Each written order for restraint or seclusion shall be time limited and shall not exceed twenty-four (24) hours. No PRN orders for restraint or seclusion may be written.

(7) Restraint or seclusion may be utilized in an emergency by trained, clinically-privileged staff. The emergency implementation of restraint or seclusion shall not exceed thirty (30) minutes at which time a physician staff member's oral order is required if use of the procedure is to continue. The physician's written order to confirm restraint or seclusion shall be entered in the resident's record as soon as possible, but not more than twenty-four (24) hours after the implementation of the procedure.

(8) Use of restraint or seclusion for a period of twenty-four (24) hours shall be approved by a committee made up of the professional staff, the clinical director, and the program director prior to the expiration of the first twenty-four (24) hour order.

(9) Staff who implement special treatment procedures shall have documented training in the proper use of the procedure used and shall be certified in physical management by a nationally recognized training program in which certification is obtained through skilled-out testing.

(10) A professional or direct-care staff member shall be constantly, physically present with a resident in restraint; and attention shall be given in regard to regular meals, bathing and use of the toilet. This attention shall be documented in the resident's record.

(11) A professional or direct-care staff person shall always be in the seclusion room with a resident twelve (12) years of age or under so long as the staff person is not placed in undue physical danger due to the relative size and strength of the resident who is in seclusion. Attention shall be given in regard to regular meals, bathing and use of the toilet. This attention shall be documented in the resident's record.

(12) Constant visual attention through physical presence, remote video, or window shall be paid to an adolescent who is in seclusion and over twelve (12) years of age or a resident who is under twelve (12) years of age if the staff person would be placed in undue physical danger due to the resident's relative size and strength. Professional or direct-care staff shall check the resident's breathing and talk to the resident every fifteen (15) minutes and shall attend to the resident's regular meals, bathing, and use of the toilet. This attention shall be documented in the resident's record.

(13) At no time may a procedure be used in a manner that causes undue physical discomfort, harm, or pain to a resident.

(14) All uses of special treatment procedures shall be reviewed on a daily basis by the clinical director and evaluated by him for the possibility of unusual or unwarranted patterns of use.

(15) A facility shall not use extraordinary risk procedures including, but not limited to experimental treatment modalities, psychosurgery, aversive conditioning, electroconvulsive therapies, behavior modification procedures that use painful stimuli, unusual medications, and investigational and experimental drugs.

(16) Unusual treatment shall require the informed consent of the resident and parent, guardian, or custodian prior to the provision of unusual treatment as follows:

(a) The proposed unusual treatment shall be reviewed and interpreted by one (1) or more persons legally qualified to prescribe

treatment addressing the rationale for use, methods to be used, specified time to be used, who will provide the treatment, and the methods that will be used to evaluate the efficacy of the treatment.

(b) The potential risks, side effects, and benefits of the proposed unusual treatment shall be explained, verbally and in writing, to the resident and the parent, guardian, or custodian prior to their granting approval for the unusual treatment. The approval shall be given in writing prior to implementation of the treatment.

Section 14. Housekeeping Services. (1) The facility shall have policies and procedures for and services which maintain a clean, safe, and hygienic environment for residents and facility personnel. Policies and procedures shall include guidelines for at least the following:

(a) The use, cleaning, and care of equipment;

(b) Assessing the proper use of housekeeping and cleaning supplies;

(c) Evaluating the effectiveness of cleaning; and

(d) The role of the facility staff in maintaining a clean environment.

(2) A laundry service shall be provided by the facility or through contractual agreement.

(3) Pest control shall be provided by the facility or through contractual agreement.

Section 15. Infection Control. (1) Because infections acquired in a facility or brought into a facility from the community are potential hazards for all persons having contact with the facility, there shall be an infection control program developed to prevent, identify, and control infections.

(2) Written policies and procedures pertaining to the operation of the infection control program shall be established, reviewed at least annually, and revised as necessary.

(3) A practical system shall be developed for reporting, evaluating, and maintaining records of infections among residents and personnel.

(4) The system shall include assignment of responsibility for the ongoing collection and analysis of data, as well as for the implementation of required follow-up actions.

(5) Corrective actions shall be taken on the basis of records and reports of infections and infection potentials among residents and personnel and shall be documented.

(6) All new employees shall be instructed in the importance of infection control and personal hygiene and in their responsibility in the infection control program.

(7) The facility shall document that in-service education in infection prevention and control is provided to all services and program components.

TIMOTHY L. VENNO, Inspector General

JOHN MORSE, Secretary

APPROVED BY AGENCY: June 14, 1996

FILED WITH LRC: June 19, 1996 at 10 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ralph Von Derau

(1) Type and number of entities affected: Psychiatric residential treatment facilities. There are presently ten (10) licensed PRTFs.

(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: to be determined after the notice of intent public hearing.

(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 the Notice

ADMINISTRATIVE REGISTER - 410

of Intent public hearing.

(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 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 the notice of intent public hearing.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: KRS Chapter 216B mandates that minimum standards be established for licensure.

(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: This proposed administrative regulation should make it easier for psychiatric residential treatment services to be provided in a cost effective manner. The accessibility of these services to the adolescent population of the Commonwealth would not be enhanced without the proposed amendments.

(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? No. This is a licensure program and, as such, applies to all licensed services.

comply with the Executive Order 96-862 which transfers the Disabilities Determinations Program to the Department for Social Insurance. Material in 902 KAR 16:010 is being transferred to 904 KAR 2:470E. It is necessary to promulgate this emergency administrative regulation to prevent the possible loss of federal funding (100 percent) due to the change in the authority over the administration of the program from the Cabinet for Health Services to the Cabinet for Families and Children. The administrative regulation is also being promulgated as an ordinary administrative regulation for public comments.

PAUL E. PATTON, Governor

VIOLA P. MILLER, Secretary

CABINET FOR FAMILIES AND CHILDREN Department for Social Insurance Division of Management and Development

904 KAR 2:470E. Disability Determinations Program.

RELATES TO: KRS 194.030(6), 205.200, 205.245, 20 CFR 404.1503

STATUTORY AUTHORITY: KRS 194.050, EO 96-862

EFFECTIVE: July 12, 1996

NECESSITY AND FUNCTION: Executive Order 96-862 transfers to the Cabinet for Families and Children the authority to administer a program under 20 CFR 404.1503 for determinations of disability and blindness. KRS 194.050 provides that the secretary shall by administrative regulation develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This administrative regulation incorporates into regulatory form, by reference, materials used in determinations of disability and blindness under 42 USC 401-433, 42 USC 1381-1383d and KRS 205.245. The program for making disability and blindness determinations shall be referred to as the Disability Determinations Program.

Section 1. Incorporation by Reference. The cabinet shall incorporate by reference materials used in the implementation of the Disability Determinations Program.

Section 2. Listing of Incorporated Materials. The following materials are hereby incorporated by reference, effective on the date shown:

(1) Social Security Disability Rulings, effective August 1, 1987;

(2) Social Security Disability Program Operations Manual, Part 04, Chapters 200 through 295, and 305 through 342, effective August 1, 1987; and

(3) Social Security Administration instructional messages, effective May 1, 1986.

Section 3. Material Incorporated by Reference may be inspected and copied at the Department for Social Insurance, Division of Disability Determinations, First City Complex, P.O. Box 1000, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

VIOLA P. MILLER, Secretary

JOHN L. CLAYTON, Commissioner

APPROVED BY AGENCY: July 10, 1996

FILED WITH LRC: July 12, 1996 at 4 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Marty Mason, Director

(1) Type and number of entities affected: The affected entities are individuals who apply or receive benefits under the provisions of 42 USC 401-433, 42 USC 1381-1383d, and KRS 205.245 who require a disability determination by the agency in order to receive eligible benefits based on disability or blindness. The transferring of authority

STATEMENT OF EMERGENCY 904 KAR 2:470E

The administrative regulation 904 KAR 2:470E, Disabilities Determinations Program, implements the Disabilities Determinations Program in the Department for Social Insurance. As a result of Executive Order 96-862, authority over this program is transferred from the Cabinet for Health Services to the Cabinet for Families and Children. The Cabinet for Families and Children is now required to administer the program under 20 CFR 404.1503 for determinations of disability and blindness under the provisions of 42 USC 401-433 and 42 USC 1381-1383d. This administrative regulation is needed to

of the Disabilities Determination Program from the Cabinet for Health Services to the Cabinet for Families and Children will have no fiscal impact to applicants or recipients of these programs who require a disability determination by the agency. This emergency administrative regulation transfers the authority to administer the program to the Cabinet for Families and Children. A regular administrative regulation will be promulgated to replace this emergency regulation.

(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 the 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 the 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:

1. First year following implementation: This administrative regulation will not create any additional compliance, reporting or paperwork requirements.

2. Second and subsequent years: See item #1.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: The Disabilities Determinations Program is 100 percent federally funded. We do not anticipate any fiscal impact to the agency.

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: No effect.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: 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) Geographical area in which administrative regulation will be implemented: To be determined after the publication of the notice of intent.

(b) Kentucky: To be determined after the publication of the notice of intent.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered since the state is responsible under federal requirements, 20 CFR 404.1503, to administer a program for the determination of disability under the provisions of 42 USC 401-433, 42 USC 1381-1383d. The authority for the administration of the program is transferred from the Cabinet for Health Services to the Cabinet for Families and Children. This administrative regulation transfers the material found in 902 KAR 16:010.

(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 state is required to administer the program required under 20 CFR 404.1503 for the determination of disability under the provisions of 42 USC 401-433 and 42 USC 1381-1383d. Individuals who benefit from this program are persons who apply or receive benefits under Social Security, Supplementation Security Income Program, and State Supplementation Program who require a disability determination by the agency in order to receive eligible benefits based on disability or blindness. This administrative regulation is needed to comply with Executive Order 96-862 which transfers the Disabilities Determinations Program to the Department for Social Insurance.

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

health would result if this amendment is not implemented.

(c) If detrimental effect would result, explain detrimental effect: It is necessary to promulgate this emergency administrative regulation to prevent the possible loss of federal funding (100 percent) due to the change in the authority over the administration of the program from the Cabinet for Health Services to the Cabinet for Families and Children.

(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? No. Tiering was not applied since application of policy is applied in a like manner for all individuals as set forth through federal requirements.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 20 CFR 404.1503

2. State compliance standards. There is no state requirement for a Disability Determinations Program.

3. Minimum or uniform standards contained in the federal mandate. 20 CFR 404.1503 requires the state to administer a disability determinations program for determinations of disability and blindness under the provisions of 42 USC 401-433 and 42 USC 1381-1383d.

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

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.

3. State the aspect or service of local government to which this administrative regulation relates.

4. How does this administrative regulation affect the local government or any service it provides?

STATEMENT OF EMERGENCY 905 KAR 1:320E

These emergency administrative regulations were promulgated to implement provisions of KRS 13B.005 to 13B.170 relating to administrative hearings conducted by the Department for Social Services. The Cabinet for Families and Children, pursuant to KRS 194.050 and federal regulations 45 CFR 205.10, is authorized to promulgate an administrative regulation to provide a hearing by an applicant or recipient who is approved by an agency action that results in denial, suspension, reduction, discrimination, exclusion or termination of services. These amendments revise provisions related to the Notice to Complaint, conduct of the hearing, findings of fact, recommended order, and final order to comply with specific provisions of KRS Chapter 13B which are required to be implemented by July 15, 1996. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation shall be filed with the Regulations Compiler in accordance with KRS Chapter 13A.

ADMINISTRATIVE REGISTER - 412

PAUL E. PATTON, Governor
VIOLA P. MILLER, Secretary

CABINET FOR FAMILIES AND CHILDREN Department for Social Services

905 KAR 1:320E. Fair hearing.

RELATES TO: KRS 13B.005 to 13B.170, 45 CFR 205.10, 29 USC 794, 42 USC 12101 et seq., 2000a et seq.

STATUTORY AUTHORITY: KRS 194.050, EO 96-862

EFFECTIVE: July 12, 1996

NECESSITY AND FUNCTION: Under Titles IV-A, IV-B, IV-C, IV-E and Title XX of the Social Security Act, the single state agency responsible for the program shall be required by federal regulation, 45 CFR 205.10, to provide a hearing to an applicant or recipient who is aggrieved by an agency action resulting in denial, suspension, reduction, discrimination, exclusion or termination of services. The Department for Social Services has assured various federal agencies that it shall comply with the provisions of 29 USC 794, 42 USC 12101 et seq., 42 USC 2000a et seq., and with 45 CFR 205.10. Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Department for Social Services and the Child Welfare Program under the Cabinet for Families and Children. This administrative regulation amends provisions to comply with requirements of KRS 13B.005 to 13B.170.

Section 1. Definitions. (1) "Applicant for services" means a person who has applied for services from the Department for Social Services by means of signing an application.

(2) "Client" means a recipient or a person who has been determined to be eligible to receive services from the Department for Social Services and has been registered in a case to receive ongoing services or a person who has been ordered by a court to receive services from the Department for Social Services.

(3) "Complainant" means the applicant for services, client, foster parent or adoptive parent who after submitting their written complaint, is entitled to a fair hearing.

(4) "Hearing officer" means a person who is trained in administrative hearing procedures designated by the Commission for Social Services or designee to conduct fair hearings.

(5) "Local resolution process guidelines" means the local resolution conference consisting of an informal process that gives the complainant the opportunity to discuss his complaint and clarify issues and attempt to resolve those issues. The complainant shall be afforded the opportunity to decide whether he continues to desire a formal hearing following the local resolution process.

(6) "Timely" means that a notice is mailed at least ten (10) days before the date of the action, except that adequate written notice shall be given no later than the date of the action if staff determines that delaying the action endangers the health or well-being of the children or that the health or well-being of children may be endangered if prior notice is given.

Section 2. Right to a Fair Hearing. (1) The department shall not on the basis of race, color, national origin, sex, age, religion or disability:

(a) Deny an individual aid, care, services or other benefits of the department, either directly or through contractual or other agreements.

(b) Provide aid, care, services, or other benefits to an individual which is different or is provided in a different manner from that provided to others.

(c) Subject an individual to segregation or separate treatment in a matter related to his receipt of aid, care, services or other benefits.

(d) Restrict an individual in the enjoyment of an advantage or privilege enjoyed by others receiving aid, care, services or other benefits.

(e) Treat an individual differently from others in determining whether he satisfies eligibility or other requirements or conditions which individuals shall meet to receive aid, care, services or other benefits.

(f) Deny an individual an opportunity to participate in the program through the provision of services or afford him an opportunity to do so which is different from that afforded others.

(2) A notice of the client's right to a hearing shall be displayed prominently in each Department for Social Services residential treatment facility, clinical programs, day treatment center, group home, and in each Department for Social Services office in a location easily accessible to clients. The notice of right to a hearing shall state:

(a) If you are dissatisfied with the action taken, you may request a fair hearing within thirty (30) days from the date of the action by filing a written request or a DSS-154, Request for Fair Hearing form, incorporated by reference herein, with the Quality Assurance Branch, Department for Social Services, ~~404 Ann Street, Frankfort, Kentucky 40604~~.

(b) You may be represented by an attorney or other spokesman.

(3) Staff of the Department for Social Services, shall have the responsibility of advising applicants, clients, foster parents and subsidized adoptive parents in writing of their right to a fair hearing:

(a) During intake or the initial treatment planning conference, using the DSS-154, Request for Fair Hearing form.

(b) During any action affecting services or assistance:

1. Staff shall give the applicant, client or subsidized adoptive parent timely and adequate notice and an opportunity to object, using the DSS-154A, Notice of Intended Action form, incorporated by reference herein.

2. If a request for a hearing is made within ten (10) days of the notice of an action affecting services, services shall be continued until a decision is rendered after a hearing, unless staff determines that continuation of the services or delay of the action endangers the health or well-being of a child; and

(c) Staff shall give new foster parents, upon approval a written notice of their right to a fair hearing when:

1. A foster home is closed;

2. A child is removed from one (1) foster home to another foster home; and

3. Training provided by the department is denied.

(4) Hearing entitlement.

(a) An applicant or client shall be entitled to a hearing on the following actions:

1. A denial, reduction, material modification, suspension, discontinuance, exclusion from or termination of a service;

2. Dissatisfaction with a service received, inappropriate or inadequate treatment, placement or visitation;

3. Failure of the department to act upon a request for service with reasonable promptness;

4. Failure of the department to take into account a client's choice of service or a determination that the individual shall participate in a service program against his wishes except where required by law; or

5. Discrimination against a client by department staff on account of age, sex, race, national origin, disability or religion.

(b) A foster parent shall be entitled to a hearing on the following decisions:

1. To remove a foster child from one foster home to another foster home except if the child has been the subject of a substantiated report of abuse or neglect by the foster parents;

2. To deny foster parents foster parent training provided and scheduled by the department.

3. To close the foster home;

4. Foster parents are not entitled to a fair hearing if:

a. Sexual abuse or sexual exploitation by the foster parents is substantiated;

b. Substantiation of physical abuse of a child or spouse warrant-

ing the removal of the victim;

- c. There is presence of a serious physical or mental illness which impairs or precludes adequate care of the child by the foster parents;
- d. Foster parents are convicted of a felony offense; or
- e. Foster parents have not had a placement within five (5) years of the approval date.

(c) Subsidized adoptive parents shall be entitled to a hearing on the decision to deny or reduce adoptive assistance for a special needs child. Adoptive parents eligible for a Title IV-E adoption subsidy for a special needs child are entitled to a hearing for:

- 1. Failure of the department to advise the adoptive parents of the availability of the adoption assistance for special needs children; and
- 2. Failure to provide the Title IV-E eligible adoptive parents known relevant facts regarding the child, biological family and child's background prior to finalization.

(5) The following issues shall not be considered through the hearing procedure described herein:

(a) Complaints related to legal issues, for example, actions involved in court cases or the interpretation of any statute or regulation;

(b) A complaint that has not been filed in writing with the Quality Assurance Branch;

(c) A complaint that has been abandoned by failure of the complainant to carry forward with their complaint, to furnish information requested by the hearing officer or to appear at a scheduled hearing;

~~(d) [A complaint of a provider of services under contract or memorandum of agreement, that is day treatment, group homes, private child care facilities or area development districts. Refer to 905 KAR 8:140, Hearing procedures for area agency on aging, contract selector actions, for formal complaint procedure for area agencies on aging;~~

~~(e)~~ A client complaint involving services or discrimination against a contract agency;

~~(e)~~ ~~(f)~~ Discrimination practices in relation to departmental personnel policies and procedures. These grievances shall be handled per instructions in the personnel manual; and

~~(f)~~ ~~(g)~~ A report or investigation of child abuse or neglect and adult abuse or neglect.

Section 3. Request for Hearing. (1) The complainant or legal guardian shall sign the request and submit it to the Quality Assurance Branch. Upon request, departmental staff shall assist individuals in preparation and submission of a request for hearing. Staff shall not assume responsibility for mailing the request. Requests for hearing shall be in writing or filed on the DSS-154, Request for Hearing form and contain:

- (a) Specific allegations or complaints against the department;
- (b) Name of the staff person, or persons involved if known;
- (c) Circumstances under which the alleged act occurred; and
- (d) Date and place of alleged act.

(2) Requests shall be filed in writing within thirty (30) days after the alleged act or notice of a decision affecting services. If the notice is mailed, the date of the notice shall be the date mailed; otherwise it shall be the date of delivery. If the request is filed after the thirty (30) day period, a decision as to acceptance or denial of the complaint for action shall be made by the Commissioner of the Department for Social Services, or designee.

(a) Within five (5) working days of the receipt of the complaint, the Quality Assurance Branch shall notify the complainant of the receipt of the request and the department's policy of attempts at local resolution before a hearing is scheduled.

1. The appropriate family services district manager or designee shall also be notified of the receipt of the request and asked to set a meeting with the complainant to attempt to resolve the issues that led to the complaint.

2. The juvenile services specialist shall arrange a meeting with

the complainant to attempt to resolve the issues that led to the complaint if received from youth in residential treatment facilities, Residential programs, group homes or day treatment programs.

(b) The local resolution facilitator contacts the complainant to:

- 1. Clarify the issues of the complaint;
- 2. Determine if the complainant wishes to participate in the local resolution process; and

3. Determine if the complainant is a client or a person filing on behalf of a client. If the complainant is not a client, notify the Quality Assurance Branch Manager immediately.

(c) The complainant may refuse to participate in the local resolution efforts and shall sign an acknowledgement to be forwarded to the Quality Assurance Branch Manager and choose:

- 1. To request that the complaint be withdrawn; or
- 2. That the complaint be referred for a formal fair hearing.

(d) If the complainant chooses to be involved in the local resolution process, the local resolution facilitator shall solicit information from the involved parties in an attempt to resolve the complaint in a manner that is acceptable to the complainant. The solicitation of information may include:

- 1. Interviews with the complainant and named DSS staff;
- 2. Interviews with other involved parties; and
- 3. A review of relevant case materials.

(e) Other issues identified as a result of the local resolution conference shall be brought to the attention of appropriate management and supervisory staff.

(4) The family services district manager or his designee or the juvenile services specialist shall forward to the Quality Assurance Branch, in writing, the results of their efforts to achieve local resolution of the complaint not more than thirty (30) days after the filing of the request for hearing. The report shall contain:

- (a) Nature of the complaint;
- (b) Date of resolution conference;
- (c) Persons present at the conference; and
- (d) A specific statement of any issues not resolved.

(5) If the complaint is resolved, the complainant shall sign an acknowledgment to be attached to the report. A copy of the local resolution report shall be sent to the complainant and involved staff.

Section 4. Hearing Before the State Agency. (1) If a complaint is not resolved within thirty (30) days after filing, it shall be referred to a hearing officer of the Quality Assurance Branch to conduct a hearing. The hearing shall be held within thirty (30) days after referral. If the complainant agrees to an extension of time, the time for final administrative action shall be correspondingly extended.

(2) The hearing shall be conducted at a reasonable location selected by the hearing officer.

(3) The complainant and representatives, as appropriate, the DSS staff involved in the complaint and their representatives, and cabinet Office of the Counsel [CHP Department of Law] shall be given seven (7) working days written notice prior to the hearing. The hearing officer's notice shall comply with KRS Chapter 13B.050(2) and (3). The following additional information shall be contained in the hearing officer's notice to the complainant and his representative and staff named in the complaint:

~~(a) [The specific complaint issues to be heard at the hearing:]~~ The complainant shall be asked to notify the hearing officer in writing within five (5) working days of the receipt of the notice if the complaint issues have not been correctly stated. The hearing officer shall then make a determination as to whether to modify the complaint issues;

(b) Individuals to be present at the hearing;

~~(c) [The complainant's option of presenting his case himself or with the aid of an authorized representative, for example, legal counsel, relative, friend or other spokesman;~~

~~(d)~~ That the department shall not be responsible for any legal fees incurred by the complainant related to the hearing;

~~(d)~~ ~~(e)~~ The nature and conduct of the hearing, shall be held in

an orderly but informal manner, with an opportunity to present witnesses and to cross examine opposing witnesses[; and

~~(f) The complainant's right to examine the contents of his case file and all documents and records to be used by the agency at the hearing at a reasonable time before the date of the hearing and instructions on how to access the material under the open records law as governed by KRS 61.870 to 61.884.~~

~~(4) The following information shall be contained in the hearing officer's notice to staff named in the complaint:~~

~~(a) The specific complaint issues to be heard at the hearing;~~

~~(b) Individuals to be present at the hearing;~~

~~(c) The nature and conduct of the hearing, shall be held in an orderly but informal manner, with an opportunity to present witnesses and to cross examine opposing witnesses;~~

~~(d) The Department of Law shall represent the Department for Social Services in fair hearings; and~~

~~(e) The involved staff may present evidence in defense of their actions either on their own or through a representative of their choosing. An attorney from the Department of Law may represent the involved staff provided there is not a conflict of interest. If staff obtain private legal representation, the Department of Social Services shall not be responsible for legal fees incurred).~~

~~(5) Attendance at the hearing shall be limited to:~~

~~(a) The complainant and representatives;~~

~~(b) Staff involved in the complaint and their representatives;~~

~~(c) The department's attorney;~~

~~(d) A representative of the department;~~

~~(e) A person to operate the recording equipment;~~

~~(f) Witnesses called by either the complainant or staff; and~~

~~(g) The hearing officer.~~

~~(6) The hearing shall be conducted as governed by KRS 13B.080 and 13B.090. [in an orderly but informal manner, following the rules of procedure applicable to administrative hearings.] Facts relevant to the issue shall be received.~~

~~(a) The hearing officer shall open the hearing by:~~

~~1. Describing the purpose of the hearing;~~

~~2. Explaining the role of the hearing officer; and~~

~~3. Introducing parties to the hearing.~~

~~4. The hearing officer may direct or grant a continuance for good cause shown.~~

~~5. The hearing officer shall carefully clarify the complaint issues to be heard with the parties to the hearing. The complaint issues shall be the same as those in the written notification of the hearing.~~

~~(b) [Before receipt of testimony, the hearing officer shall administer the oath pursuant to KRS 194.026.~~

~~(c) The hearing officer shall arrange for the separation of witnesses. Only the client and representatives; staff involved in the complaint and their representatives; the department's attorney; a representative of the department; the hearing officer; and a person to operate the recording equipment are entitled to be in the hearing room throughout the entire hearing. The hearing officer may permit others to remain throughout the entire hearing if circumstances dictate.~~

~~(d) A witness shall complete direct testimony and then shall answer questions on cross examination by the adverse party.]~~

~~(c) [(e)] The complainant shall have the burden of proof and shall testify first and may present pertinent evidence, including testimony of witnesses and documents.~~

~~(d) [(f)] Upon completion of the case for the complainant, the respondents may testify and present other evidence including testimony of witnesses and documents.~~

~~(e) [(g)] Upon completion of the case for the respondents, the complainant may present additional evidence in strict rebuttal of the evidence presented by respondents. Additional evidence may be presented by either complainant or respondents at the discretion of the hearing officer.~~

~~(f) [(h)] The hearing officer may, if necessary to secure full~~

information on the issue:

1. Postpone the hearing;

2. Examine each party who appears, and his witnesses; and

3. Take any additional evidence which he deems necessary including excerpts from the case record.

~~[(i) After both parties to the hearing have been given ample opportunity to present their testimony and evidence, the hearing officer shall give each party an opportunity to summarize the salient points of their cases.~~

~~[(j) Upon completion of the hearing, the hearing record shall be closed unless the hearing officer grants an exception under proper motion.]~~

~~[(g) [(k)] The hearing officer shall advise the parties that a decision shall be rendered within twenty (20) days from the close of the hearing.~~

~~[(h) [(l)] Ex parte communications with the hearing officer shall be prohibited. Ex parte communications with the hearing officers shall be shared with the parties to the hearing and become a part of the official record.~~

Section 5. Hearing Officer's Recommended Order. ~~[Report and Decision:]~~ (1) Within ten (10) days after the close of the hearing, the hearing officer shall file a recommended order ~~[written report]~~ with the Quality Assurance Branch. The order [report] shall comply with KRS 13B.110 and at least contain:

(a) Statement of the complaint;

(b) Persons present at the hearing, including witness;

(c) Findings of fact based solely on the evidence introduced at the hearing;

(d) Conclusions as to whether or not the findings support the complaint, citing appropriate policy, procedures and practices in a recommended decision on the issues;

(e) Recommendations as to action to be taken on the complaint; and

(f) Other issues identified by the hearing officer shall be addressed in a separate memorandum ~~[to the branch manager who shall forward them to the commissioner].~~

(2) Each party to the hearing shall have fifteen (15) days from date of recommended order to file exceptions.

(3) Within ten (10) days after receipt of the hearing officer's recommended order [report] by the Quality Assurance Branch, the commissioner, or designee, shall render a final order [written decision] on the complaint. The final order [written decision] shall be sent to the complainant by certified mail, return receipt requested, and to the staff involved, and shall comply with KRS Chapter 13B.120 and at least contain the following information:

(a) Statement of the complaint;

(b) Findings of fact and conclusion with applicable statutes, policies, procedures and practices in regard to the complaint; and

(c) Decision and action to be taken based on findings of fact.

Section 6. Corrective Action. After reviewing the findings of fact and conclusions and recommendations of the hearing officer, if the commissioner or the commissioner's designee feels that corrective action is warranted, a memorandum shall be forwarded to the appropriate assistant director for family services or residential services requesting that corrective action be initiated. Corrective actions deemed necessary shall be initiated within ten (10) days.

Section 7. Record. The record of each administrative hearing shall comply with KRS 13B.130 [transcript or recording of testimony and exhibits, or an official report containing the substance of the testimony introduced at the hearing, together with all exhibits, papers and requests filed in the proceeding, ex parte communications and the report of the hearing officer shall constitute the exclusive record] and shall be available at the Frankfort office of the Quality Assurance Branch at any reasonable time in accordance with open records. The

record of the fair hearing shall be maintained in a locked file separate from the case record of the complainant.

Section 8. Contract Agencies. (1) Contract agencies of the department shall follow procedures outlined in this administrative regulation ~~(manual section)~~ if a client has a complaint related to civil rights, discrimination or service delivery. If the complainant is dissatisfied with the written decision rendered by the contract agency, the client has ten (10) days from the date of the agency's decision to appeal. The agency, if requested, shall assist the complainant in filing an appeal of the decision. An appeal shall be mailed to the office of the commissioner.

(2) The commissioner shall forward the appeal of the decision to the Quality Assurance Branch to be reviewed by a hearing officer. After reviewing the decision made by the contract agency, the hearing officer shall file a written report with the commissioner which shall contain:

(a) Conclusions as to whether the contract agency's finding support the complaint, citing appropriate policy and procedure; and

(b) Recommendations as to action to be taken on the complaint.

(3) After receipt of the hearing officer's report, the commissioner or the commissioner's designee shall render a written decision on the complaint. The written decision shall be sent to the complainant by certified mail, return receipt requested, and shall contain the following:

(a) Statement of the appeal; and

(b) Decision and action to be taken.

Section 9. Material Incorporated by Reference. (1) The DSS-154, Request for Hearing, revised December, 1992 and the DSS-154A, Notice of Intended Action, revised October, 1993 shall be 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.

VIOLA P. MILLER, Secretary and Acting Commissioner

APPROVED BY AGENCY: July 11, 1996

FILED WITH LRC: July 12, 1996 at 2 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact: Michael Cheek

(1) Type and number of entities affected: The type and number of entities affected are applicants, clients, foster parents or subsidized adoptive parents receiving services from the Department for Social Services. The actual number cannot be determined, but during fiscal year 1995, the Quality Assurance Branch accepted complaints and conducted fair hearings and administrative reviews. The other complaints were either resolved locally, dismissed by the client or ruled inappropriate requests.

(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. There are no direct and indirect costs or savings on the cost of living and employment in the area in which the administrative regulation will be implemented as the proposed regulations only implement provisions of KRS Chapter 13B relating to administrative hearings and clarify terminology in order to improve the existing regulation in compliance with KRS Chapter 13A. A public hearing has been scheduled during which public comments may be 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. There are no direct and indirect costs or savings on the cost of doing business in the area in which the administrative regulation will be implemented as the proposed

regulations only implement provisions of KRS Chapter 13B relating to administrative hearings and clarify terminology in order to improve the existing regulation in compliance with KRS Chapter 13A. A public hearing has been scheduled during which public comments may be received.

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

1. First year following implementation: There are no direct and indirect costs or savings for compliance, reporting or paperwork requirements for the clients as these proposed regulations only implement provisions of KRS Chapter 13B relating to administrative hearings and clarify terminology in order to improve the existing regulation in compliance with KRS Chapter 13A. A public hearing has been scheduled during which public comments may be received.

2. Second and subsequent years: There are no direct and indirect costs or savings for compliance, reporting or paperwork requirements for the clients as these proposed regulations only implement provisions of KRS Chapter 13B relating to administrative hearings and clarify terminology in order to improve the existing regulation in compliance with KRS Chapter 13A. A public hearing has been scheduled during which public comments may be received.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First Year: There are no direct and indirect first year costs or savings for compliance, reporting or paperwork requirements for the Department for Social Services as these proposed regulations only implement provisions of KRS Chapter 13B relating to administrative hearings and clarify terminology in order to improve the existing regulation in compliance with KRS Chapter 13A. A public hearing has been scheduled during which public comments may be received.

2. Continuing costs or savings: There are no direct and indirect continuing costs or savings for compliance, reporting or paperwork requirements for the Department for Social Services as these proposed regulations only implement provisions of KRS Chapter 13B relating to administrative hearings and clarify terminology in order to improve the existing regulation in compliance with KRS Chapter 13A. A public hearing has been scheduled during which public comments may be received.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing the costs as these proposed regulations only implement provisions of KRS Chapter 13B relating to administrative hearings and clarify terminology in order to improve the existing regulation in compliance with KRS Chapter 13A.

(b) Reporting and paperwork requirements: There are no direct and indirect continuing costs or savings for compliance, reporting or paperwork requirements for the Department for Social Services as these proposed regulations only implement provisions of KRS Chapter 13B relating to administrative hearings and clarify terminology in order to improve the existing regulation in compliance with KRS Chapter 13A.

(4) Assessment of anticipated effect on state and local revenues: There will not be any anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The sources of revenue to be used for implementation of this administrative regulation are Title IV-A, Title IV-B, Title IV-E, Title XX, which require the fair hearing process and 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: A public hearing has been scheduled during which public comments may be received.

(b) Kentucky: A public hearing has been scheduled during which public comments may be received.

(7) Assessment of alternative methods; reasons why alternatives

ADMINISTRATIVE REGISTER - 416

were rejected: No other alternative methods were considered because the proposed amendments only implement provisions of KRS Chapter 13B relating to administrative hearings and clarify terminology in order to improve the existing regulation in compliance with KRS Chapter 13A.

(8) Assessment of expected benefits: The anticipated benefits are compliance with KRS Chapter 13B relating to administrative hearings. It is necessary to file this administrative regulation by emergency in order to implement by July 15, 1996 as required by KRS Chapter 13B.

(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 because the proposed amendments only implement provisions of KRS Chapter 13B relating to administrative hearings and clarify terminology in order to improve the existing regulation in compliance with KRS Chapter 13A. It is necessary to file this administrative regulation by emergency in order to implement by July 15, 1996 as required by KRS Chapter 13B.

(b) State whether a detrimental effect on environment and public health would result if not implemented: There would be no detrimental effect on the environment and public health because the proposed amendments only implement provisions of KRS Chapter 13B relating to administrative hearings and clarify terminology in order to improve the existing regulation in compliance with KRS Chapter 13A. It is necessary to file this administrative regulation by emergency in order to implement by July 15, 1996 as required by KRS Chapter 13B.

(c) If detrimental effect would result, explain detrimental effect: There would be no detrimental effect. It is necessary to file this administrative regulation by emergency in order to implement by July 15, 1996 as required by KRS Chapter 13B.

(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 we are aware.

(11) TIERING: Is tiering applied? No. This regulation was not tiered as it implements provisions of KRS Chapter 13B relating to administrative hearings which are applicable statewide.

STATEMENT OF EMERGENCY 905 KAR 2:100E

These emergency administrative regulations were promulgated to implement provisions of KRS 13B.005 to 13B.170 relating to administrative hearings conducted by the Department for Social Services. The Cabinet for Families and Children, pursuant to KRS 199.8982 has established standards for the certification of family child care homes that are intended to protect the health, safety and welfare of children. Applicants/ providers may appeal adverse actions of the agency. These amendments revise provisions related to the Notice to Complaint, conduct of the hearing, findings of fact, recommended order, and final order to comply with specific provisions of KRS Chapter 13B which are required to be implemented by July 15, 1996. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation shall be filed with the Regulations Compiler in accordance with KRS Chapter 13A.

PAUL E. PATTON, Governor
VIOLA P. MILLER, Secretary

CABINET FOR FAMILIES AND CHILDREN Department for Social Insurance

905 KAR 2:100E. Certification of family child care homes.

RELATES TO: KRS 17.165, 199.898, 199.8982, 42 USC 602
STATUTORY AUTHORITY: KRS 13B.005 to 13B.170, 194.050, 199.8982, EO 96-862

EFFECTIVE: July 12, 1996

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. Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Department for Social Services and the Child Welfare Program under the Cabinet for Families and Children. In compliance with KRS 199.8982, the Department for Social Services has established standards for the certification of family child care homes. These standards are intended to protect the health, safety and welfare of children. This administrative regulation amends provisions to comply with requirements of KRS 13B.005 to 13B.170.

Section 1. Definitions. These definitions shall be used in this administrative regulation.

(1) "Adequate supervision" means that qualified staff devote full time and attention to the children being supervised and keep the children within sight and sound.

(2) "Assistant" means a person:

(a) Sixteen (16) years of age or older;

(b) Under direct supervision of a provider or substitute provider; and

(c) Has obtained a criminal records check and tuberculosis skin test.

(3) "Cabinet" means the Kentucky Cabinet for Families and Children [~~Human Resources~~].

(4) "Child" means a person under thirteen (13) years of age, or under eighteen (18) years of age if the person has been identified as having special child care needs.

(5) "Commissioner" means the Commissioner for the Department for Social Services.

(6) "Family child care home" as governed by KRS 199.8982 and does not apply to providers who care for their own children, related children or children in legal custody of the provider and up to three (3) unrelated children.

(7) "Home" means the private primary residence of the provider.

(8) "Human services center or facility" means a facility that provides full or part-time care to children or adults. This term shall include:

(a) Day care center;

(b) Certified family child care home;

(c) Adult day care center;

(d) Adult day health care facilities;

(e) Family care home;

(f) Group homes for the mentally retarded or developmentally disabled;

(g) Acute care, psychiatric, or comprehensive physical rehabilitation hospitals;

(h) Intermediate care facilities;

(i) Nursing facilities;

(j) Nursing homes;

(k) Personal care homes;

(l) Skilled nursing facilities;

(m) Psychiatric residential treatment facilities;

(n) Child caring facilities;

- (o) Child placing agencies;
- (p) Rural primary-care hospitals;
- (q) Alzheimer nursing homes;
- (r) Youth camps;
- (s) Boarding home;
- (t) Alternate intermediate services for the mentally retarded or developmentally delayed.
- (9) "Immediate danger" means a situation or condition in which one (1) or more children is being harmed or likely to be harmed before appropriate corrective action can be taken as evidenced by:
 - (a) A continuing condition;
 - (b) A recurring condition; or
 - (c) A condition which has caused death or serious physical injury within the past two (2) weeks.
- (10) "Infant" means a child under one (1) year of age.
- (11) "Nighttime care" means family home child care in which a child receives regular full, or part-time care during the night, and beginning at 6 p.m.
- (12) "Provider" means an owner, operator or person providing care for preschool or school-age children or both inside his own home for less than twenty-four (24) hours a day, and who is not required to be licensed under 905 KAR 2:010.
- (13) "Provider's own child" means the providers's own children and children in legal custody.
- (14) "Regular" means the provision of child care services in the caregiver's home on more than one (1) day in one (1) week or more than ten (10) hours per week.
- (15) "Related child" means a certified provider's grandchildren, nieces and nephews.
- (16) "School-age child" shall be considered as one attending kindergarten or above.
- (17) "Special needs child" means children who have multiple or severe problems and the Department for Social Service staff has confirmed the need for ongoing specialized care.
- (18) "Substitute provider" means a person:
 - (a) Who is eighteen (18) years of age;
 - (b) Has obtained a criminal records check and a tuberculosis skin test; and
 - (c) Is available to provide care in a family child care home.
- (19) "Toddler" means a child between the age of twelve (12) months and twenty four (24) months.

Section 2. Certification Process. (1) The department shall be responsible for the certification of family child care homes.

(2) Authorized representatives of the department shall be trained to apply the administrative regulation and have the authority to:

- (a) Inspect premises;
- (b) Review records required by this administrative regulation; and
- (c) Review the program of family child care homes.
- (3) Inspections by the department shall be unannounced.
- (4) A provider shall apply for certification if the provider is caring for four (4) to six (6) unrelated children and may apply if caring for three (3) or fewer children as governed by KRS 199.8982.

(5) A person who has had a certification, license, registration or permit to operate a human services center denied for reasons set forth in Section 3(1)(a) or (b) of this administrative regulation or revoked or voluntarily forfeits their certification, license, registration or permit after the department initiates denial for reasons set forth in Section 3(1)(a) or (b) of this administrative regulation or revocation action shall not apply for a certificate to operate a family child care home for a period of five (5) years from the date of revocation.

(a) After the expiration of the five (5) year period, the person may apply for certification after establishing that the applicant has the ability to comply with the provisions of this administrative regulation and has demonstrated completion of at least sixty (60) hours of training in developmentally appropriate child care practice since the time of the prior revocation.

(b) If certification is granted after the five (5) year period, the provider shall serve a two (2) year probationary period during which the family child care home shall be inspected on at least a quarterly basis. Inspections shall be unannounced as governed by KRS 199.8982.

(6) A provider making application for certification shall:

- (a) Complete the DSS-78, Application for Family Child Care Certification, incorporated by reference herein;
- (b) Complete the DSS-79, Self-Check List, incorporated by reference herein;
- (c) Meet the minimum requirements as governed by KRS 199.8982;
- (d) Submit a criminal records check for adult persons living in the home;
- (e) Comply with provisions set forth in Sections 5 through 11 of this administrative regulation.
- (7) Upon receipt of the application and fee, staff of the department shall:

- (a) Review the application; and
- (b) Conduct an inspection of the home as governed by KRS 199.8982.

(8) If the requirements have been met excluding the provisions of Section 5(3)(a) and (b) of this administrative regulation which shall be met within three (3) months of the application date, the home shall be certified and a certificate shall be issued for a two (2) year period.

(a) The certificate shall be displayed where parents can read it and shall contain:

- 1. The name and address of the provider;
- 2. Limit of children to be served;
- 3. Identification number; and
- 4. Effective and expiration dates.

(b) The certification shall be valid for the certified provider and the address listed. A change of location shall require a change of location application and inspection as specified in subsections (6) and (7) of this section.

(9) If the provider does not comply with the standards set forth in this administrative regulation, within three (3) months of the initial inspection, the application shall be denied.

(10) ~~The application for~~ Certification ~~process~~ shall be renewed ~~repeated~~ every two (2) years. The provider shall submit a certification renewal request ~~new application~~ and fee one (1) month prior to the expiration of the certification.

(11) A certified family child-care home shall not have a certification suspended or revoked for failure to comply with standards of this administrative regulation until after the expiration of a period not to exceed six (6) months from the date of the first official notice that the standards have not been met, except for conditions as governed by Section 3(2) of this administrative regulation.

Section 3. Denial, Suspension, or Revocation. (1) The cabinet shall review and may deny, suspend, revoke or refuse certification if the:

(a) Provider, an adult living in the provider's home or person under the supervision of the provider:

- 1. Has been convicted of a crime related to abuse, neglect or exploitation of a child or an adult; or
- 2. Refuses to provide a criminal records check;

(b) Provider or/and an adult living in the provider's home has abused, neglected or exploited a child or an adult;

(c) Provider fails to comply with certification standards set forth in this administrative regulation; or

(d) Provider has had a human services center or facility registration, certification, permit or license denied for reasons set forth in paragraph (a) or (b) of this subsection or revoked or voluntarily forfeits their certification, license, registration or permit after the department initiates denial for reasons set forth in paragraph (a) or (b) of this subsection or revocation action.

(2) If one (1) of the grounds for denial, suspension or revocation set forth in this section exists and the condition creates an immediate danger to the children in care, the department may suspend or revoke the certification immediately.

Section 4. Appeal. (1) If the cabinet denies, suspends, or revokes a certification, the cabinet shall notify the provider in writing stating the reasons for the adverse action and the provider's right of appeal.

(2) If the provider feels an action of the Department for Social Services is unfair, without reason, or unwarranted, the provider may appeal the action, in writing, to the Commissioner of the Department for Social Services, 6th Floor, 275 East Main Street, Frankfort, Kentucky 40621, within ~~twenty (20) fifteen (15)~~ days after receiving the notice of the action from the cabinet.

(3) Upon receipt of the request for hearing, the commissioner, or designee, shall notify the provider in writing within fifteen (15) days of the time and place of the hearing. The notice shall comply with KRS 13B.050(2) and (3). The commissioner, or designee, shall appoint a hearing officer to review the record, take additional evidence, and make recommendations upon the matter appealed.

(4) The hearing shall be conducted as governed by KRS 13B.080 and 13B.090. ~~[The hearing officer shall have authority to issue subpoenas to compel the attendance of witnesses and the production of documents to be used as evidence in hearings held pursuant to this section.]~~

(5) Based upon the record and upon the information obtained at the hearing, the hearing officer shall issue a recommended order to the secretary as governed by KRS 13B.110 which shall affirm or overturn the initial decision of negative action. ~~[The decision of the hearing officer shall be final.]~~ The provider shall be notified in writing of the decision of the hearing officer.

(6) If a provider whose certification has been suspended or revoked pursuant to Section 3(2) of this administrative regulation request a hearing, the department shall conduct a hearing within five (5) working days of receipt of the request. The hearing may be continued at the request of the provider.

(a) The sole issue of the hearing shall be whether one (1) or more grounds for suspension or revocation create an immediate danger to the children in care.

(b) The department shall render a decision within five (5) working days of the close of the hearing. If a decision is not rendered within five (5) working days of the close of the hearing, the provider shall have its certification returned and be allowed to operate pending action on other regulatory violations, if any.

(c) If the hearing officer decides within five (5) working days of the close of the hearing that one (1) or more of the grounds for suspension or revocation create an immediate danger to the children in care, the certification of the provider shall be suspended pending action of the department to accept the plan of correction or revoke the certification.

(7) If denial or revocation of certification is upheld, the commissioner's or designee's notification shall specify the date by which the family child care home shall close.

(8) A family child care home continuing to have four (4) to six (6) unrelated children in attendance after the closing date established by the commissioner shall be subject to legal action by the cabinet as provided by law.

Section 5. Standards for the Provider. (1) Qualifications of provider and staff:

(a) The provider shall be at least eighteen (18) years of age;

(b) The provider shall meet minimum requirements as governed by KRS 199.8982; and

(c) Beginning with the second year of operation, the provider shall participate annually in at least six (6) hours of training in child development approved by the Department for Social Services in compliance with the Guidelines for Obtaining Child Day Care Training

revised July 1993 incorporated by reference in 905 KAR 2:001.

(2) Staff-child ratio.

(a) A provider shall not provide care for more unrelated children than the number of children for which the family child care home is certified

(b) If more than four (4) infants, including the certified provider's own or related infants, are in care, the certified provider shall have an assistant present.

(c) A certified provider shall not care for more than six (6) children under the age of six (6) years old, including the certified provider's own or related children.

(d) The maximum number of children in the care of a certified provider, including the providers' own or related children, shall not exceed ten (10).

(3) Within three (3) months of the date of application for certification the provider shall:

(a) Demonstrate completion of training as governed by KRS 199.8982; and

(b) Obtain liability insurance in the amount of \$50,000 per occurrence.

(4) The provider shall be currently certified in:

(a) Infant and child cardiopulmonary resuscitation (CPR) by:

1. The American Red Cross;
2. The American Safety Council; or
3. The American Heart Association; and

(b) Infant and child first aid by:

1. The American Red Cross; or
2. The American Safety Council.

(c) This subsection shall be enforced beginning July 1, 1994. This subsection may be revised by administrative regulation to a date prior to July 1, 1994, contingent upon accessibility of training in all areas of the Commonwealth.

Section 6. The Family Child Care Home Environment. (1) The provider's home and play areas used for child care shall be safe and have adequate heat, light and ventilation.

(2) Each floor level used for child care shall have at least one (1) unblocked exit and at least one (1) smoke detector and fire extinguisher.

(3) The home shall be free of hazards and the following items shall be kept inaccessible to children:

- (a) Medications and drugs;
- (b) Cleaning supplies, poisons and insecticides;
- (c) Guns, knives, scissors and sharp objects;
- (d) Power tools, lawn mowers, hand tools, nails and other equipment;

(e) Matches, cigarettes, lighters and flammable liquids;

(f) Alcoholic beverages;

(g) Plastic bags; and

(h) Litter and rubbish.

(4) Electrical outlets not in use shall be covered.

(5) Electric fans, floor furnaces, or freestanding heaters or fi replaces, shall be out of the reach of children or have a safety guard on them to protect children from injury.

(6) The home shall have at least one (1) telephone in working order with a list of emergency numbers posted by each telephone, including numbers for the:

(a) Police;

(b) Fire station;

(c) Emergency medical care, rescue squad; and

(d) Poison control center.

(7) Equipment and toys shall be developmentally appropriate for the ages and number of children in care and be kept in good repair.

(8) Stairs and steps used for children in care shall be solid, safe and railed. Indoor stairs with more than two (2) steps shall be blocked if children in care are infants or toddlers.

(9) The provider shall maintain first aid supplies that are easily

accessible for use in an emergency, and shall wash superficial wounds with soap and water before bandaging. First aid supplies shall include a fully equipped first aid kit containing the following unexpired items:

- (a) Liquid soap;
- (b) Adhesive bandages;
- (c) Sterile gauze;
- (d) Medical tape;
- (e) Scissors;
- (f) Tweezers;
- (g) Thermometers;
- (h) Flashlight;
- (i) Cold pack; and
- (j) First-aid book. [approved by the American Red Cross.]

(10) Indoor areas, including furnishings, used for child care shall contain a minimum of thirty-five (35) square feet per child for play and for activities which meet the development needs of the children in care.

(11) Outdoor play areas shall be free of hazards and shall be fenced or the provider shall make provisions to assure that the children are under direct supervision in outdoor play areas.

(12) Outdoor stationary play equipment shall be securely anchored.

(13) Practice fire and tornado drills shall be conducted with the children at least monthly and documented.

(14) Health and sanitation for the child care environment shall require that the provider:

- (a) Have a home that is kept clean, uncluttered and free of insects and rodents;
- (b) Have a water supply properly located, protected, adequate, and of a source approved by the local health department;
- (c) Have bathrooms, including toilets, sinks, and potty chairs that are sanitary and in good working condition;
- (d) Assure that a covered, leak-proof container which is emptied and cleaned daily is available for soiled diapers;
- (e) Refrigerate perishable food and beverages. The refrigerator shall be in working order and maintain a temperature of forty-five (45) [forty (40)] degrees Fahrenheit or below and frozen food shall be kept at temperatures to remain frozen, except if being thawed for preparation or use;
- (f) Label bottles for each individual child, except if there is only one (1) bottle-fed child in care;
- (g) Serve only pasteurized milk or milk products;
- (h) Screen windows and doors used for ventilation;
- (i) Have household pets vaccinated for rabies;
- (j) Store indoor and outdoor garbage in waterproof containers with tight-fitting covers;
- (k) Provide adequate space for a rest-time for each child in care for more than four (4) hours. Individual linens shall be provided for each child and shall be changed at least weekly or if they become soiled or wet.

(15) Program for children. A plan for daily activities and routines shall be established.

(16) Children shall be released from the family child care home to:

- (a) The child's custodial parent;
- (b) The person designated in writing by the parent to receive the child; and
- (c) A person in an emergency designated over the telephone by the parent.

Section 7. To assure a healthy environment, the provider shall:

- (1) Maintain current immunizations certificates for each child within thirty (30) days of enrollment;
- (2) Maintain for each child a health and emergency information form completed and signed by the child's parent or guardian. The completed form shall be on file on the first day the child attends and

shall include the following information:

- (a) The child's name, address, and date of birth;
 - (b) The names of individuals to whom the child may be released;
 - (c) The general status of the child's health;
 - (d) Allergies or restrictions on the child's participation in activities with specific instructions from the child's parent or physician;
 - (e) The names and phone numbers of persons to be contacted in an emergency situation;
 - (f) The name and phone number of the child's physician and preferred hospital; and
 - (g) Authorization by the parent or guardian for the provider to seek emergency medical care in the parent's absence.
- (3) Provide a quiet, separate area which can be easily supervised for children too sick to remain with other children;
- (4) Prohibit prescription medications or aspirin to be administered to a child except as authorized by a licensed physician and with written daily request of the parent or guardian;
- (5) Administer nonprescription medication to a child only with written daily request of parent or guardian; and
- (6) The provider shall maintain a child care program which assures affirmative steps are taken to protect children from abuse or neglect as governed by KRS Chapter 620.

Section 8. Transportation. To assure the safety of children if transportation is provided or arranged by the provider, the provider shall:

- (1) Have written permission from a parent or guardian to transport his child;
- (2) Have a car or van equipped with seat belts which allow each child to be individually secured;
- (3) Require that each child shall have a seat, be individually seat-belted and remain seated while the vehicle is in motion. A child under forty (40) inches in height shall be transported restrained in a federally-approved motor vehicle safety seat in good repair;
- (4) Have a valid driver's license issued by the Division of Motor Vehicles;
- (5) Have emergency and identification information about each child in the vehicle whenever children are being transported; and
- (6) Conform to state laws pertaining to vehicles, drivers license and insurance as governed by KRS 281.600, 186.020 and Chapters 189 and 189A.
- (7) Never leave children in a vehicle unattended by an adult.
- (8) Never use the back of pickup trucks to transport children.

Section 9. Child Records. The provider shall not disclose or knowingly permit the use of information concerning the child or family directly or indirectly except to representatives of the Cabinet for Families and Children [Human Resources] or as governed by this administrative regulation.

Section 10. The program shall ensure ongoing communication with a child's parent by:

- (1) Developing written information about the service which specifies the charge for child care and the expected frequency of payment for the program;
- (2) Make available a copy of the certification standards to each parent;
- (3) Give each parent the name and address and telephone number of the cabinet, to register complaints if he believes the family child care home provider is not meeting the standards; and
- (4) Post and provide to each parent copies of children and parent rights pursuant to KRS 199.898.

Section 11. The provider shall comply with the following:

- (1) Swimming or wading pools on the premises shall be maintained and supervised when in use in order to safeguard the lives and health of the children.

(2) Wash hands with soap and water before and after diapering a child.

(3) Use sanitary procedures when preparing and serving food.

(4) Assure that children shall not share cups, eating utensils, wash cloths or towels.

(5) The provider or other persons in the home shall not be under the influence of alcohol or drugs while children are in care except those drugs prescribed by a physician.

(6) Prohibit smoking in the presence of children in care.

(7) In the absence of the provider, a substitute provider shall be physically present at the family child care home during hours of operation. The provider shall not be employed outside the home during regular hours of operation. Children are not permitted off the premises without the caregiver. An exception may be made for school-age children, as long as their whereabouts are known, and the parents have given written permission.

(8) An infant's formula shall be prepared and provided by the parent. An exception may be made for providers that provide formula as a fringe benefit to the parent.

(9) Infants in care shall be held during feeding and bottles shall never be propped.

(10) If overnight care is provided, the provider shall:

(a) Remain awake until every child in care is asleep;

(b) Sleep on the same level as infants and toddlers; and

(c) Provide comfortable, clean and safe bedding for each child.

(11) Serve meals which include a food from each of the four (4) basic food groups and snacks appropriate in amount and type of foods served for the ages of the children in care.

(12) Provide opportunities for outdoor play or fresh air.

(13) Be able to recognize symptoms of childhood illnesses.

(14) Visually supervise children who are awake and be able to respond to the children immediately.

(15) Be able to provide basic first aid.

(16) Allow parents to visit and observe the program during the hours of operation and communicate with each child's parent about his child's development, activities, likes and dislikes.

Section 12. Incorporation by Reference. (1) The DSS-78, Application for Family Child Care Certification, revised June 1996 [~~September 1993~~], and the DSS-79, Self Check List, revised September 1993, shall be herein incorporated by reference.

(2) Material incorporated by reference may be inspected or copied at the Department for Social Services, Cabinet for Human Resources Building, 6th Floor, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

VIOLA P. MILLER, Secretary and Acting Commissioner

APPROVED BY AGENCY: July 11, 1996

FILED WITH LRC: July 12, 1996 at 2 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact: Michael Cheek

(1) Type and number of entities affected: There are 605 currently certified family child care homes and 65 applicants requesting certification or any other entity requesting certification to operate a family child care home.

(2) Direct and indirect costs or savings on the: Direct and indirect savings to certified providers requesting renewal by eliminating the requirement for a criminal records check for the certified provider and all adults in the home, the tuberculosis test on the certified provider and the physician's statement on the certified provider.

(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 change.

(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 change.

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

1. First year following implementation: There will be a reduction in the amount of paperwork required by the certified provider with a direct and indirect savings thereto.

2. Second and subsequent years: There will be a reduction in the amount of paperwork required by the certified provider with a direct and indirect savings thereto.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There will be additional costs incurred to the agency through notification of certified providers and applicants of the amended standards and notification of the procedural changes required of DSS child care workers.

2. Continuing costs or savings: None after first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Additional paperwork and reporting requirements may be incurred by DSS child care workers through procedural changes needed to implement revised standards.

(4) Assessment of anticipated effect on state and local revenues: No change. There will not be any 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 of this administrative regulation. Federal funds through the Child Care and Development Block Grant (CCDBG).

(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 significant economic impact.

(b) Kentucky: There will not be a significant economic impact.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternate methods were not considered since the agency must have regulatory authority in order to effect a change on standards which govern the certification program.

(8) Assessment of expected benefits: It is necessary to file this administrative regulation by emergency in order to implement by 7-15-96 as required by KRS Chapter 13B. Less paperwork and a more streamlined method for certified providers to renew certification every two years.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: It is necessary to file this administrative regulation by emergency in order to implement by 7-15-96 as required by KRS Chapter 13B. There should not be any effect on the public health and environmental welfare of the child care provider or citizens of the Commonwealth through the implementation of the amended standards. It is necessary to file this administrative regulation by emergency in order to implement by 7-15-96 as required by KRS Chapter 13B.

(b) State whether a detrimental effect on environment and public health would result if not implemented: There should not be any effect on the public health and environmental welfare of the child care provider or citizens of the Commonwealth through the implementation of the amended standards. It is necessary to file this administrative regulation by emergency in order to implement by 7-15-96 as required by KRS Chapter 13B.

(c) If detrimental effect would result, explain detrimental effect: Not applicable. It is necessary to file this administrative regulation by emergency in order to implement by 7-15-96 as required by KRS Chapter 13B.

(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: These amendments to 905 KAR 2:100 further strengthen the DSS's mandate to protect and serve the children and families of the Commonwealth.

(11) TIERING: Is tiering applied? No. This regulation was not tiered as it implements: Upon adoption of 905 KAR 2:100E, all certified homes or applicants for certification shall be required to comply with the provisions of this administrative regulation statewide.

STATEMENT OF EMERGENCY

907 KAR 3:020E

This emergency administrative regulation is being promulgated to provide coverage and payments for targeted case management and rehabilitative services provided through an agreement with the state Title V agency, the Department of Health Services, for Medicaid eligible recipients. This action must be taken on an emergency basis to assure that medically necessary targeted case management and rehabilitative services are available to Medicaid recipients and to comply with the Budget Bill of the 1996 General Assembly with regards to the Department of Social Services funding through the Medicaid Program. Failure to enact this administrative regulation on an emergency basis would pose an imminent threat to the public health, safety or welfare of Medicaid recipients. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler.

PAUL E. PATTON, Governor
JOHN H. MORSE, Secretary

CABINET FOR HEALTH SERVICES

Department for Medicaid Services

907 KAR 3:020E. Coverage and payments for targeted case management and rehabilitative services provided through an agreement with the state Title V agency.

RELATES TO: KRS 205.560

STATUTORY AUTHORITY: KRS 194.050, 42 CFR 431.615, 440.130, 447 Subpart B, 42 USC 1396a-d, 1396s, EO 95-79

EFFECTIVE: June 28, 1996

NECESSITY AND FUNCTION: The Cabinet for Health Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. Executive Order 95-79, effective December 28, 1995, reorganized the Cabinet for Human Resources and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health Services. KRS 205.520 empowers the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation provides for coverage and payments for targeted case management and rehabilitative services provided through an agreement with the state Title V agency, the Department for Health Services.

Section 1. Definitions. (1) "Department" means the Department for Medicaid Services.

(2) "Rehabilitative services" means medical or remedial services

recommended by a physician or other licensed practitioner of the healing arts, within the scope of his practice under state law, for maximum reduction of physical or mental disability and restoration of a recipient to his best possible functional level.

(3) "Targeted case management services" is a set of activities which assist an individual in accessing needed medical, social, educational, and other support services.

(4) "Title V agency" means the Department for Health Services.

Section 2. Interagency Agreement. Services provided pursuant to this administrative regulation shall be in accordance with an inter-agency agreement between the department and the Title V agency.

Section 3. Coverage. Services provided shall be the following:

(1) Targeted case management services provided to the following:

(a) Medicaid-eligible children under the age of twenty-one (21) who meet the Department for Social Services' conditions and circumstances to be defined as a child in the custody of, or under the supervision of or at risk of being in the custody of the state; and

(b) Medicaid-eligible adults (persons twenty-one (21) years of age or older) who meet the Department for Social Services' conditions and circumstances to be defined as an adult in need of protective services.

(2) Rehabilitative services provided to Medicaid-eligible children under the age of twenty-one (21) who meet the Department for Social Services' conditions and circumstances as a child in the custody of, or under the supervision of or at risk of being in the custody of the state.

Section 4. Provider Qualifications and Conditions for Participation. The following provider qualifications and conditions for participation shall be applicable for services provided pursuant to this administrative regulation.

(1) The Title V agency may provide services directly or through agreement with the Department for Social Services as the state agency responsible for the provision of child and adult protective services, which includes the following:

(a) Children in the custody of the state; or

(b) Under the supervision of the state; or

(c) At risk of being in the custody of the state; and

(d) Adults who may receive protective services from the state as a component of the Title V Maternal and Child Health Program.

(2) Services which are provided by the Department for Social Services and its subcontractors shall meet appropriate requirements for the service, including as appropriate a plan of care, supervision, and reporting.

(3) Providers and subcontractors shall maintain records to document services provided for not less than five (5) years or until any audit dispute or issue is resolved if beyond five (5) years.

Section 5. Access to Records, Providers, and Recipients. (1) The treatment and financial records of providers and subcontractors shall be made available to the department upon request to verify services provided and the cost of the services.

(2) Inspection may be on site or through the submittal of written or electronic materials as determined to be appropriate by the department.

(3) The department shall have the right to interview all current or previous provider or subcontractor staff with regard to services provided pursuant to this administrative regulation and all recipients of targeted case management or rehabilitative services with regard to services received pursuant to this administrative regulation.

(4) Access to provider or subcontractor records relating to services provided shall be required for:

(a) Representatives of the United States Department of Health and Human Services;

(b) The state Attorney General's Office; and

(c) The state Auditor's Office.

(5) Providers or subcontractors shall be required to provide to the department and representatives of those agencies or offices referenced in this section of this administrative regulation, on request, any information maintained by the provider to document the service provided and any information regarding payments claimed by the provider for furnishing services.

Section 6. Reimbursement. The following reimbursement provisions shall be applicable:

(1) Payments shall be based on cost.

(2) An interim rate based on projected cost shall be used as necessary with a settlement to cost at the end of the state fiscal year.

(3) A billable unit of service shall include all services of that type (targeted case management or rehabilitative services) provided during the month.

Section 7. Incorporation by Reference of the Provider Manual. (1) "The Policies and Procedures Manual for Title V Services provided by the Department for Social Services," dated July 1996, shall be incorporated by reference in this administrative regulation.

(2) The manual shall be on file in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Third Floor East, Frankfort, Kentucky 40621.

(3) The manual shall be available for review during the normal business week, Monday through Friday, 8 a.m. through 4:30 p.m. (eastern time), excluding state holidays.

(4) Each participating in-state provider shall be provided one (1) copy of the manual and appropriate manual updates following their incorporation by reference. Additional copies may be obtained from the Department for Medicaid Services upon payment of an appropriate fee which approximates cost in accordance with KRS 61.872.

Section 8. Implementation Date. The provisions of this administrative regulation shall be applicable with regard to services provided on or after July 1, 1996.

JOHN H. MORSE, Commissioner, Secretary
APPROVED BY AGENCY: June 27, 1996
FILED WITH LRC: June 28, 1996 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ked Fitzpatrick or Karen Doyle

(1) Type and number of entities affected: Department for Social Services providing case management and rehabilitative services provided through an agreement with the state Title V agency, the Department for Health Services, to Medicaid recipients.

(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: To be determined after the notice of intent public hearing which will be held in accordance with KRS Chapter 13A requirement.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: To be determined after the notice of intent public hearing which will be held in accordance with KRS Chapter 13A requirement.

(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: Targeted case management, \$18 million (cost);

Rehabilitative services, \$6 million (cost).

2. Continuing costs or savings: Targeted case management, \$21 million (cost); Rehabilitative services, \$6 million (cost).

3. Additional factors increasing or decreasing costs: Number of Medicaid recipients needing targeted case management and rehabilitative services.

(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: 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: To be implemented statewide.

(b) Kentucky: To be determined after the notice of intent public hearing which will be held in accordance with KRS Chapter 13A requirement.

(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: To assure that medically necessary targeted case management and rehabilitative services are available to Medicaid recipients.

(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: May pose an imminent threat to the public health, safety, or welfare of Medicaid recipients.

(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? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FEDERAL MANDATE ANALYSIS COMPARISON

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

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

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

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation does not set stricter requirements.

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

ADMINISTRATIVE REGISTER - 423

STATEMENT OF EMERGENCY 909 KAR 1:005E

This emergency administrative regulation is necessary due to the abolishment of the Kentucky Health Policy Board by Senate Bill 343. As of July 15, 1996, the Kentucky Health Policy Board will no longer exist and administrative regulations prepared by the Kentucky Health Policy Board need to be repealed. This emergency administrative regulation will not be replaced by an ordinary administrative regulation.

PAUL E. PATTON, Governor
JACK B. HALL, Chairman

KENTUCKY HEALTH POLICY BOARD

909 KAR 1:005E. Repeal of 909 KAR Chapter 1.

RELATES TO: KRS Chapter 216B
STATUTORY AUTHORITY: SB 343, Sec. 64
EFFECTIVE: July 11, 1996

NECESSITY AND FUNCTION: This administrative regulation is necessary due to the abolishment of the Kentucky Health Policy Board by Senate Bill 343. The function of this administrative regulation is to repeal administrative regulations promulgated by the Kentucky Health Policy Board.

Section 1. The following administrative regulations are hereby repealed: 909 KAR 1:010, Kentucky Health Policy Board meetings, minutes and transactions; 909 KAR 1:021, State Health Plan; 909 KAR 1:040, Certificate of need process; 909 KAR 1:050, Certificate of need application fee schedule; 909 KAR 1:055, Certificate of need expenditure minimums; 909 KAR 1:060, Licensure hearings; 909 KAR 1:070, Data reporting by health care providers; 909 KAR 1:080, Accountable health plan certification; 909 KAR 1:090, Establishment of the Kentucky Risk Assessment and Risk Adjustment System; 909 KAR 1:100, Provider network certification; 909 KAR 1:200, Twenty-four (24) Hour Pilot Insurance Program.

JACK B. HALL, Chairman
APPROVED BY AGENCY: July 11, 1996
FILED WITH LRC: July 11, 1996 at 4 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack B. Hall

(1) Type and number of entities affected: All entities that operate health facilities, insurance companies, or provide health services. All persons in the Commonwealth who purchase health services or insurance.

(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: There is no anticipated impact on the cost of living and employment in any geographical area in the Commonwealth as a result of this regulation. No public comments have been received.

(b) Cost of doing business in the geographical areas in which the administrative regulation will be implemented, to the extent available from the public comment received: No comments have been received from the public indicating that the cost of doing business will be affected by this regulation. This regulation should not affect the cost of living.

(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 are anticipated.

2. Second and subsequent years: None are anticipated.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings:

1. First year: None

2. Continuing cost 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:

(8) Assessment of expected benefits: None

(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: 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? Tiering was not applied.

ADMINISTRATIVE REGISTER - 424

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY
AND REVIEWING SUBCOMMITTEE

COMPILER'S NOTE: The following administrative regulations were amended by the Administrative Regulation Review Subcommittee and the promulgating agency on July 1, 1996.

GENERAL GOVERNMENT CABINET
Kentucky Board of Dentistry
(As Amended)

201 KAR 8:121. Repeal of 201 KAR 8:120

RELATES TO: KRS 313.035

STATUTORY AUTHORITY: KRS 313.220

NECESSITY AND FUNCTION: KRS 313.035 authorizes the board to issue limited licenses for students and teaching to allow qualified individuals to practice dentistry in conjunction with programs of the dental school where the person is a student or full-time faculty member and to provide professional services only to patients of those programs. [KRS 313.035 permits the board to grant special (courtesy) licenses to graduates of approved dental schools in order to be employed in any of the state's dental or dental hygiene schools, as well as state, county and city health programs.] Therefore, this administrative regulation was superseded by KRS 313.035 and should be repealed.

Section 1. 201 KAR 8:120, Special licensure, is hereby repealed.

STEPHEN T. SCHULER, D.M.D., President
APPROVED BY AGENCY: March 9, 1996
FILED WITH LRC: May 10, 1996 at 1 p.m.

GENERAL GOVERNMENT CABINET
Kentucky Board of Dentistry
(As Amended)

201 KAR 8:150. Dental application; examination[~~application~~.]

RELATES TO: KRS 313.040

STATUTORY AUTHORITY: KRS 313.220

NECESSITY AND FUNCTION: KRS 313.220 requires the board to conduct the examinations of all applicants for a license and authorizes the board to promulgate administrative regulations relating to the practice of dentistry. This administrative regulation establishes the guidelines for filing the application form for licensure with the Board of Dentistry and establishes the guidelines for the examination for licensure. [Sets forth guidelines for filing of application by candidates for licensure [the clinical examination] and sets forth guidelines for examination.] [the manner in which the application is to be filed with the Kentucky Board of Dentistry.]

Section 1. (1) The [Applicants for any examination before the board will be given a number by the secretary and they shall be known to the other members of the board by number only; applicant's number must appear upon his or her questions and answers papers before turning in same to the examiners.

(2) application form for general practice of dentistry [hereto attached, shall be a part of this rule and] shall be filled out in its entirety by each applicant. The application form [all applicants; same] shall be executed and sworn to before a notary and returned

to the [secretary of the] Kentucky Board of Dentistry. [Applicants graduating during the present school year shall file their applications with the secretary of the board not less than thirty (30) days prior to the date of the examination. Applicants who shall have graduated in a school year prior to the date of the board examination will be required to file their application with the secretary of the board not less than sixty (60) days prior to the date of the examination.] The board shall reject any application that does not comply with the requirements of all applicable administrative regulations from 201 KAR Chapter 8 and KRS Chapter 313. [The board [secretary] shall reject any and all applications that are not properly filled out and sworn to and meet all requirements as provided in the rules of the board and KRS Chapter 313.]

(2) [(3)] The examination shall consist of two (2) parts: a written examination, and a clinical examination.

Section 2. Incorporation by Reference. (1) The "Application to Practice Dentistry" form, May 1996 edition, Kentucky Board of Dentistry, is incorporated by reference.

(2) It may be inspected, copied, or obtained at the Kentucky Board of Dentistry, 10101 Linn Station Road, Suite 540, Louisville, Kentucky 40223, Monday through Friday, 8 a.m. to 4:30 p.m. [Application to practice dentistry. A copy of this application may be obtained at the board office, 10101 Linn Station Road, Suite 540, Louisville, Kentucky 40223. Office hours are 8 a.m. to 4:30 p.m.]

[Application No. _____]

APPLICATION FOR EXAMINATION
before the
KENTUCKY BOARD OF DENTISTRY
FOR A LICENSE TO PRACTICE DENTISTRY
in the
COMMONWEALTH OF KENTUCKY

Examination Date _____

To the Kentucky Board of Dentistry:

I hereby apply for permission to take an examination at your next annual examinations to demonstrate my qualifications to practice dentistry in the Commonwealth of Kentucky. I enclose herewith the required fee of fifty (50) dollars (certified check or post office money order) and furnish below the information required by you, to which my affidavit is added at the end.

PHYSICAL DESCRIPTION

Name (Print in full) _____ Age in years _____
Date of Birth _____ Place of Birth _____
Present Residence _____
Race _____ Native of _____ Complexion _____
Color of Eyes _____ Color of Hair _____ Height _____
Stout _____ Medium _____ Thin _____ (check) Weight _____
Citizen of the United States? _____
By birth or naturalization? _____
If naturalized, give date and place of naturalization _____
Has surname ever been changed? _____
If so, give date and place _____
Give original surname _____

PREDENTAL EDUCATION

ADMINISTRATIVE REGISTER - 425

(Give title and location of the college of liberal arts and science in which you were prepared for the study of dentistry, the length of the course you pursued and the degree, if any, you secured. Append hereto a transcript of your pre-dental college record officially certified by the proper authority of that institution.)

DENTAL EDUCATION

(Fill out blanks indicated and append hereto a transcript of your record in dental school or college, officially certified by the proper authority of that institution.)

Dental School or College from which you graduated _____
Date of graduation _____ Degree received _____
Record of attendance in Dental School or College:

1st Yr.: From the _____ day of _____, 19____ to the _____ day of _____, 19____
2nd Yr.: From the _____ day of _____, 19____ to the _____ day of _____, 19____
3rd Yr.: From the _____ day of _____, 19____ to the _____ day of _____, 19____
4th Yr.: From the _____ day of _____, 19____ to the _____ day of _____, 19____

PRACTICE OF DENTISTRY

(Give below full account with dates and places of any previous practice of dentistry by you, either on your own account or in the employment of others.)

Date, number and sources of any previous license or licenses to practice dentistry in Kentucky or any other states or territory:

If you have ever been examined and refused a license, give full particulars:

If any dental license held by you has ever been cancelled or revoked in any state or territory, give full particulars:

I submit herewith a bust photograph of myself taken within the past six months which is certified by one of the following: The Dean of the dental school from which I graduated; the Secretary of the Board of Dental Examiners of the state in which I am now practicing; or the Secretary of the State or Local Dental Society of which I am a member.

(Attach photograph in space below.)

I hereby certify that the accompanying photograph is that of the person making this application for examination for licensure to practice dentistry.

PHOTO

Signature _____
Official Title _____

AFFIDAVIT

State of _____ }
County of _____ } ss.

On this _____ day of _____, 19____, personally appeared before me, _____, who being sworn, says that he is the person referred to in the foregoing application for admission to an examination to demonstrate his qualifications to practice dentistry in the Commonwealth of Kentucky; that the statements herein contained are strictly true in every respect; that he has never been convicted of a felony or a misdemeanor involving moral turpitude; that he is not addicted to the liquor or drug habit; that he has read and understands this affidavit; and that if this petition is granted and a license subsequently issued to him, he will comply with the laws governing the practice of dentistry in the Commonwealth of Kentucky and do his utmost to uphold and maintain the dental profession.

(Signature of applicant)

Signed and sworn to before me this _____ day of _____, 19____.

(Official designating officer administering oath)

INSTRUCTIONS

NOTE: This application, properly filled out and certified, together with the fee of fifty (50) dollars, must be in the hands of the Secretary of the Kentucky Board of Dentistry not less than (see below)* days before the examination. The application should be accompanied by a bust photograph of the applicant taken within six months of the date of the application and certified by an officer of the dental school from which he graduated, the Secretary of the Board of Dental Examiners of the state in which he may be practicing, or by an officer of a state or local dental society of which he may be a member.

*RECENT GRADUATES: Applicants graduating during the present school year must file their applications with the Secretary of the Board by April 1st. In the event an applicant fails to graduate after having filed his application, the full examination fee will be returned promptly.

*APPLICANTS IN PRACTICE: Applicants having graduated prior to the present school year are required to file their applications with the Secretary of the Board sixty (60) days in advance of the examination date. This is to allow ample time to check at the sources of the information given. It is required that you submit with this application letters of recommendation from the Secretary of your state or local district dental society; the Dean of the dental school from which you graduated; and the Secretary of the Board of Examiners in the state in which you are now located, attesting to your record as a practitioner in that state. The applicant should insert here the address to which correspondence from this Board is to be sent:

} Make all checks and money orders
} payable to:
} KENTUCKY STATE TREASURER
}

IMPORTANT: } Address all correspondence to and
} submit application and fee to:
} KENTUCKY BOARD OF DENTISTRY

ADMINISTRATIVE REGISTER - 426

} 2106 Bardstown Road
 } Louisville, Kentucky 40205

STEPHEN T. SCHULER, D.M.D., President
 APPROVED BY AGENCY: March 9, 1996
 FILED WITH LRC: May 10, 1996 at 1 p.m.

GENERAL GOVERNMENT CABINET Kentucky Board of Dentistry (As Amended)

201 KAR 8:260. Dental hygiene application; examination.

RELATES TO: KRS 313.300

STATUTORY AUTHORITY: KRS 313.270

NECESSITY AND FUNCTION: KRS 313.270 authorizes the board to promulgate administrative regulations relating to the practice of dental hygiene. KRS 313.300 requires written applications to the board in order to practice dental hygiene. This administrative regulation establishes the guidelines for filing the application form for licensure in dental hygiene and establishes the guidelines for the examination for licensure. [Sets forth guidelines for filing of application by candidates for (the clinical examination for) licensure in dental hygiene; and, sets forth guidelines for examination.] [the manner in which the application is to be filed with the Kentucky Board of Dentistry.]

Section 1. (1) The [Applicants for any examination before the board will be given a number by the secretary and they shall be known to the other members of the board by number only; applicant's number must appear upon his or her questions and answers papers before turning in same to the examiners.

(2) application form for the practice of dental hygiene [hereto attached, shall be a part of this rule and] shall be filled out in its entirety by each applicant. The application form [all applicants, same] shall be executed and sworn to before a notary and returned to the [secretary of the] Kentucky Board of Dentistry. [Applicants graduating during the present school year shall file their applications with the secretary of the board not less than thirty (30) days prior to the date of the examination. Applicants who shall have graduated in a school year prior to the date of the board examination will be required to file their application with the secretary of the board not less than sixty (60) days prior to the date of the examination.] The board shall reject any application that does not comply with the requirements of all applicable administrative regulations from 201 KAR Chapter 8 and KRS Chapter 313. [The board [secretary] shall reject any and all applications that are not properly filled out and sworn to and meet all requirements as provided in the rules of the board and KRS Chapter 313.]

(2) (3) The examination for licensure shall consist of two (2) parts: a written examination, and a clinical examination.

Section 2. Incorporation by Reference. (1) The "Application to Practice Dental Hygiene" form, May 1996 edition, Kentucky Board of Dentistry, is incorporated by reference.

(2) It may be inspected, copied, or obtained at the Kentucky board of Dentistry, 10101 Linn Station Road, Suite 540, Louisville, Kentucky 40223, Monday through Friday, 8 a.m. to 4:30 p.m. [Application to practice dentistry. A copy of this application may be obtained at the board office: 10101 Linn Station Road, Suite 540, Louisville, Kentucky 40223. Office hours are 8 a.m. to 4:30 p.m.]

[Application No. _____]

APPLICATION FOR EXAMINATION
 before the

KENTUCKY BOARD OF DENTISTRY FOR A LICENSE TO PRACTICE DENTAL HYGIENE in the COMMONWEALTH OF KENTUCKY

Examination Date _____

To the Kentucky Board of Dentistry:

I hereby apply for permission to take an examination at your next annual examinations to demonstrate my qualifications to practice dental hygiene in the Commonwealth of Kentucky. I enclose herewith the required fee of twenty-five (25) dollars (certified check or post office money order) and furnish below the information required by you, to which my affidavit is added at the end.

PHYSICAL DESCRIPTION

Name (Print in full) _____ Age _____ years
 Date of Birth _____ Place of Birth _____
 Present Residence _____
 Race _____ Native of _____ Complexion _____
 Color of Eyes _____ Color of Hair _____ Height _____
 Stout _____ Medium _____ Thin _____ (check) Weight _____
 Citizen of the United States? _____ By birth or naturalization? _____
 If naturalized, give date and place of naturalization: _____
 Has surname ever been changed? _____
 If so, give date and place _____
 Give original surname _____
 If married, give husband's full name and permanent address _____

PREPARATORY EDUCATION

(Give name and location of the high school from which you were graduated, and the name and location of any college attended, along with the course you pursued and the degree, if any, you secured. Append hereto a transcript of your high school and college records, officially certified by the proper authority of the institution concerned.)

Name of high school _____ Location _____
 Years attended _____ Date graduated _____
 Name of college _____ Location _____
 Years attended _____ Course pursued _____
 Degree secured _____ Date _____

EDUCATION IN DENTAL HYGIENE

(Fill out blanks indicated and append hereto a transcript of your record in school of dental hygiene officially certified by the proper authority of that institution.)

School of dental hygiene from which you graduated _____
 Date of graduation _____ Degree received _____
 Record of attendance in School of dental hygiene:

1st Yr.: From the _____ day of _____ 19__ to the _____ day of _____ 19__
 2nd Yr.: From the _____ day of _____ 19__ to the _____ day of _____ 19__
 3rd Yr.: From the _____ day of _____ 19__ to the _____ day of _____ 19__
 4th Yr.: From the _____ day of _____ 19__ to the _____ day of _____ 19__

PRACTICE OF DENTAL HYGIENE

ADMINISTRATIVE REGISTER - 427

(Give below full account with dates and places of any previous practice of dental hygiene by you, either on your own account or in the employment of others.)

Date, number and sources of any previous license or licenses to practice dental hygiene in Kentucky or any other states or territory:

If you have ever been examined and refused a license, give full particulars:

If any license to practice dental hygiene held by you has ever been cancelled or revoked in any state or territory, give full particulars:

I submit herewith a 2" x 2" photograph of myself taken within the past six months which is certified by one of the following: The Dean or director of the school of dental hygiene from which I graduated; the Secretary of the Board of Dental Examiners of the state in which I am now practicing.

(Attach photograph in space below.)

I hereby certify that the accompanying photograph is that of the person making this application for examination for licensure to practice dental hygiene.

PHOTO

Signature _____
Official Title _____

AFFIDAVIT

State of _____ }
County of _____ } ss.

On this _____ day of _____, 19____, personally appeared before me, _____, who being sworn, says that she is the person referred to in the foregoing application for admission to an examination to demonstrate her qualifications to practice dental hygiene in the Commonwealth of Kentucky; that the statements herein contained are strictly true in every respect; that she has never been convicted of a felony or a misdemeanor involving moral turpitude; that she is not addicted to the liquor or drug habit; that she has read and understands this affidavit; and that if this petition is granted and a license subsequently issued to her, she will comply with the laws governing the practice of dental hygiene in the Commonwealth of Kentucky and do her utmost to uphold and maintain the profession of dental hygienist.

(Signature of applicant)

Signed and sworn to before me this _____ day of _____, 19____.

(SEAL)

(Official designating officer administering oath)

INSTRUCTIONS

NOTE: This application, properly filled out and certified, together with the fee of twenty five (25) dollars, must be in the hands of the Secretary of the Kentucky Board of Dentistry not less than (see below)* days before the examination. The application should be accompanied by letters of recommendation from two reputable dentists of this state and a 2" x 2" photograph of the applicant taken within six months of the date of the application and certified by an officer of the school of dental hygiene from which she graduated, or the Secretary of the Board of Dental Examiners of the state in which she may be practicing.

*RECENT GRADUATES: Applicants graduating during the present school year must file their applications with the Secretary of the Board by April 1st. In the event an applicant fails to graduate after having filed her application, the full examination fee will be returned promptly.

*APPLICANTS IN PRACTICE: Applicants having graduated prior to the present school year are required to file their applications with the Secretary of the Board sixty (60) days in advance of the examination date. This is to allow ample time to check at the sources of the information given. It is required that you submit with this application letters of recommendation from the Dean or director of the school of dental hygiene from which you graduated; and the Secretary of the Board of Examiners in the state in which you now are located, attesting to your record as a practitioner in that state. The applicant should insert here the address to which correspondence from this Board is to be sent:

ADDRESS: _____

{ Make all checks and money orders pay-
{ able to:
{ KENTUCKY STATE TREASURER
{
IMPORTANT: { Address all correspondence to and submit
{ application and fee to:
{ KENTUCKY BOARD OF DENTISTRY
{ 2106 Bardstown Road
{ Louisville, Kentucky 40205

STEPHEN T. SCHULER, D.M.D., President
APPROVED BY AGENCY: March 9, 1996
FILED WITH LRC: May 10, 1996 at 1 p.m.

GENERAL GOVERNMENT CABINET
Kentucky Board of Dentistry
(As Amended)

201 KAR 8:330. Hygienists' temporary retirement; reinstatement.

RELATES TO: KRS 313.305, 313.270 [313.260]

STATUTORY AUTHORITY: KRS 313.270 [313.260]

NECESSITY AND FUNCTION: KRS 313.270 authorizes the board to promulgate administrative regulations necessary to carry out the provisions of KRS 313.260 to 313.350, the dental hygiene laws. This administrative regulation establishes the procedure for temporarily retiring the license of a dental hygienist and the procedure for reinstating a license that has been retired. [Permits dental hygienists to retire their license when no longer actively engaged in the practice of dental hygiene; sets forth guidelines for retirement of such license; sets forth guidelines for suspension of dental hygiene license if not renewed by December 31 (March 1) of each year.]

Section 1. ~~[(4)]~~ Any licensed dental hygienist who desires temporarily to retire from practice and who has given the board notice in writing to that effect, shall be granted ~~[such a]~~ retirement. ~~[Such]~~ A license shall be reinstated upon request and after payment of accumulated renewal fees and cost of reinstatement.

~~[(2) Any license granted by the board shall be suspended if the holder fails to secure the renewal certificate by December 31 (March 1) of each year, but any license thus suspended may be restored by the board upon the payment (to the secretary-treasurer) of a reinstatement fee of twenty-five (25) dollars within one (1) year after the suspension.]~~

STEPHEN T. SCHULER, D.M.D., President
APPROVED BY AGENCY: March 9, 1996
FILED WITH LRC: May 10, 1996 at 1 p.m.

**GENERAL GOVERNMENT CABINET
Board of Embalmers and Funeral Directors
(As Amended)**

201 KAR 15:010. Definitions.

RELATES TO: KRS 316.030(6)(c), (7), 316.150(3)(b), (c)
~~[316.040, 316.040, 316.090]~~

STATUTORY AUTHORITY: KRS 316.210(1) ~~[(4)]~~

NECESSITY AND FUNCTION: This administrative regulation defines terms used in KRS 316.030 and 316.150, [throughout KRS Chapter 316 and the administrative regulations governing the Kentucky Board of Embalmers and Funeral Directors.]

Section 1. "Full-time" means at least forty (40) hours per week under the personal supervision of a licensed embalmer or licensed funeral director and shall not include time spent "on call". [Definitions. (1) "All his working hours" [for an apprentice means regular employment in a licensed funeral establishment in this state. Regular employment shall involve at least forty (40) working hours per week to be accumulated under actual working conditions and under the personal supervision of a licensed embalmer or [and] licensed funeral director holding a valid Kentucky license. Employment shall be regular and steady employment and shall not be secondary to any other employment or educational pursuit. Working hours shall not include time spent by an apprentice "on call".]

~~[(2) "Dishonest dealings" means any statement or act by a licensee which demonstrates a lack of integrity.~~

~~[(3) "Fraudulent dealings" means any statement or act by a licensee that is a violation of any state or federal law governing funeral directing or embalming practices.]~~

Section 2. "Operating" [(4) "Operation of"] a funeral establishment means the management of a funeral establishment including ~~[but not limited to:]~~ the daily activities of funeral directing, embalming, bookkeeping, and supervision of employees.

~~[(5) "Unprofessional dealings" means any statement or act by a licensee which is unfair, false, misleading, or deceptive to the public.]~~

Section 3. 201 KAR 15:060, Annual license renewal, late renewal, and reinstatement, is hereby repealed.

Section 4. 201 KAR 15:100, Schools recognized by the board, is hereby repealed.

JOHN G. BARKER, President
APPROVED BY AGENCY: May 1, 1996
FILED WITH LRC: May 13, 1996 at 2 p.m.

**GENERAL GOVERNMENT CABINET
Board of Embalmers and Funeral Directors
(As Amended)**

201 KAR 15:050. Apprenticeship requirements.

RELATES TO: KRS 316.030(3)(e), (4)(d), (8) ~~[316.040, 316.090]~~

STATUTORY AUTHORITY: KRS 316.210(1) ~~[(4)]~~

NECESSITY AND FUNCTION: KRS 316.030(3)(e) and (4)(d) require an applicant for an embalmer's license or a funeral director's license to serve an apprenticeship under the supervision of a Kentucky-licensed embalmer or funeral director. KRS 316.030(8) requires an applicant to file sworn statements semiannually during the apprenticeship. [The necessity of promulgating this administrative regulation is to comply with the provisions of KRS Chapter 13A.] The function of this administrative regulation is to establish the time for filing the sworn statements and the additional information required in the sworn statements. [requirements for apprentices seeking to qualify for licensure as an embalmer or funeral director.]

Section 1. An applicant serving an apprenticeship shall file the sworn statements required by KRS 316.030(8) [(4)] on or before May 1 and November 1 of each year relating to [every registered apprentice shall file with the board a statement of the training the apprentice has received during] the six (6) month period ending with the preceding middle of April or middle of October respectively, [on a form available from the board.

~~[(2) Failure of the apprentice to timely file a completed form with the board in compliance with this administrative regulation and KRS 316.040 may, in the discretion of the board, cause the forfeiture of the apprenticeship served during the reportable period.~~

~~[(3) Failure of the apprentice to have all report forms completed and filed with the board at the time of making application for examination shall disqualify the applicant from taking the embalmer and funeral director examinations.]~~

Section 2. The sworn statements by the applicant serving an apprenticeship shall include [apprenticeship report forms shall require the apprentice to provide] the following information:

~~[(1) [The name of at least one (1) professional magazine read by the apprentice each month;~~

~~[(2) The name of at least one (1) textbook studied by the apprentice during each six (6) month period;~~

~~[(3) An attached review written by the apprentice of at least one (1) textbook studied by the apprentice during each six (6) month period;~~

~~[(4) The names and dates [number] of funerals [services] in which the applicant for a funeral director's license [apprentice funeral director] assisted in managing during each six (6) month period;~~

~~[(2) [(6)] The names and dates [number] of embalming cases in which the applicant for an embalmer's license [apprentice embalmer] assisted [with the care and preparation] during each six (6) month period; and [and]~~

~~[(3) [(6)] The names of the service items in which the applicant [apprentice] assisted during each six (6) month period. [;]~~

Section 3. [(4)] With the initial sworn statement, an applicant shall file a [attached] report written by the applicant summarizing [en] the requirements of KRS Chapter 316 and the administrative regulations promulgated pursuant to KRS Chapter 316. [and]

Section 4. [(6)] With subsequent sworn statements, an applicant shall file a [attached] report written by the applicant on an article or a book related to embalming or funeral directing read by the applicant during the six (6) month period.

~~[Section 3. (1) The apprenticeship report forms provided by the~~

ADMINISTRATIVE REGISTER - 429

~~board to the apprentice shall be accompanied by a written explanation of the training program to ensure that the apprentice and the sponsoring funeral director and embalmer fully understand the objectives of the training program.~~

~~(2) The report forms filed by each apprentice shall be reviewed by the board to determine whether the training was adequate and in conformity with the requirements of KRS Chapter 316 and this administrative regulation.]~~

JOHN G. BARKER, President

APPROVED BY AGENCY: May 1, 1996

FILED WITH LRC: May 13, 1996 at 2 p.m.

GENERAL GOVERNMENT CABINET Board of Embalmers and Funeral Directors (As Amended)

201 KAR 15:080. Complaints of violations.

RELATES TO: KRS 316.150

STATUTORY AUTHORITY: KRS 316.210(1) [(4)]

NECESSITY AND FUNCTION: KRS 316.150 authorizes [permits] the board to take disciplinary action against the license of an embalmer, a funeral director, or a funeral establishment or against the registration of an apprentice for violations of KRS Chapter 316. [The necessity of promulgating this administrative regulation is to comply with the provisions of KRS Chapter 13A.] The function of this administrative regulation is to establish the procedure for filing complaints of violations with the board. [of KRS Chapter 316 and the administrative regulations promulgated pursuant to KRS Chapter 316 with the Kentucky State Board of Embalmers and Funeral Directors.]

Section 1. Complaint. (1) A complaint that an embalmer, a funeral director, a funeral establishment, or an apprentice [a person] (respondent) has violated the provisions [failed or refused to obey the requirements] of KRS Chapter 316 [or the administrative regulations of the board] shall be made in writing to the board.

(2) The complaint shall be signed by the person (complainant) making the complaint.

(3) The complainant need not be a licensed embalmer or funeral director.

Section 2. Notice to Respondent. (1) The board shall [may] send a notice with a copy of the complaint to the respondent requesting a written response [reply] to the complaint.

(2) The [Upon request,] respondent shall file a written response [reply] to the complaint with the board within twenty (20) days after receipt of notice of the complaint.

[(3) Failure of the respondent to file a timely reply to the complaint shall constitute a violation of a board order and an administrative regulation of the board and shall be grounds for disciplinary action under KRS 316.150(1)(g).]

Section 3. Investigation of Complaint. (1) The board may, if it deems appropriate, assign one (1) or more persons to conduct an investigation of the facts alleged in a complaint and submit a report to the board.

(2) The board may, at any time, conduct an investigation on its own initiative without receipt of a written complaint if the board has reason to believe that there may be a violation of KRS Chapter 316 [or the administrative regulations of the board].

(3) The board may dismiss a complaint at any time if the board determines that the facts stated in the complaint, or facts known to the board after investigation, fail to warrant disciplinary action. The board shall notify the complainant and the respondent in writing if it dismisses the complaint. [establish a violation of KRS Chapter 316 or

the administrative regulations of the board.]

JOHN G. BARKER, President

APPROVED BY AGENCY: May 1, 1996

FILED WITH LRC: May 13, 1996 at 2 p.m.

GENERAL GOVERNMENT CABINET Board of Embalmers and Funeral Directors (As Amended)

201 KAR 15:090. Hearings.

RELATES TO: KRS Chapter 13B, 316.155

STATUTORY AUTHORITY: KRS 13B.170, 316.210(1) [(4)]

NECESSITY AND FUNCTION: KRS 316.155 requires the board to conduct hearings in accordance with KRS Chapter 13B. KRS 13B.170 authorizes [permits] an agency to promulgate by administrative regulation supplemental procedures relating to hearings. [This administrative regulation is necessary to comply with KRS 13A.100 which requires that the board prescribe procedures to be utilized in the conduct of hearings by the board.] The function of this administrative regulation is to establish supplemental [hearing] procedures relating to hearings.

Section 1. An [Any] attorney representing a party before the board shall file a written notice of entry of appearance with the board before practicing in a matter before the board. [A party may:

(1) Represent himself; or

(2) Be represented by an attorney.]

Section 2. A subpoena may be served by a [any] person over eighteen (18) years of age or by certified mail, return receipt requested. [Presiding Officer. (1) The presiding officer shall be:

(a) The president of the board; or

(b) Any person designated by the chairman to serve as the presiding officer.

(2) The presiding officer may:

(a) Issue subpoenas;

(b) Authorize the taking of depositions;

(c) Require production of documents;

(d) Administer oaths;

(e) Examine witnesses;

(f) Render decisions on motions, requests, or other matters that do not result in a final disposition of the complaint;

(g) Receive evidence; and

(h) Take other action required in the conduct of hearings.]

Section 3. (1) At the board's discretion, a [the] hearing shall occur before only a hearing officer or before the board with a hearing officer. [A presiding officer or board member may be disqualified for:

(a) Bias or prejudice;

(b) Conflict of interest;

(c) Violation of the provisions of statutes or administrative regulations governing board hearings; or

(d) Other causes for which a judge may be disqualified.]

(2) If a [the] hearing occurs before the board with a hearing officer, the:

(a) Board shall deliberate on the matter in closed session at the conclusion of the hearing;

(b) [The] Hearing officer may be present during the board's deliberations and shall advise the board about legal issues and legal conclusions supported by the board's factual findings; and

(c) [but shall have no vote in the deliberations. The decision of the board shall be by majority vote. The] Hearing officer shall draft the board's findings of fact, conclusions of law, and final order consistent with the board's decision [deliberations] for the board's approval at

the next board meeting or as soon thereafter as directed by the board. ~~[(a) A party may make a written motion to disqualify a presiding officer or board member upon:~~

1. Receipt of notice of the identity of the presiding officer; or
 2. Discovery of facts establishing grounds for disqualification of the presiding officer or board member.
- (b) The motion shall state the facts or reasons supporting it.]

Section 4. Upon request, with the exception of a party or an investigator retained by the board, the hearing officer may exclude witnesses from the hearing so that they may not hear the testimony of the other witnesses~~], but a party or the board's investigator may not be excluded].~~ [Evidence. (1) Formal rules of evidence shall not apply.

- (2) The presiding officer may exclude evidence that is:
 - (a) Irrelevant;
 - (b) Immaterial;
 - (c) Unduly repetitious; or
 - (d) Excludable on:
 1. Constitutional or statutory grounds; or
 2. The basis of evidentiary privilege recognized in the courts of the Commonwealth.
- (3) Testimony or other evidence may be admitted if it is:
 - (a) Based on facts; and
 - (b) Commonly relied upon by reasonably prudent persons.
- (4) Hearsay evidence, including affidavits, may be admitted for the purpose of supplementing other relevant evidence.
- (5) The presiding officer may admit party or witness testimony taken by deposition if:
 - (a) A party or witness is unable to attend through no fault of his own; and
 - (b) The opposing party has had a full opportunity to cross-examine the party or witness.
- (6) Evidence may be received in written form if it will:
 - (a) Expedite the hearing; and
 - (b) Not substantially prejudice the interest of a party.
- (7) Official notice may be taken of:
 - (a) A fact that would be judicially noticed in the courts of the Commonwealth;
 - (b) The record of other proceedings before the board;
 - (c) Technical or scientific matters within the specialized knowledge of the board; and
 - (d) Codes or standards that have been adopted by:
 1. An agency of the United States, the Commonwealth, or another state; or
 2. A nationally recognized organization or association that has been incorporated by reference as provided by KRS Chapter 13A.]

Section 5. As determined by the hearing officer or by the board, its president, or other designated board member, continuances of hearings may be granted upon good cause shown. ~~[Separation of Functions. A person shall not participate as a board member in the adjudication of a matter, or serve as a presiding officer of a hearing, or assist or advise a presiding officer in a hearing, if he has served as an investigator, prosecutor, or complainant with regard to the subject matter of the hearing.]~~

Section 6. (1) The hearing officer or the board may refer a matter [Any matter may be referred] to mediation with or without the consent of the parties or counsel.

(2) [No] Statements or admissions made solely during mediation shall not be admitted into evidence during a hearing. ~~[Procedure at Hearing. A hearing shall proceed as follows unless altered by the presiding officer:~~

- (1) Opening statements by:
 - (a) Board or its counsel; and
 - (b) Respondent or respondent's counsel.

(2) Board presentation of:

- (a) Witnesses; and
- (b) Evidence.

(3) Respondent's presentation of:

- (a) Witnesses; and
- (b) Evidence.

(4) Closing arguments by:

- (a) Board or its counsel; and
- (b) Respondent or respondent's counsel.

(5) ~~The presiding officer may require parties to submit legal memoranda in lieu of opening statements or closing arguments.~~

Section 7. Posthearing Procedure. (1) If the hearing has not been conducted by the board, the presiding officer shall prepare and submit to the board findings of fact, conclusions of law, and recommended order.

(2) A copy of the findings of fact, conclusions of law, and recommended order, or decision if the board has conducted the hearing, shall be mailed to all parties of record.

(3)(a) If the hearing was not conducted by the board, a party may file exceptions to the presiding officer's findings of fact, conclusions of law, and recommended order within fifteen (15) days of their submission to the board.

(b) If the hearing was conducted by the board, a party may not file exceptions to the board's findings of fact, conclusions of law, and order.

(4) The board may:

- (a) Adopt the findings of fact, conclusions of law, and recommended order of the presiding officer;
- (b) Prepare its own findings of fact, conclusions of law, and order;
- (c) Remand for further action by the presiding officer; or
- (d) Take any action it deems necessary to resolve the issues raised by the hearing.

(5) The decision of the board shall:

- (a) Be in writing; and
- (b) Contain a statement of its:
 1. Findings of fact;
 2. Conclusions of law; and
 3. Order.]

Section 7. This administrative regulation shall expire on adjournment of the next regular session of the General Assembly.

JOHN G. BARKER, President

APPROVED BY AGENCY: May 1, 1996

FILED WITH LRC: May 13, 1996 at 2 p.m.

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

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

RELATES TO: KRS 150.025, 150.170, ~~[150.175, 150.340, 150.360,]~~ 150.370, 150.390~~[-150.395,]~~ ~~[150.411, 150.4111,]~~ ~~[150.990]~~

STATUTORY AUTHORITY: KRS ~~[150.015,]~~ 150.025, 150.170, ~~[150.175,]~~ 150.390~~[-150.990]~~

NECESSITY AND FUNCTION: KRS 150.025 authorizes the department to promulgate administrative regulations relating to game and fish, including seasons and limits. This administrative regulation establishes [To establish] deer and turkey hunting seasons on federal areas. This amendment is necessary to establish consistent season frameworks for federal areas, to allow the taking of fallow deer at Land Between the Lakes, and to change tagging

requirements at Reelfoot National Wildlife Refuge. [hunting dates for these areas, and to remove extraneous subject matter which the department does not regulate, to remove references to areas now included in 301 KAR 2:078, and to meet the formatting and language requirements of KRS Chapter 13A.]

Section 1. General Requirements. (1) Unless otherwise stipulated in this administrative regulation, the provisions of 301 KAR 2:172 and 301 KAR 2:140 apply.

(2) On the areas listed in this administrative regulation, hunters shall:

- (a) Obtain ~~[appropriate]~~ permission to hunt, in the form of area permits, before hunting.
- (b) Not hunt deer or turkey except on assigned hunting dates.
- (c) Remain in assigned areas.
- (d) Unless exempted by KRS 150.170~~[(3) through (8)]~~, have in their possession the signature portion of a valid deer or turkey permit.
- (e) Unless otherwise specified in this administrative regulation, tag deer with area tags issued on the area in lieu of the state deer tag.
- (f) Keep the area tag attached to the deer until the carcass is processed.

(3) Hunters may obtain specific information about application procedures and deadlines, permit fees, or other hunting requirements from the appropriate federal agency.

Section 2. Land Between the Lakes (1) Deer archery, quota and youth quota hunts: antlered or antlerless white-tailed or fallow deer as specified on permit [any white-tailed deer] on assigned areas and dates between [the last Saturday in] September 15 and January 15.

(2) A [Quota hunt: one (1) white-tailed deer, antlered or antlerless as specified on permit, on assigned areas and dates between October 1 and January 15.

~~(3) Quota youth hunt: one (1) white-tailed deer, antlered or antlerless as specified on permit, on assigned areas and dates between October 1 and January 15.~~

~~(4) person[s] shall not take more than:~~

~~(a) [In 1996:~~

~~1. Two (2) deer per season;~~

~~2. One (1) deer during quota hunts.~~

~~(b) In 1996 and subsequent years:~~

~~1. Two (2) deer during archery hunts; and~~

~~(b) [2.] One (1) deer during quota hunts.~~

~~(3) [(6)] Turkey archery hunts: one (1) turkey of either sex during deer archery hunt.~~

~~(4) [(6)] Quota hunters shall:~~

~~(a) Apply in advance at Land Between the Lakes.~~

~~(b) check in prior to hunting.~~

~~(5) [(7)] Persons shall tag:~~

~~(a) Harvested turkeys with the appropriate state turkey tag.~~

~~(b) Harvested deer with either:~~

~~1. The appropriate state antlered or antlerless state deer tag; or~~

~~2. A wildlife management area tag issued by Land Between the Lakes.~~

~~(6) [(9)] Persons harvesting deer or turkey shall take the entire or field-dressed carcass to a Land Between the Lakes check station before leaving Land Between the Lakes.~~

~~(7) [(9)] Persons shall not hunt deer or turkey with crossbows.~~

Section 3. Fort Campbell. (1) Youth, gun or archery deer hunts: antlered or antlerless [any] deer as specified on permit on assigned areas and dates between September 15 and January 15.

(2) [Deer gun or archery hunts. Any deer on assigned areas and dates from September 1 through January 15.

~~(3) Turkey, either sex:~~

~~(a) Deer archery hunters may take turkey.~~

~~(b) Firearm season: on assigned areas and dates between October 15 and December 31.~~

(c) Turkeys taken at Fort Campbell are bonus birds.

~~(3) [(4)] White turkey.~~

(a) Hunters may take one (1) white turkey of either sex during open Fort Campbell hunting seasons.

(b) Statewide and post limits and tagging requirements do not apply to white turkey.

Section 4. Fort Knox. ~~[(4)] Deer gun or archery hunts: antlered or antlerless [any] deer as specified on permit~~ on assigned areas and dates between September 15 ~~[(30)]~~ and January 15 ~~[(December 31)].~~

~~[(2) Deer gun hunt: any deer on assigned areas and dates between November 1 and January 31.]~~

Section 5. Bluegrass Ordnance Depot Activity. ~~[(4)] Deer gun or archery hunts: antlered or antlerless deer as specified on permit~~ on assigned areas and dates between September 15 and January 15. ~~[during the month of October and November on assigned areas and dates.]~~

~~[(2) Deer gun hunts: during the month of November and December on assigned areas and dates.]~~

Section 6. Reelfoot National Wildlife Refuge. (1) Archery or quota hunts: antlered or antlerless deer as specified on permit on assigned areas and dates between September 15 and January 15. [any deer first Saturday in November for two (2) consecutive days.]

~~(2) [Archery hunt: any deer, the first Monday in October for fourteen (14) consecutive days.~~

~~(3) Bag limits. The refuge bag limit is four (4) deer. [No] More than two (2) deer shall not be taken by gun.~~

(3) Tagging deer.

(a) Quota hunters shall tag deer with a tag issued by Reelfoot National Wildlife Refuge.

(b) Archery hunters shall tag deer with the appropriate state tag.

~~(4) [Gun deer hunters shall check in at designated refuge check stations.~~

~~(5) Deer hunters shall check harvested deer at the nearest open state check station.~~

C. THOMAS BENNETT, Commissioner

ANN R. LATTA, Secretary

MIKE BOATWRIGHT, Chairman

APPROVED BY AGENCY: March 1, 1996

FILED WITH LRC: May 14, 1996 at 1 p.m.

**JUSTICE CABINET
Department of Corrections
(As Amended)**

501 KAR 6:060. Northpoint Training Center.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the commissioner to promulgate 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. This administrative regulation establishes the policies and procedures for the Northpoint Training Center.

Section 1. (1)(a) Northpoint Training Center policies and procedures, May 13 [March 13], 1996, are incorporated by reference.

(b) It may be inspected, copied, or obtained at the Office of the General Counsel, Department of Corrections, State Office Building,

ADMINISTRATIVE REGISTER - 432

501 High Street, Frankfort, Kentucky 40601, Monday through Friday,
8 a.m. to 4:30 p.m.

(2) Northpoint Training Center policies and procedures include:

NTC 01-05-01	Extraordinary Occurrence Reports	NTC 13-17-01	Inmates Assigned to Health Services <u>(Amended 5/13/96)</u>
NTC 01-10-01	Legal Assistance for Corrections Staff	NTC 13-19-01	Mental Health Care Program <u>(Amended 5/13/96)</u>
NTC 01-11-01	Political Activities of Merit Employees	NTC 13-19-03	Suicide Prevention and Intervention Program <u>(Amended 5/13/96)</u>
NTC 01-15-01	Establishment of the Warden as Chief Executive Officer	NTC 13-20-01	Infectious Disease
NTC 01-17-01	Relationships with Public, Media and Other Agencies	NTC 13-20-02	Infection Control
NTC 02-02-02	Warden's Participation in the Agency Budgeting Process	NTC 13-20-03	Disposal of Biohazard Waste <u>(Amended 5/13/96)</u>
NTC 02-03-01	Accounting for Appropriations and Expenditures of Funds	NTC 13-21-01	Vision Care and Optometry Services <u>(Amended 5/13/96)</u>
NTC 02-04-01	Internal Control and Monitoring of Accounting Procedures	NTC 13-22-01	Informed Consent <u>(Amended 5/13/96)</u>
NTC 02-07-02	Chapel Fund	NTC 13-23-01	Special Needs Inmates <u>(Amended 5/13/96)</u>
NTC 02-08-01	Inmate Canteen <u>(Amended 5/13/96)</u>	NTC 14-01-01	Legal Services Program <u>(Amended 5/13/96)</u>
NTC 02-10-01	Insurance Coverage	NTC 14-01-02	Receiving, Viewing, Handling and Storage of Video Tapes
NTC 02-12-01	Inmate Accounts <u>(Amended 5/13/96)</u>	NTC 14-02-01	Inmate Grievance Procedure
NTC 04-01-01	Training and Staff Development	NTC 14-03-01	Inmate Rights and Responsibilities <u>(Amended 5/13/96)</u>
NTC 04-04-01	Firearms and Chemical Agents Training	NTC 14-03-02	Board of Claims <u>(Amended 5/13/96)</u>
NTC 06-01-01	Offender Records	NTC 15-01-01	Restoration of Forfeited Good Time <u>(Amended 5/13/96)</u>
NTC 06-01-02	Records - Release of Information <u>(Amended 5/13/96)</u>	NTC 15-02-01	Due Process/Disciplinary Procedures
NTC 06-01-03	Taking Offender Record Folders onto the Yard	NTC 15-02-02	Extra Duty Assignments <u>(Amended 5/13/96)</u>
NTC 08-05-01	The Fire and Safety Officer	NTC 15-02-03	Hearing Officer <u>(Amended 5/13/96)</u>
NTC 08-05-02	Fire Procedures	NTC 15-03-01	Rules for Inmates Assigned to Outside Detail
NTC 08-05-03	Fire Prevention	NTC 15-03-02	Rules and Regulations for General Population Dormitories
NTC 08-05-04	Storage of Flammables and Dangerous Chemicals and Their Use <u>(Amended 3/13/96)</u>	NTC 15-04-01	Inmate Identification <u>(Amended 5/13/96)</u>
NTC 08-07-01	Safety Standards <u>(Amended 3/13/96)</u>	NTC 16-01-01	Mail Regulations
NTC 10-01-01	Special Management Unit	NTC 16-02-01	Visiting
NTC 10-03-01	Protective Custody	NTC 16-02-02	Extended and Special Visits
NTC 11-03-01	Food Services: General Guidelines	NTC 16-02-03	Honor Dorm and Outside Detail Dorm Visiting
NTC 11-04-01	Food Service: Meals <u>(Deleted 5/13/96)</u>	NTC 16-02-04	Controlled Visitation
NTC 11-04-02	Menu, Nutrition and Special Diets	NTC 16-03-01	Inmate Furloughs <u>(Amended 5/13/96)</u>
NTC 11-05-02	Health Standards and Regulations for Food Service Employees	NTC 16-05-01	Telephone Use and Control <u>(Amended 5/13/96)</u>
NTC 11-06-01	Inspection and Sanitation	NTC 17-01-01	Personal Property Control <u>(Amended 5/13/96)</u>
NTC 11-07-01	Purchasing and Storage of Food Products	NTC 17-01-02	Authorized Inmate Personal Property <u>(Amended 5/13/96)</u>
NTC 12-01-01	Institutional Inspection <u>(Amended 3/13/96)</u>	NTC 17-01-03	Unauthorized Inmate Property <u>(Amended 5/13/96)</u>
NTC 12-02-01	Personal Hygiene for Inmates; Clothing and Linens <u>(Amended 3/13/96)</u>	NTC 17-01-04	Disposition of Unauthorized Property <u>(Amended 5/13/96)</u>
NTC 12-02-02	Issuance of Personal Hygiene Products <u>(Amended 3/13/96)</u>	NTC 17-01-05	State Issue and Required Inmate Clothing
NTC 12-07-01	Grooming and Hair Care Standards <u>(Amended 3/13/96)</u>	NTC 17-03-01	Assessment and Orientation <u>(Amended 3/13/96)</u>
NTC 13-01-01	Emergency Medical Care Plan <u>(Amended 3/13/96)</u>	NTC 18-01-01	Parole Progress Report <u>(Amended 5/13/96)</u>
NTC 13-01-02	Emergency and Specialized Health Services <u>(Amended 3/13/96)</u>	NTC 18-02-01	Classification <u>(Amended 5/13/96)</u>
NTC 13-02-01	Administration and Authority for Health Services <u>(Amended 3/13/96)</u>	NTC 18-02-02	Classification - 48 Hour Notification <u>(Amended 5/13/96)</u>
NTC 13-03-01	Sick Call and Pill Call <u>(Amended 5/13/96)</u>	NTC 18-03-01	Special Notice Form <u>(Amended 5/13/96)</u>
NTC 13-04-01	Utilization of Pharmaceutical Products <u>(Amended 5/13/96)</u>	NTC 18-05-01	Transfers of Inmates <u>(Amended 5/13/96)</u>
NTC 13-05-01	Dental Services <u>(Amended 5/13/96)</u>	NTC 18-05-02	Transfer of Inmates to Kentucky Correctional Psychiatric Center <u>(Amended 5/13/96)</u>
NTC 13-05-03	Dental Radiation Levels <u>(Amended 5/13/96)</u>	NTC 19-01-01	Inmate Work Program
NTC 13-05-04	Attest Steam Incubator <u>(Amended 5/13/96)</u>	NTC 19-01-03	Temporary Leave from Job Assignment
NTC 13-06-01	Licensure and Training Standards <u>(Amended 5/13/96)</u>	NTC 19-02-01	Correctional Industries <u>(Amended 5/13/96)</u>
NTC 13-07-01	Provisions for Health Care Delivery <u>(Amended 5/13/96)</u>	NTC 19-02-02	Guidelines for Correctional Industries <u>(Amended 5/13/96)</u>
NTC 13-08-01	Medical and Dental Records <u>(Amended 5/13/96)</u>	NTC 20-01-01	Educational Programs <u>(Amended 5/13/96)</u>
NTC 13-09-01	Special Diets <u>(Amended 5/13/96)</u>	NTC 20-02-02	Live Work Projects in Vocational School Classes <u>(Amended 3/13/96)</u>
NTC 13-11-01	Inmate Health Screening and Evaluation <u>(Amended 5/13/96)</u>	NTC 21-01-01	Library Services <u>(Amended 3/13/96)</u>
NTC 13-12-01	Special Health Care Programs <u>(Amended 5/13/96)</u>	NTC 22-03-01	Conducting Inmate Organizational Meetings and Programs
		NTC 23-01-01	Religious Services
		NTC 23-03-01	Marriage of Inmates
		NTC 24-04-01	Honor Status
		NTC 24-05-01	Unit Management
		NTC 25-01-01	Release Preparation Program

ADMINISTRATIVE REGISTER - 433

NTC 25-01-02 Temporary Release/Community Center Release
NTC 25-01-03 Graduated Release
NTC 25-02-01 Funeral Trips and Bedside Visits
NTC 25-03-01 Inmate Release Procedure
NTC 26-01-01 Citizen Involvement and Volunteer Services Program

DOUG SAPP, Commissioner

APPROVED BY AGENCY: May 13, 1996

FILED WITH LRC: May 14, 1996 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for June 24, 1996, at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Jack T. Damron, 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: 269 employees of the correctional institutions, 929 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 administra-

tive 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.

PUBLIC PROTECTION AND REGULATION CABINET Public Service Commission (As Amended)

807 KAR 5:026. Gas service; gathering systems.

RELATES TO: KRS Chapter 278

STATUTORY AUTHORITY: KRS 278.040(3), 278.485(~~{3}~~)

NECESSITY AND FUNCTION: KRS 278.040(3) provides that the commission may adopt, in keeping with KRS Chapter 13A, reasonable administrative regulations to implement the provisions of KRS Chapter 278. KRS 278.485(1) provides that gas service shall be furnished at rates and charges ~~[as]~~ determined by the commission. KRS 278.485(3) provides ~~[requires]~~ that safety ~~[installation and]~~ standards ~~[of safety]~~ for installation of service lines may be prescribed by the commission. This administrative regulation applies ~~[establishes rules which apply]~~ to service from natural gas gathering pipeline systems.

Section 1. Definitions. For purposes of this administrative regulation:

(1) "Average volumetric rate" means the rate of a local gas distribution utility subject to rate regulation by the commission which is an average of the utility's volumetric retail gas sales rates for residential customers as authorized by the commission. ~~["Commission" means Public Service Commission.]~~

(2) "Customer meter" means the device ~~[meter]~~ that measures the transfer of gas from the pipeline ~~[gas]~~ company to the consumer.

(3) "Customer line [piping]" means all equipment and material required to transfer natural gas from the tap on the gathering line to the customer's premises and includes the saddle or tapping tee, the first service shutoff valve, the meter, and the service regulator, if one is required. ~~[section(e) of natural gas piping owned by the customer as established by Section 3 of this administrative regulation.]~~

(4) "Gas company" means the owner of any producing gas well or gathering line.

(5) "Gathering line" means any pipe~~[line]~~ which carries uncompressed gas and which is used to gather~~[ing]~~ gas from a producing gas well ~~[excluding pipelines on the discharge side of compressor stations].~~

(6) "Interior line [fuel gas piping]" means pipe used to transfer natural gas ~~[the line]~~ from the point of entry into a [the] building to the point or points of use ~~[utilization]~~.

(7) "Price index" means the average of the producer price index-utility natural gas (PPI 05-5) for the most recent twelve (12) month period as published monthly by the United States Department of Labor, Bureau of Labor Statistics. ~~["Service line" means a line that transports gas from a gathering line to:~~

~~(a) A customer meter or the connection to a customer's piping, whichever is farther downstream; or~~

~~(b) The connection to a customer's piping if there is no customer meter.~~

~~(8) "Yard line" means a line that transports gas from:~~

~~(a) A customer meter or the connection to a customer's piping, whichever is farther downstream; or~~

~~(b) The connection to a customer's piping if there is no customer meter to point of entry into the building.]~~

Section 2. Construction Standards. Construction ~~[standards]~~ not specifically addressed ~~[covered]~~ by this administrative regulation shall meet~~[, where]~~ applicable~~[, the]~~ requirements of the "American National Standard Code for Pressure Piping, Gas Transmission and Distribu-

tion Piping Systems (ASME [ANSI] B31.8)" 1992 [1982] edition as published by the American Society of Mechanical Engineers, United Engineering Center, 345 East 47th Street, New York, N. Y. 10017, which is [herein] incorporated by this reference. Copies are available for public inspection and copying, subject to copyright law, Monday through Friday, holidays excepted, from 8 a.m. to 4:30 p.m., at the commission office, 730 Schenkel Lane, P.O. Box 615, Frankfort, Kentucky 40602.

Section 3. Requirements for Service. (1) Persons desiring gas service under KRS 278.485 shall apply [file applications] at the local gas company office. Applications shall contain [the following information]:

- (a) The name and address of the applicant.
- (b) The purpose for which gas is requested.
- (c) The name and address of the contractor who will install the customer [installing service or yard] line [and other facilities required to be furnished by applicant].

(d) The name and address of the gas company from which service is requested.

(2) The gas company shall furnish the applicant with construction drawings specifying the [showing] installation methods and the materials [meeting the company's specifications as] approved by the commission for service installation.

(3) Prior to providing service, [After receipt of the application,] the gas company shall furnish a copy of the application to the commission.

(4) Upon receipt of a copy of the application, the commission shall cause the customer line to be inspected for compliance with commission specifications. Service shall not commence until commission specifications have been met. [Applicant's gas service or yard line shall be inspected and approved by commission staff before service is commenced. No service or yard line shall be inspected for which an application has not been received.]

(5) The commission shall notify the applicant by mail if the customer [service or yard] line does not comply with commission specifications [meet the requirements of its rules and administrative regulations]. If subsequent inspection reveals that defects have not been [are not] corrected [within the time permitted], the commission shall notify the gas company, and the gas company shall take no further action on the application [application shall be discontinued by the company] until the defects have been [are] corrected.

(6) The gas company shall furnish, install, and maintain the meter and the service tap, including saddle and first service shutoff valve, which shall remain its property. The gas company shall ensure that its name appears on each of its meters.

(7) [The service tap including saddle and first service shutoff valve shall be installed by the gas company and shall remain its property unless other provisions are made by tariff approved by the commission.]

(8) All other approved equipment and material required for the [such] service shall be furnished, installed, and maintained by the customer [applicant] at his expense and shall remain his [applicant's] property.

(9) If leaks or other hazardous conditions are detected in the customer [service or yard] line, the gas company shall discontinue service until the [such leaks or other] hazardous conditions have been [are repaired or] remedied [by customer].

Section 4. Connections to High Pressure Gathering Lines. (1) Connections shall be smaller than the diameter of the gathering line.

(2) Connections shall be on the upper one-half (1/2) of the gathering line [pipe] surface, and [preferably] at a [an angle of] forty-five (45) degree angle where practicable. [degrees.]

(3) Connections shall be at right angles to the center line of the gathering line.

(4) A service shutoff valve shall immediately follow the connection

to the gathering line.

(5) A drip tank shall be installed preceding regulating equipment, but may be omitted upon prior approval of the commission [eteff].

Section 5. Control and Limitation [Limiting] of Gas Pressure. (1) If [When] maximum gas pressure on the gathering line [pressures] may exceed sixty (60) psig, a service regulator shall be installed between the service shutoff valve and the customer meter, and a secondary regulator [located upstream from the service regulator] shall be installed between the service regulator and the customer meter. Regulators shall be spring type, and the secondary regulator shall not [in no case] be set to maintain pressure higher than sixty (60) psig. A spring type relief valve shall be installed to limit pressure on the inlet of the service regulator to sixty (60) psig or less [in case the secondary regulator fails to function properly].

(2) Every customer [service] line shall be equipped with an adequate spring type relief valve. The valve may be part of the final stage regulator.

(3) Regulators shall not be bypassed.

(4) Each relief valve shall be vented into outside air, and all [-] vents shall be covered to prevent water and insects from entering.

(5) [(6)] All metering and regulating equipment shall be as near to the gathering line as practicable, in accordance with safe and accepted operating practices.

(6) [(7)] Regulating equipment shall be properly protected by the customer [applicant].

Section 6. Customer [Service or Yard] Lines and Metering Facilities. (1) The customer shall furnish and install the customer [service or yard] line from the tap to the point of use [utilization]. The customer shall [also] secure all rights-of-way and [-] railroad, highway, and other crossing permits. The customer's [service] line shall be laid on undisturbed or well compacted soil in a separate trench, avoiding all structures and hazardous locations. No structure shall be erected over the [service or yard] line.

(2) No branch tee or other connection shall be installed [permitted] on the line to serve any user other than the customer [applicant] without prior written consent of the gas company and the customer. If consent is given, [applicant, in which event] service to each user shall have an automatic shutoff valve with manual reset located on the riser in a horizontal position. The [Such] shutoff valve shall have maximum operating pressure of eight (8) ounces PSIG with a shutoff pressure setting of not less than two (2) ounces.

(3) Customer [Service or yard] lines shall not [be constructed to avoid subsurface structures but in no case shall service lines] be constructed nearer [within a distance of less] than thirty-six (36) inches to [from] any subsurface structure.

(4) Customer [Service or yard] lines, including the connection to the main, where feasible, shall be [leak] checked for leaks by the gas company prior to first use [being placed into service]. If it is [feasible the service line connection to main shall be included in the test; if] not feasible to test the connection to the main before first use, it shall be [given a leakage] tested for leaks at the operating pressure when placed into service. Customer [Service or yard] lines shall be tested by the gas company with air, natural gas, or inert gas at [to] fifty (50) psig for at least thirty (30) continuous minutes.

(5) Customer [Service or yard] lines shall be purged after testing to remove any accumulated air [accumulations].

(6) Metering pressure shall not exceed eight (8) ounces [per square inch] or .5 psig, unless [or as] otherwise approved in advance by the commission.

(7) Steel customer [service or yard] lines shall be constructed of [new plant coated] black finish steel pipe, at least one and one quarter (1 1/4) inches in diameter or larger, that conforms to standards in the Standard Specification for Pipe, Steel, Black, and Hot-dipped, Zinc Coated, Welded and Seamless (A53-95a) 1995, as

published by the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428 which is incorporated by reference. Copies are available for public inspection and copying, subject to copyright law, Monday through Friday, holidays excepted, from 8:30 a.m. to 4:30 p.m., at the commission's offices, 730 Schenkel Lane, P.O. Box 615, Frankfort, Kentucky, 40602. ~~[with]~~ All joints and fittings shall be coated or taped, in accordance with manufacturer's recommendations, from the gas meter to the outlet side of the stopcock located on the riser entering ~~[into]~~ the building. Steel customer lines shall be installed with at least twelve (12) inches of cover on private property and at least eighteen (18) inches of cover on streets and roads. ~~If [and shall be of a size not less than one and one-fourth (1 1/4) inches.]~~

(a) ~~When~~ the steel customer ~~[service]~~ line passes through tillable ~~[cultivated]~~ land, the trench shall be of sufficient depth to permit ~~[backfill cover of]~~ twenty-four (24) inches of backfill above the service line.

~~[(b) Where twenty four (24) inch cover is not practical, trench depth shall be sufficient to permit minimum cover of eighteen (18) inches.]~~

(8) Each steel customer ~~[service or yard]~~ line shall have two (2) insulating joints, one (1) between the secondary regulator and the customer meter, and one (1) at the point of entry into the building ~~[of which shall follow the regulating units, the other shall separate the yard line from interior fuel gas piping].~~

(9) Plastic customer ~~[service or yard]~~ lines shall be constructed of one and one-quarter (1 1/4) ~~[plastic]~~ pipe that meets the Standard Specification for Thermoplastic Gas Pressure Pipe, Tubing and Fittings (D 2513-94a), 1994 edition, as published by the American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania, 19103, which is incorporated by this reference. Copies are available for public inspection and copying, subject to copyright law, Monday through Friday, holidays excepted, from 8:30 a.m. to 4:30 p.m., at the commission's offices, 730 Schenkel Lane, P.O. Box 615, Frankfort, Kentucky, 40602. ~~[qualified for gas use in accordance with American Society for Testing and Material standards.]~~ Plastic customer ~~[service]~~ lines shall ~~[only]~~ be installed with at least twelve (12) inches of cover ~~on [in]~~ private property and at least eighteen (18) inches of cover ~~on [in]~~ streets and roads. When passing through tillable ~~[cultivated]~~ land, the plastic customer ~~[service]~~ line shall be installed with at least twenty-four (24) inches of cover. Plastic customer ~~[service]~~ lines shall be buried with an electrically conductive wire to enable inspectors to locate ~~[capable of locating]~~ the plastic line. All joints in plastic ~~[service]~~ lines shall be made by persons qualified under 807 KAR 5:022, Section 6 ~~[7](8), to join plastic pipe, [in accordance with the provisions of 49 CFR Part 192.285.]~~ No ~~[exposed]~~ plastic line shall be installed above ground.

(10) Customer ~~[Yard]~~ lines shall enter the building above ground level, and ~~[with]~~ a stopcock ~~[shutoff]~~ valve shall be located on the riser.

(11) ~~[Service to]~~ Each customer's service shall have an automatic shutoff ~~[cutoff]~~ valve with manual reset to stop ~~[shut-off]~~ gas flow if gas pressure fails. The valve may be part of the final stage regulator and ~~[Such a valve]~~ shall have operating pressure of eight (8) ounces with shutoff pressure setting of not less than two (2) ounces.

Section 7. Failure to Pay~~(ment of)~~ Bills or Other Default. (1) ~~[The]~~ Customers shall be required to pay the installation charge and to ~~[thereafter]~~ pay ~~[the gas company]~~ for all gas delivered at rates approved by the commission. The gas company shall render statements to the customer at regular monthly or bimonthly intervals, ~~[for gas delivered. These]~~ Statements shall be rendered within ~~[not later than]~~ ten (10) days following each billing period. ~~[No gas company shall discontinue]~~ Service shall not be discontinued to any customer for nonpayment of charges unless the gas company has first ~~[bills (including delayed payment charges) without first having]~~ made a reasonable effort to obtain payment from ~~[induce]~~ the

customer ~~[to pay the bill]~~. The customer shall be given at least forty-eight (48) hours' written notice of termination, but no termination of service shall be made until at least ~~[, but cutoff shall not be effected before]~~ fifteen (15) days after ~~[the mailing date of]~~ the original bill has been mailed. Service shall not be reestablished until the customer has paid the gas company all amounts due for gas delivered plus a turn-on charge of twenty-five (25) dollars, and has complied fully ~~[placed himself in full compliance]~~ with applicable service ~~[commission]~~ administrative regulations ~~[pertaining to such service]~~. If the customer has not paid amounts owed, or if the customer has not complied ~~[fails or refuses to pay such unpaid bill(s) and turn-on charge or to comply]~~ with commission administrative regulations within thirty (30) days from the date the gas is turned off, the gas company may disconnect the customer's ~~[service]~~ line from its gathering line. Service shall not be reestablished until the customer has complied with provisions of this ~~[commission]~~ administrative regulation~~[s]~~ pertaining to initial service.

(2) The gas company may require a cash deposit or other guaranty from the customer to secure payment~~[s]~~ of bills.

Section 8. General Provisions. The gas company shall ~~[at all times]~~ have reasonable access to the customer's premises ~~[where the connection is made and the meter is located]~~, and may shut off gas and remove its property from the ~~[said]~~ premises upon reasonable notice for any of the following reasons:

- (1) Need for repairs ~~[or because of leakage]~~;
- (2) Nonpayment ~~[of any bills]~~;
- (3) Failure to make a cash deposit, if required;
- (4) Any violation of this administrative regulation;
- (5) ~~[moving of the]~~ Customer's removal from premises;
- (6) ~~[fraudulent]~~ Tampering with the meter, regulators, or connections;
- (7) Shortage of gas or reasons of safety;
- (8) Theft ~~[larceny]~~ of gas;
- (9) Any action by a customer to secure gas through his meter ~~[gas]~~ for purposes other than those for which it was requested, or for any other party without written consent of the gas company; or
- (10) False representation with respect to ownership of property to which service is furnished.

Section 9. Rates and Charges. (1) Rates. Each gas company shall charge rates filed with and approved by, the commission. A gas company may request an adjustment in its rates to reflect changes in its costs to provide service pursuant to KRS 278.485.

(a) A gas company which provides service pursuant to KRS 278.485 may request an adjustment in rates through a proposed tariff submitted at least sixty (60) days prior to its proposed effective date if:

1. The percentage change in rates does not exceed the percentage change in the price index during the most recent twelve (12) month period immediately preceding the date the proposed tariff is filed; and

2. The proposed rate does not exceed the highest average volumetric rate of a local gas distribution utility approved by the commission and in effect on the date the proposed tariff is filed. The commission shall provide the current percentage change in the price index and the highest prevailing rate upon written request.

(b) If the proposed percentage increase in rates exceeds the percentage change in the price index but the proposed rate remains below the highest prevailing gas rate approved by the commission, the gas company shall submit, with its proposed tariff, cost data which support the proposed increase. The data shall include the gas company's costs to provide the service during each of the previous two (2) years and shall be current within ninety (90) days of the date the proposed tariff is filed.

(c) A proposed tariff increasing rates shall not be filed with a proposed effective date less than one (1) year later than the last

commission approved increase. Once the commission has determined that sufficient information has been filed with the proposed tariff, the commission shall either approve or deny the proposed adjustment within sixty (60) days. The commission may suspend the proposed tariff beyond the sixty (60) day review period.

(d) A gas company which files a proposed tariff to increase rates shall mail notice to its customers no later than twenty (20) days prior to the filing date of the proposed tariff. The notice shall be dated, shall state the proposed rate and the estimated amount of monthly increase per customer, and shall state that any customer may file comments or a request to intervene by mail to the Public Service Commission, 730 Schenkel Lane, P.O. Box 615, Frankfort, Kentucky 40602.

(e) In lieu of a rate adjustment through a proposed tariff, a gas company may file an application with the commission for authority to adjust rates pursuant to 807 KAR 5:001, Section 10. If eligible, the gas company may file under the alternative rate adjustment procedure, 807 KAR 5:076.

(2) Charges.

(a) Any nonrecurring, customer-specific charge, such as those listed in 807 KAR 5:006, Section 8, that is assessed by the gas company shall be listed in its tariff. These charges may be adjusted by filing a proposed tariff with the commission at least thirty (30) days prior to the effective date of the adjustment.

(b) Each gas company may charge \$150 for each service tap, including saddle and first shutoff valve which, under this administrative regulation, it must furnish and install. ~~[are required to be furnished and installed by the gas company. No part of this charge shall be refunded by the gas company.]~~

(2) Each gas company shall charge, for gas used, tariff rates which have been approved by the commission, or if none, current Federal Energy Regulatory Commission approved rate.]

(3) Provisions contained in this administrative regulation shall apply only to connections made and services provided [made] pursuant to KRS 278.485 after [and subsequent to] the effective date of this administrative regulation.

(4) In providing notice as required by Section 9(1)(d) of this administrative regulation, the gas company shall use the following form:

NOTICE OF PROPOSED RATE CHANGE

(Name of gas company) has filed a request with the Public Service Commission to increase its rates. The rates contained in this notice are the rates proposed by (name of gas company). However, the Public Service Commission may order rates to be charged that differ from the rates in this notice.

Any corporation, association, body politic, or person may file written comments or a written request for intervention within thirty (30) days of the date of this notice with the Public Service Commission, 730 Schenkel Lane, P.O. Box 615, Frankfort, Kentucky 40602.

Copies of the request for an increase in rates may be obtained by contacting the gas company at (address of gas company). A copy of the request for an increase in rates is available for public inspection at this address.

<u>Present Rate</u>	<u>Proposed Rate</u>	<u>Estimated Monthly Increase Per Customer</u>
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Section 10. Deviation from Rules. In special cases for good cause shown the commission may permit deviations from these rules.

LINDA K. BREATHITT, Chairman
PAUL PATTON, Governor

APPROVED BY AGENCY: April 2, 1996
FILED WITH LRC: April 15, 1996 at 10 a.m.

PUBLIC PROTECTION AND REGULATION CABINET Department of Housing, Buildings and Construction (As Amended)

815 KAR 8:010. Master heating, ventilation, and air conditioning (HVAC) contractor licensing requirements.

RELATES TO: KRS 198B.650 - 689

STATUTORY AUTHORITY: KRS 198B.654

NECESSITY AND FUNCTION: KRS 198B.654 requires the Board of Heating, Ventilation and Air Conditioning Contractors to promulgate administrative regulations requiring persons engaged in the heating, ventilation and air conditioning (HVAC) contracting business to be licensed effective July 1, 1995. This administrative regulation sets forth the required proof of experience, examination, fees, application form and other administrative requirements for licensing HVAC contractors. This amendment is necessary to reduce the passing grade on the master examination because the board found that seventy-five (75) percent was excessively restrictive. ~~[This amendment is necessary to delete language regarding the "grandfather clause" and update the application form to the current date.]~~

Section 1. Definitions. (1) "Master HVAC contractor" or "master" as defined by KRS 198B.650(12) and is authorized to contract for and engage in the business of installation, maintenance, altering, remodeling and repair of HVAC systems. If the individual is representing a company, the license issued in the name of the individual shall also name the company.

(2) "Journeyman HVAC mechanic" or "journeyman" as defined by KRS 198B.650(10) and is authorized to install, maintain, alter, remodel, and repair heating systems, ventilation systems, hydronic systems, burner service or cooling systems, under the supervision of a master.

(3) "Supervise" means exercising authority and responsibility for the direction of all persons engaged in carrying out the actual work on HVAC systems, including the authority to exercise independent judgment regarding activities of others acting under his direction.

Section 2. General Requirements. (1) Mandatory licensure. Any person, other than one exempted by KRS 198B.674, who is engaged in the business of HVAC contracting shall comply with applicable administrative regulations of the board set forth in this administrative regulation.

(2) Continuing education. Beginning July 1, 1996, each licensee shall complete ten (10) hours of continuing education, approved by the board, prior to renewal of the license for the next year.

(3) Supervision. The master shall supervise and be primarily responsible for all HVAC work performed by the employees and subcontractors of the licensee. The master shall assign each apprentice to the oversight of one (1) or more journeyman. The master shall not personally engage in actual installation, maintenance, alteration or remodeling or repair unless the master also possesses a journeyman license.

(4) Company license. A licensee who is an employee of a company whom the licensee is representing shall notify the board, in writing, if the licensee ceases to represent the company or if the name of the company changes, requesting a change of information on his license and paying the change of information fee listed in Section 7(5) of this administrative regulation.

Section 3. Initial Application Requirements. (1) Filing the application. Each applicant seeking a master HVAC contractor license shall meet all of the following application requirements:

(a) The applicant shall submit the Master HVAC Contractor License Application Form HVAC 1, September, 1995, hereby incorporated by reference, to the Department of Housing. Copies of the application form are available at the Department of Housing,

Buildings and Construction, 1047 U.S. 127 South, Frankfort, Kentucky, between 8 a.m. and 4:30 p.m., Monday through Friday.

(b) The completed application form shall be accompanied by a nonrefundable initial license application fee of \$100; and

(c) The applicant shall submit proof of satisfactory completion of the examination required by Section 4 of this administrative regulation; and

(d) The applicant shall be an individual; and

(e) The applicant shall have and shall verify to the board the applicant's experience as a contractor in the business of installation, alteration, maintenance and performance of repairs and alteration of HVAC systems, as required by Section 5 of this administrative regulation; and

(f) The applicant shall supply a certificate of insurance showing general liability insurance in the minimum amount of \$500,000, including at least \$300,000 for property damage. The named insurance carrier shall be a company which holds a certificate of authority from the Kentucky Department of Insurance; and

(g) If the applicant is an employee representing a company, the company name shall be stated on the application form. The company may provide the insurance certificates required by paragraph (f) of this subsection and shall be subject to this administrative regulation.

(2) Termination of application. The initial application shall remain pending until all requirements are met, up to a period of one (1) year after the date the application is submitted. At the end of one (1) year, the application shall be void.

Section 4. Examination Requirements. Each applicant shall take and pass the examination administered in compliance with this section.

(1) The examination shall test the applicant's knowledge of codes, standards, laws and administrative regulations and of current technological and industry recommended practices with respect to the proper installation, maintenance, repair, remodeling or alteration of all types of HVAC systems.

(2) Reasonable accommodations will be made where necessary to provide accessibility to disabled applicants, upon request; and oral examinations may be given upon good cause shown.

(3) The applicant shall successfully complete the test known as "Kentucky Master Heating, Ventilation and Air Conditioning Contractor Examination" with a passing grade of seventy (70) ~~seventy-five (75)~~ percent; or, the applicant shall pass another test or method of examination deemed equivalent by and approved by the board.

(4) Requests to sit for the examination shall be made directly to the testing company, Block and Associates, 5209 Linbar Drive, Suite 626, Nashville, Tennessee 37211 ~~(the National Assessment Institute, 783 Old Hickory Boulevard, Suite 255, Brentwood, Tennessee 37027)~~, or other testing agency approved by the board.

(5) The examination fee shall be fifty (50) dollars and shall accompany the application for examination.

(6) The examination shall be provided and administered by the approved testing agency as often as necessary but at least four (4) times a year at various locations.

(7) An applicant shall not retake an examination less than sixty (60) days from the date of his last examination.

(8) A passing score on the examination shall be valid for a period of two (2) years.

Section 5. Experience Requirements. All applicants shall meet the experience requirements of this section.

(1) Minimum experience. Each applicant shall have at least two (2) years experience. Applicants shall receive credit for experience as follows:

(a) Credit for experience in the HVAC business obtained after July 1, 1995, shall be for HVAC work under the supervision of a master.

(b) Credit for experience obtained prior to July 1, 1995 shall be

for HVAC work as an actively engaged and lawfully established self-employed HVAC contractor/mechanic and for work as an actively engaged and lawfully qualified mechanic under another HVAC contractor.

(2) Records of experience. An applicant's experience shall be listed on the application form. Additional proof of experience may be requested by the board, prior to or after licensing, if the board has reason to believe that the experience shown is insufficient or nonexistent.

Section 6. Renewal and Reactivation Requirements and Procedures. (1) Except for licenses placed in inactive status, application for license renewal shall be filed by each licensee no later than June 30 of each year.

(2) A renewal fee of fifty (50) dollars shall be paid prior to renewal. The department shall send renewal application cards to each licensee each year to be returned, together with the required fee.

(3) Renewal applications filed late, but no later than September 29, shall be accepted, but a restoration fee shall be added to the renewal fee.

(4) Failure to renew by September 29 shall void the license and the applicant shall comply with all requirements for a new license pursuant to Section 3 of this administrative regulation.

(5) Licenses which have been placed in inactive status are exempt from annual renewal. They shall be reactivated upon payment of a renewal fee for the year reactivated, the reactivation fee and compliance with continuing education requirements for each year of inactive status.

(6) The application for renewal or reactivation of a licensed master HVAC contractor shall be denied if any of the following occur:

(a) The applicant fails to pay the fees required for renewal, reactivation and restoration, if applicable; or

(b) The applicant fails to comply with the continuing education requirements of the board; or

(c) The applicant fails to provide the current insurance certificate.

Section 7. Special Service Fees. In addition to other fees required by this administrative regulation, the following fees shall also be applied:

(1) Restoration fee. The fee for renewal of expired licenses shall be fifty (50) dollars.

(2) Inactive status fee. A licensee may place his license in "inactive status" upon payment of twenty (20) dollars. Inactive status shall be maintained until such time as the licensee requests reactivation.

(3) Reactivation fee. A license shall be reactivated upon payment of a fee of twenty (20) dollars and compliance with Section 6(5) of this administrative regulation.

(4) Duplicate license fee. Verified lost or destroyed licenses shall be replaced upon payment of a ten (10) dollar fee.

(5) Change of information fee. The fee for the change of information required by Section 2(4) of this administrative regulation shall be fifteen (15) dollars. If a change of information request is simultaneous with license renewal, this fee shall not be applicable.

Section 8. Revocation or Suspension of Licenses. A license issued pursuant to this administrative regulation may be suspended or revoked by the board for any of the reasons stated in KRS 198B.672.

CHARLES A. COTTON, Commissioner

LAURA M. DOUGLAS, Secretary

APPROVED BY AGENCY: April 30, 1996

FILED WITH LRC: May 13, 1996 at noon

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
(As Amended)

815 KAR 8:020. Journeyman heating, ventilation, and air conditioning (HVAC) mechanic licensing requirements.

RELATES TO: KRS 198B.650 - 689

STATUTORY AUTHORITY: KRS 198B.654

NECESSITY AND FUNCTION: KRS 198B.654 requires the Board of Heating, Ventilation and Air Conditioning Contractors to promulgate administrative regulations requiring persons engaged in the heating, ventilation and air conditioning (HVAC) installation and repair business to be licensed effective July 1, 1995. This administrative regulation sets forth the required proof of experience, examination, fees, application form and other administrative requirements for licensing journeyman HVAC mechanics. This amendment is necessary to delete continuing education requirements and to include the teaching experience of an HVAC teacher as equal to one (1) year work experience. This amendment is in compliance with HB 189 of the 1996 General Assembly. [This amendment is necessary to delete language regarding the "grandfather clause" and update the application form to the current date.]

Section 1. Definitions. (1) "HVAC" means heating, ventilation and air conditioning, hydronic and burner service systems as defined in KRS 198B.650(1), (2), (8), (9) and (15).

(2) "Master HVAC contractor" or "master" as defined by KRS 198B.650(12) and is authorized to contract for and engage in the business of installation, maintenance, altering, remodeling and repair of HVAC systems.

(3) "Journeyman HVAC mechanic" or "journeyman" as defined by KRS 198B.650(10) and is authorized to install, maintain, alter, remodel, and repair heating systems, ventilation systems, hydronic systems, burner service or cooling systems, under the supervision of a master HVAC contractor.

Section 2. General Requirements. (1) Mandatory licensure. Effective July 1, 1995, any person engaging in HVAC work shall comply with the applicable requirements in this administrative regulation.

~~(2) [Continuing education. Beginning July 1, 1996, each journeyman licensee shall complete ten (10) hours of continuing education, approved by the board, prior to renewal of the license for the next year.~~

~~(3)~~ The journeyman shall be physically on site, personally observe and be responsible for each apprentice assigned to the journeyman in carrying out the installation, alteration and repair of HVAC systems and shall otherwise operate under the general direction of the master.

Section 3. Initial Application Requirements. (1) Filing the application. Each applicant seeking a journeyman license shall meet all of the following application requirements:

(a) The applicant shall submit the journeyman HVAC Mechanic Application Form HVAC 2, September, 1995, hereby incorporated by reference, to the Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Suite 1, Frankfort, Kentucky, between 8 a.m. and 4:30 p.m., Monday through Friday.

(b) The completed application shall be accompanied by a nonrefundable initial license application fee of fifty (50) dollars; and

(c) The applicant shall submit proof of satisfactory completion of the examination required by Section 4 of this administrative regulation; and

(d) The applicant shall be an individual; and

(e) The applicant shall have and shall verify to the board the

applicant's experience in the installation, alteration, maintenance and performance of repairs on and alteration of HVAC systems, as required by Section 5 of this administrative regulation; and

(2) Termination of application. The initial application shall remain pending until all requirements are met up to a period of one (1) year after the date the application is submitted. At the end of one (1) year, the application shall be void.

Section 4. Examination Requirements. Each applicant shall take and pass the examination administered in compliance with this section.

(1) The examination shall test the applicant's basic knowledge of codes, standards and of current technological and industry recommended practices with respect to the proper installation, maintenance, repair, remodeling or alteration of HVAC systems.

(2) Reasonable accommodations will be made where necessary to provide accessibility to disabled applicants, upon request; and oral examinations may be given upon good cause shown.

(3) The applicant shall successfully complete the test known as "Kentucky Journeyman Heating, Ventilation and Air Conditioning Mechanic Examination" with a passing score of seventy (70) percent; or, the applicant shall pass another test or method of examination deemed equivalent by and approved by the board.

(4) Requests to sit for the examination shall be made directly to the testing company, Block and Associates, 5209 Linbar Drive, Suite 626, Nashville, Tennessee 37211 [the National Assessment Institute, 783 Old Hickory Boulevard, Suite 255, Brentwood, Tennessee 37027], or other testing agency approved by the board.

(5) The examination fee shall be forty (40) dollars and shall accompany the application for examination.

(6) The examination shall be provided and administered by the approved testing agency as often as necessary but at least four (4) times a year at various locations.

(7) An applicant shall not retake an examination less than sixty (60) days from the date of his last examination.

(8) A passing score on the examination shall be valid for a period of two (2) years.

Section 5. Experience Requirements. All applicants shall meet the experience requirements of this section. (1) Minimum experience. Each applicant shall have at least two (2) years experience. Applicants shall receive credit for experience as follows:

(a) Credit for experience working in the HVAC trades obtained after July 1, 1995, shall be HVAC work under the supervision of a master.

(b) Credit for experience obtained prior to July 1, 1995 shall be for work as an actively engaged and lawfully qualified self-employed contractor/mechanic and for work under another Kentucky HVAC contractor.

(c) Credit for completion of one (1) year of teaching experience in a board or state approved HVAC technical education program shall be considered equivalent to one (1) year employment.

(2) Records of experience. Additional proof of experience may be requested by the board, prior to or after licensing, if the board has reason to believe that the experience shown is insufficient or nonexistent.

(3) A minimum of 3,000 work hours to be completed as part of the two (2) years experience requirement of subsection (1) of this section.

(4) Education may be substituted for experience, pursuant to KRS 198B.658(4), subject to the prior approval of the board.

Section 6. Renewal Requirements and Procedures. (1) Applications for license renewal shall be filed by each licensee no later than June 30 of each year.

(2) A renewal fee of twenty-five (25) dollars shall be paid prior to renewal. The department shall send renewal application cards to each

licensee each year.

(3) Renewal applications filed late, but no later than September 29, shall be accepted, but a restoration fee shall be added to the renewal fee.

(4) Failure to renew by September 29 shall void the license and the applicant shall comply with all requirements for a new license pursuant to Section 3 of this administrative regulation.

(5) The application for renewal of a licensed journeyman HVAC mechanic shall be denied if ~~[any of the following occur:~~

~~(a) the applicant fails to pay the fees required for renewal and restoration, if applicable; or~~

~~(b) The applicant fails to comply with the continuing education requirements of the board].~~

Section 7. Special Services and Fees. In addition to the initial license application fee, examination fee, and renewal fee, the following special fees shall be applied:

(1) Restoration fee. The fee for renewal of expired licenses, pursuant to Section 6(3) of this administrative regulation, shall be twenty-five (25) dollars.

(2) Duplicate license fee. Verified lost or destroyed licenses shall be replaced upon payment of a ten (10) dollar fee.

Section 8. Revocation or Suspension of License. A license issued pursuant to this administrative regulation may be suspended or revoked by the board for any of the reasons stated in KRS 198B.672.

CHARLES A. COTTON, Commissioner

LAURA M. DOUGLAS, Secretary

APPROVED BY AGENCY: April 30, 1996

FILED WITH LRC: May 13, 1996 at noon

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
(As Amended)

815 KAR 35:030. Kentucky certification of electrical contractors.

RELATES TO: KRS 227.450 through 227.500

STATUTORY AUTHORITY: KRS 227.4901

NECESSITY AND FUNCTION: In 1990, the General Assembly enacted KRS 227.4901 which requires that the Department of Housing, Buildings and Construction select and approve an examination designed to determine the competency of electrical contractors under the National Electrical Code, to certify those individuals passing the examination and to collect and compile reports on disciplinary actions taken against licensed electrical contractors by cities and counties. This administrative regulation is necessary in order to establish procedures of administration and reasonable fees to carry on the certification program. This amendment is necessary in order to reduce the administrative burden on the department, reduce the "red tape" for contractors and maintain flexibility in maintaining certification. [This amendment is necessary to establish a revival and reinstatement fee for those certified electrical contractors who fail to renew their certification in a timely manner.]

Section 1. Definitions. (1) "NAIE" means the examination based upon the National Electrical Code which is developed, administered and scored by the National Assessment Institute.

(2) "NCPCCI" means the National Certification Program for Construction Code Inspectors.

(3) "Kentucky Certificate of Electrical Contractor Examination" means the written document issued by the department which certifies that the person whose name is listed thereon has successfully completed the examination required by this administrative regulation.

Section 2. Approved Examinations. (1) After the effective date of this amendment, any person seeking to obtain a Kentucky Certificate of Electrical Contractor Examination shall pass the examination known as the NAIE.

(2) The department shall issue or renew a Kentucky Certificate of Electrical Contractor Examination to any person who complies with the terms of this administrative regulation.

~~Section 3. [Proof of Insurance. (1) An applicant shall submit to the department proof of \$250,000 liability insurance for electrical construction work by certificate from the insurance company and he shall also submit an affidavit verifying compliance with Kentucky worker's compensation and unemployment insurance laws.~~

~~(2) If the applicant submits proof of insurance as set forth in subsection (1) of this section, the department shall indicate that fact on the applicant's certificate. This proof shall be submitted annually, upon renewal, in order to continue to be noted upon the certificate.~~

~~Section 4.] Application for Certificate. (1) Application shall be made to the department by the individual seeking certification on forms incorporated by reference [as outlined] in Section 5 [7] of this administrative regulation.~~

~~(2) The original application shall be accompanied by a fee of \$100 to cover the administrative costs of processing the application, verifying examination scores and issuing certificates.~~

~~(3) The Kentucky Certificate of Electrical Contractor Examination is not a license to do business as an electrical contractor.~~

Section 4. ~~[6-]~~ Renewal of Certificates. (1) General. Each person seeking certification pursuant to this administrative regulation shall be required to pay an additional annual renewal fee in the sum of twenty-five (25) dollars no later than June 30 of each year in order to maintain the certification.

(2) Delinquent renewal fee. Any certified electrical contractor who fails to renew his certification on or before July 1 of each year may have his certification renewed upon payment of a delinquent renewal fee of \$100. If the fees are not paid by January 1 of the following year, the certification shall be automatically cancelled. [Revival fee. Any certified electrical contractor who fails to renew his certification on or before July 1 of each year may have his certification renewed upon payment of the delinquent [required] renewal fee of \$100. After [and a revival fee. The revival fee paid between July 1 and December 31 shall be twenty-five (25) dollars, in addition to the renewal fee. If the renewal and revival fees are not paid by January 1 of the following year, the certification shall be automatically cancelled.] [Upon cancellation of the certification, the revival fee paid on or after January 1 shall be fifty (50) dollars.]

(3) Reinstatement. Any certificate that has been revoked or cancelled may be reinstated upon petition to the commissioner and for good reason shown in his sole discretion and upon payment of any unpaid renewal fees plus a reinstatement fee of \$100. [The certification may be reinstated upon petition to the commissioner and for good reason shown in his sole discretion and upon payment of all delinquent renewal fees plus the revival fee of \$100 [fifty (50) dollars].]

~~[Section 6. Notice of Penalty. Any certificate or notation of insurance obtained by misrepresentation or fraudulent representation shall void the certificate or notation.]~~

Section 5. ~~[7-]~~ Electrical Contractor Certification Application Forms. (1) Application for electrical contractor certification. Each applicant seeking certification as an electrical contractor shall submit the Application for Electrical Contractor Certification Form SFM-EL-2, April 1996, hereby incorporated by reference, to the Department of Housing. Copies of the application form are available at the Depart-

ADMINISTRATIVE REGISTER - 440

ment of Housing, Buildings and Construction, Electrical Section, 1047
U.S. 127 South, Suite 1, Frankfort, Kentucky 40601, between 8 a.m.
and 4:30 p.m., Monday through Friday.

[COMMONWEALTH OF KENTUCKY
DEPT. OF HOUSING, BUILDINGS & CONSTRUCTION
APPLICATION FOR
ELECTRICAL CONTRACTOR CERTIFICATION

NAME:

ADDRESS:

CITY: ZIP CODE:

TELEPHONE #: DATE OF BIRTH:

COMMONWEALTH OF KENTUCKY

COUNTY OF: SIGNED:

having been duly sworn, states all information herein contained is true
and correct to the best of his knowledge and belief; and further states
that he shall comply with applicable statutes and rules and adminis-
trative regulations of the Department of Housing, Buildings and
Construction.

Subscribed and sworn to before me this ___ day of ___, 19__.

My commission expires:

Notary Public:

County:

NOTE: Attach check or money order for \$100.00 payable to the State
Treasurer, Commonwealth of Kentucky.

RETURN TO: Office of the State Fire Marshal
Electrical Contractor Certification Clerk
1047 U.S. 127 South, Suite #1
Frankfort, KY 40601 4337

OFFICE USE ONLY:]

(2) Renewal application for electrical contractor certification. Each
applicant seeking renewal of his application for electrical contractor
certification shall submit the Renewal Application for Electrical
Contractor Certification Form SFM-EL-2A, April 1996, hereby
incorporated by reference to the Department of Housing. Copies of
the renewal application form are available at the Department of
Housing, Buildings and Construction, Electrical Section, 1047 U.S.
127 South, Suite 1, Frankfort, Kentucky 40601, between 8 a.m. and
4:30 p.m., Monday through Friday.

[CERTIFICATE #:
COMMONWEALTH OF KENTUCKY
DEPT. OF HOUSING, BUILDINGS & CONSTRUCTION
RENEWAL APPLICATION FOR
ELECTRICAL CONTRACTOR CERTIFICATION

NAME:

ADDRESS:

CITY: ZIP CODE:

TELEPHONE #: DATE OF BIRTH:

COMMONWEALTH OF KENTUCKY

COUNTY OF: SIGNED:

having been duly sworn, states all information herein contained is true
and correct to the best of his knowledge and belief; and further states
that he shall comply with applicable statutes and the rules and
administrative regulations of the Department of Housing, Buildings
and Construction.

Subscribed and sworn to before me this ___ day of ___, 19__.

My commission expires:

Notary Public:

County:

NOTE: Attach check or money order for \$25.00 payable to the State
Treasurer, Commonwealth of Kentucky.

RETURN TO: Office of the State Fire Marshal
Electrical Contractor Certification Clerk

1047 U.S. 127 South, Suite #1

Frankfort, KY 40601 4337

OFFICE USE ONLY:

~~(3) Kentucky Workers' Compensation and Unemployment
Insurance compliance.~~

COMMONWEALTH OF KENTUCKY
DEPT. OF HOUSING, BUILDINGS & CONSTRUCTION
Kentucky Workers' Compensation & Unemployment Insurance

* The use of this form is optional. If you want your wallet card to
indicate compliance with insurance, unemployment insurance and
workers' compensation laws, file this form and a copy of your
insurance certificate along with your application.

The affiant herein does swear or affirm that he is in full compli-
ance with Kentucky Workers' Compensation and Unemployment
Insurance laws and that he has a valid liability insurance policy
covering his business of electrical contracting and installation in the
total amount of at least \$250,000 as shown on the attached certificate
from the insurance company.

Applicant:

STATE OF KENTUCKY

COUNTY OF:

Subscribed and sworn to me this ___ day of ___, 19__.

Notary Public:

My commission expires:

*NOTICE: If this information is not provided, you shall provide it for
every electrical permit you seek from the city or county.

*****]

CHARLES A. COTTON, Commissioner

LAURA M. DOUGLAS, Secretary

APPROVED BY AGENCY: May 1, 1996

FILED WITH LRC: May 13, 1996 at noon

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING
OR RECEIPT OF WRITTEN COMMENTS

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Carriers
Department of Fiscal Management
Division of Audit Review
(Amended After Hearing)

601 KAR 1:200. Administration of taxes imposed in KRS 138.655 through 138.7291.

RELATES TO: KRS 138.655 through 138.7291, 186.650, 281.725, 49 CFR Part 390.21, 49 USC Chapter 317

STATUTORY AUTHORITY: KRS 138.725, 281.600, 49 USC Chapter 317

NECESSITY AND FUNCTION: 49 USC 317.05 requires that each state be in conformance with the provisions of the International Fuel Tax Agreement (IFTA) by September 30, 1996. If a motor carrier operates in interstate commerce, the motor fuel taxes imposed by Kentucky statutes which are subject to the provisions of IFTA are KRS 138.660(1) and (2). If the motor carrier operates exclusively in intrastate commerce, the taxes imposed by KRS 138.660(1) and (2) are not subject to the requirements of IFTA. The tax imposed by KRS 138.660(3) is not subject to the IFTA federal mandate. All three (3) of these taxes are administered under the provisions of KRS 138.655 through 138.7291. House Bill 322 passed by the 1996 Regular Session of the General Assembly amended portions of KRS 138.655 through 138.7291 clearly establishing that the tax set forth in KRS 138.6601 (which was in direct conflict with the federal mandate) was repealed and that the motor fuel use taxes imposed by KRS 138.660(1) and (2) were to be applicable to two (2) axle motor vehicles with a gross weight or registered gross weight above 26,000 pounds. The General Assembly did not address the myriad provisions of IFTA relating to application for license, payment of motor fuel taxes, bond requirements, record retention, auditing of the motor carriers, appeal procedure, and other administrative provisions. Attorney General Opinion OAG 95-33 regarding the IFTA federal mandate opined that a state law that is not in conformity with IFTA is preempted on an interstate basis. This administrative regulation is necessary to set forth the administrative procedures for the implementation of the International Fuel Tax Agreement in Kentucky, to note the differences between the requirements of IFTA and Kentucky state law, to clearly establish, where applicable, when the provisions of IFTA preempt state law, and to provide for uniformity in the interstate and intrastate administration of KRS 138.660(1) and (2) so as not to violate the interstate commerce clause of the United States Constitution.

Section 1. Definitions. (1) "Base jurisdiction" means the member jurisdiction where qualified motor vehicles are based for vehicle registration purposes and:

(a) Where the operational control and operational records of the fuel tax licensee's qualified motor vehicles are maintained or can be made available; and

(b) Where some travel is accrued by qualified motor vehicles within the fleet.

(2) "Fuel tax license" means either an IFTA license or a KIT license.

(3) "IFTA" means the International Fuel Tax Agreement.

(4) "IFTA license" means a motor fuel tax license issued in accordance with the IFTA "Procedures Manual."

(5) "Jurisdiction" means a state of [§] the United States, the District of Columbia, or a province or territory of Canada.

(6) "KIT license" means the Kentucky intrastate tax license issued by the Kentucky Transportation Cabinet to intrastate motor carriers subject to the taxes imposed by KRS 138.660(1) and (2).

(7) "KYU license" means the Kentucky Highway Use License issued by the Kentucky Transportation Cabinet to motor carriers subject to the tax imposed by KRS 138.660(3).

(8) "Motor carrier" means as defined in KRS 138.655(5).

(9) "Over-the-road fuel" means fuel purchased from a retail distributor and placed directly into a qualified motor vehicle.

(10)(a) "Qualified motor vehicle" means a motor vehicle operated by a motor carrier that is used, designed, or maintained for the transportation of persons or property and that meets at least one (1) of the following criteria:

1. A single vehicle having two (2) axles and a gross vehicle weight or a registered gross vehicle weight exceeding 26,000 pounds or 11,797 kilograms;

2. A single vehicle having three (3) or more axles, regardless of weight; or

3. A vehicle used in combination, when the weight of the combination exceeds 26,000 pounds or 11,797 kilograms gross vehicle weight or registered gross vehicle weight.

(b) A qualified motor vehicle shall not include the following:

1. A recreational vehicle;

2. A motor vehicle registered pursuant to KRS 186.050(4) or under another jurisdiction's law as a farm vehicle; or

3. A motor vehicle used to transport persons for hire.

(11) "Quarterly reporting period" means a period of time consistent with the calendar quarterly periods of January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31.

(12) "Recreational vehicle" means a motor vehicle such as motor homes, pickup trucks with attached campers, and buses when used exclusively for personal pleasure by an individual and which is not used in connection with any business endeavor.

(13) "Tax-paid fuel" means motor fuel purchased either in bulk or over-the-road by a motor carrier on which the motor fuel taxes imposed by a jurisdiction are paid at the time of purchase.

Section 2. Governing IFTA Documents. The following IFTA documents prepared and adopted by the membership of the International Fuel Tax Agreement are incorporated by reference in Section 15 of this administrative regulation. The provisions of these documents, except where specifically otherwise identified in this administrative regulation regarding the administration for KIT licensees, shall govern the administration of Kentucky's collection of the taxes imposed by KRS 138.660(1) and (2):

(1) Articles of agreement as revised July [January] 1996;

(2) Procedures Manual as revised July [February] 1996; and

(3) Audit Procedures Manual as revised July [February] 1996.

Section 3. Fuel Tax License. (1)(a) Each motor carrier which operates a qualified motor vehicle in interstate commerce and which has Kentucky as the base jurisdiction for the operation of its qualified motor vehicles shall each year apply to the Division of Motor Carriers for an IFTA license or its renewal.

(b) A motor carrier which operates exclusively in intrastate commerce may apply for an IFTA license.

(c) Application for the IFTA license shall be on form TC 95-203, "Application for Motor Fuel Tax Licensing for IFTA Carriers" as revised February 1996 which is incorporated by reference in Section 15 of this administrative regulation.

(2)(a) Each motor carrier which operates all of its qualified motor

vehicles exclusively in intrastate commerce and which does not apply for an IFTA license pursuant to subsection (1) of this section shall apply each year for a KIT license or its renewal.

(b) Application for the KIT license shall be on form TC 95-200a, "Application for Kentucky Intrastate Tax License" as revised January 1996 which is incorporated by reference in Section 15 of this administrative regulation.

(3)(a) Each fuel tax license issued shall expire on December 31 of the year in which the license was issued.

(b) The Transportation Cabinet shall begin accepting renewal applications on November 1 of each year.

(4)(a) The original or a legibly reproduced copy of a fuel tax license issued by the Kentucky Transportation Cabinet or an IFTA license issued by another jurisdiction shall be carried in each qualified motor vehicle when operating on any public highway of Kentucky.

(b) An IFTA license issued by Kentucky authorizes a qualified motor vehicle for motor fuel tax purposes to be operated in any IFTA jurisdiction.

(5)(a) The Transportation Cabinet shall issue two (2) decals per qualified motor vehicle to each holder of a fuel tax license.

(b) Unless the qualified motor vehicle is being operated on a trip permit pursuant to KRS 138.665, a fuel tax decal issued by the Transportation Cabinet or a decal issued by another IFTA jurisdiction denoting proof of issuance of an IFTA license shall be displayed on the lower rear exterior portion of both sides of the cab of each qualified motor vehicle. The decal shall be located so as to be totally visible and the view of the decal shall not be obstructed by any part of the truck.

(c) The decals shall not be transferred between qualified motor vehicles.

(d) New decals shall be issued each calendar year.

(6) Each fuel tax licensee which does not have a U.S. Department of Transportation motor carrier identification number or an Interstate Commerce Commission motor carrier identification number shall apply for an intrastate motor carrier identification number on Form TC 92-150, "Application for Intrastate Carrier Identification Number", March 1996 edition which is incorporated by reference in Section 15 of this administrative regulation.

(a) The intrastate motor carrier identification number assigned to a KIT licensee shall be displayed on each qualified motor vehicle it operates in the same manner as required pursuant to 49 CFR Part 390.21 except the KIT identification number shall not be preceded by the letters "USDOT" but rather followed by the letters "KY".

(b) All fuel tax licensees shall display on each qualified motor vehicle in accordance with the provisions of 49 CFR part 390.21 the name of and location of the motor carrier.

(7)(a) Each fuel tax licensee shall immediately report any change in the principal business address, legal status, or business name to the Transportation Cabinet.

(b) All motor carrier operations shall be conducted in the name in which the fuel tax license is issued or the duly assumed business name of the licensee, as it appears on the license.

(c) All licensees shall use the name utilized in the application for the license in all documents relating to their operations. Both this name and the fuel tax license number shall be used in correspondence with the Transportation Cabinet.

Section 4. KYU License. (1) Each motor carrier subject to the tax imposed by KRS 138.660(3) shall apply for a KYU license prior to operating on the highways of Kentucky a motor vehicle subject to the tax imposed by KRS 138.660(3).

(2) Application for the KYU license shall be on form TC 95-200, "Application for Kentucky Highway Use License" as revised June 1995 which is incorporated by reference in Section 15 of this administrative regulation.

(3) Every original applicant for a KYU license shall at the time of the application file a bond with the Transportation Cabinet in accor-

dance with the provisions of Section 6 of this administrative regulation.

(4)(a) Each KYU licensee shall assign a unique number to each individual motor vehicle subject to the tax in KRS 138.660(3).

(b) The unique vehicle identification number shall be displayed on the front of the vehicle readily legible ~~visible~~ in daylight hours from a distance of 100 feet when the vehicle is not in motion.

(c) This number shall be in sharp color contrast to the background of the vehicle.

(d) This number shall not be placed higher than the bottom of the windshield or lower than the bottom of the front bumper.

(5) Each KYU licensee shall either:

(a) File a form TC 95-9, "Request for Validation of Motor Carrier Control Number", June 1996 edition with the Transportation Cabinet; or

(b) Display the KYU number on each motor vehicle subject to the tax imposed by KRS 138.660(3) it operates in the same manner as required pursuant to 49 CFR Part 390.21.

(6)(a) Each KYU licensee shall immediately report any change in the principal business address, legal status, or business name to the Transportation Cabinet.

(b) All motor carrier operations subject to KRS 138.660(3) shall be conducted in the name in which the KYU license is issued or the duly assumed business name of the licensee, as it appears on the license.

(c) All KYU licensees shall use the name utilized in the application for the license in all documents relating to their operations. Both this name and the KYU license number shall be used in correspondence with the Transportation Cabinet.

(7)(a) Each KYU licensee shall register each of its vehicles subject to the tax imposed by KRS 138.660(3) with the Transportation Cabinet. The registration shall be reported on form TC 95-38, "Application for the Registration of Taxable Vehicles in Kentucky", June 1996 edition. This form is incorporated by reference in Section 15 of this administrative regulation.

(b) If the licensee sells, leases, or buys a vehicle subject to the tax imposed by KRS 138.660(3), the KYU licensee shall immediately file a copy of the Form TC 95-38 with the Transportation Cabinet showing the addition to or deletion from its fleet.

Section 5. Leasing of Motor Vehicles. The following shall apply in the case of lessor, lessee, independent contractors, and household goods agents:

(1) A lessor regularly engaged in the business of leasing or renting motor vehicles without drivers for compensation to licensees or other lessees may be deemed to be the licensee. The lessor may be issued a license if an application has been properly filed and approved pursuant to the provisions of Sections 3 or 4 of this administrative regulation.

(2) If a motor carrier used independent contractors under leases of thirty (30) days or more, the lessor and lessee shall have the option of designating which party is to report and pay the fuel use tax imposed by KRS 138.660(1) and (2) and the fuel taxes imposed by other jurisdictions.

(3) If the lessee assumes responsibility for reporting and paying motor fuel taxes pursuant to subsection (2) of this section, the base jurisdiction for IFTA purposes shall be the base jurisdiction of the lessee, regardless of the jurisdiction in which the qualified motor vehicle is registered for vehicle registration purposes by the lessor.

(4) If a motor carrier rented a motor vehicle for a period of less than thirty (30) days, from a lessor regularly engaged in the business of leasing, or renting motor vehicles without drivers, for compensation to licensees, the lessor shall pay the fuel use taxes unless both of the following conditions are met:

(a) The lessor has a written rental contract which designates the lessee as the party responsible for reporting and paying the fuel use tax; and

(b) The lessor has a copy of the lessee's IFTA fuel tax license which is valid for the term of the rental.

(5) If the motor carrier uses independent contractors under leases of thirty (30) days or less, the trip lessor shall report and pay all fuel taxes.

(6) If the motor carrier is a household goods carrier using independent contractors, agents, or service representatives, under intermittent leases, the party liable for all motor fuel taxes shall be:

(a) The lessee when the qualified motor vehicle is being operated under the lessee's jurisdictional operating authority. The base jurisdiction for purposes of IFTA shall be the base jurisdiction of the lessee, regardless of the jurisdiction in which the qualified motor vehicle is registered for vehicle registration purposes by the lessor or lessee.

(b) The lessor who is the independent contractor, agent, or service representative when the qualified motor vehicle is being operated under the lessor's jurisdictional operating authority. The base jurisdiction for purpose of IFTA shall be the base jurisdiction of the lessor, regardless of the jurisdiction in which the qualified motor vehicle is registered for vehicle registration purposes.

(7) The lease shall be made available by either the lessee or the lessor upon request of the Transportation Cabinet.

Section 6. Bonding Requirements. (1) The bond required by KRS 138.670 shall be applicable to the taxpayers subject to KRS 138.660(3).

(2) The Transportation Cabinet shall not require the bond for the payment of the taxes imposed by KRS 138.660(1) and (2) unless the licensee meets one (1) of the following criteria:

(a) The licensee has failed to timely file a report required by Section 7 of this administrative regulation;

(b) The licensee has failed to remit all of the tax due for a taxable quarter;

(c) An audit of the licensee indicates recordkeeping or other administrative problem; or

(d) The licensee has had his IFTA license or the license required by KRS 138.665 revoked, suspended, or canceled.

(3) If a bond is required pursuant to subsection (2) of this section, the total amount of the bond shall be equivalent to twice the estimated average tax liability for the reporting period or as required by KRS 138.670, whichever is greater.

(4) A licensee required to post a bond pursuant to this section may deposit with the Transportation Cabinet one (1) of the following:

(a) A surety bond;

(b) Bonds or other obligations of the United States, Canada, or the Commonwealth of Kentucky made payable to the Commonwealth of Kentucky;

(c) Automatically renewable time certificates of deposit issued by a bank doing business in the Commonwealth of Kentucky and insured by the Federal Deposit Insurance Corporation, made in the name of licensee, payable to the Commonwealth of Kentucky and containing the provision that interest earned shall be payable to the licensee but that the certificates can only be canceled by written authorization from the Transportation Cabinet;

(d) Investment certificates or share accounts issued by a savings and loan association doing business in the Commonwealth of Kentucky and insured by the Federal Savings and Loan Insurance Corporation. Evidence of the insured account, either certificate or passbook, shall be delivered to the Transportation Cabinet with a properly executed assignment form whereby the funds on deposit are assigned and made payable to the Commonwealth of Kentucky; or

(e) A cash bond submitted in the form of a cashier's check, money order, or other certified funds which are payable to the Commonwealth of Kentucky.

(5) The licensee shall be the principal obligor and the Commonwealth of Kentucky shall be the obligee.

(6)(a) Proof of the bond required pursuant to subsection (1) of this

section, may be filed on form TC 95-201, "Kentucky Highway Use Bond", June 1995 edition which is incorporated by reference in Section 15 of this administrative regulation.

(b) Proof of the bond required pursuant to subsection (2) of this section, may be filed on form TC 95-205, "Kentucky Fuel Users Bond", June 1996 edition which is incorporated by reference in Section 15 of this administrative regulation.

Section 7. Tax Payment and Reporting. (1) The Transportation Cabinet shall by the last day of each quarterly reporting period mail the appropriate tax report form to each fuel tax licensee.

(a) Kentucky-based IFTA licensees shall be mailed form "IFTA Quarterly Fuel Tax Report" IFTA 100, November 1994 edition which is incorporated by reference in Section 15 of this administrative regulation.

(b) KIT licensees shall be mailed form "Highway Quarterly Tax Return", Form TC 95-101a, January 1996 edition which is incorporated by reference in Section 15 of this administrative regulation.

(c) Except as provided in subsection (3) of this section, each licensee shall comply with KRS 138.685.

(d) Even if a fuel tax licensee had no operations during the reporting quarter, the licensee shall file the tax reporting form.

(2)(a) The Transportation Cabinet shall send to each at the beginning of each calendar year to each KYU licensee all of the KRS 138.660(3) quarterly tax report forms "Kentucky Weight Distance Tax Form", Form TC 95-101, May 1996 edition due for that calendar year. This form is incorporated by reference in Section 15 of this administrative regulation.

(b) KYU licensees shall comply with the provisions of KRS 138.685.

(3)(a) When filing a motor fuel tax report, an IFTA licensee shall apply the overpayment generated in one (1) jurisdiction to the motor fuel taxes owed to another jurisdiction, remitting the net amount owed to the Transportation Cabinet.

(b) IFTA licenses shall present one (1) check to the Transportation Cabinet to pay the motor fuel taxes due pursuant to KRS 138.660(1) and (2) as well as the motor fuel taxes due all other IFTA jurisdictions.

(c) If a fuel tax licensee has been required to file a bond pursuant to Section 6(2) of this administrative regulation, the check to pay the motor fuel taxes due shall be certified.

(d) The requirement for a certified check for KYU licensees is waived pursuant to KRS 138.665 unless the motor carrier is notified by the Transportation Cabinet to the contrary. The cabinet may require a certified check from a motor carrier when the motor carrier:

1. Pursuant to Section 6 of this administrative regulation is required to post a bond for its fuel taxes; [is not of sound financial condition];

2. Has not established a record of consistent and continued compliance with KRS 138.655 through 138.7291; or

3. Is operating on the highways of Kentucky without a KYU license.

(4) Computer-generated tax returns can be used in lieu of the forms sent out by the Transportation Cabinet only if the licensee receives advance written approval of its format from the Transportation Cabinet, Division of Motor Carriers.

Section 8. Tax Recordkeeping. (1) Each fuel tax licensee shall maintain a complete record of all motor fuel purchased, received, or used in the conduct of its business. The fuel records shall contain at least the following information:

(a) The date of each receipt of fuel;

(b) The name and address of the person from whom purchased or received;

(c) The name of the purchaser of the fuel;

(d) The number of gallons of fuel received;

(e) The type of fuel;

(f) The vehicle or equipment into which the fuel was placed; and
(g) If applicable, complete records on power takeoff use of motor fuel as set forth in subsection (15) of this section.

(2) Except as set forth in subsection (14) of this section, each fuel tax licensee shall maintain detailed distance records which show operations on an individual-vehicle basis. The distance records for each qualified motor vehicle shall contain at least the following information:

- (a) Both taxable and nontaxable usage of fuel;
- (b) Distance traveled for taxable and nontaxable use; and
- (c) Beginning and ending date of each trip;
- (d) Trip origination and destination;
- (e) Route traveled on trip;
- (f) Trip beginning and ending odometer readings;
- (g) Total mileage of each trip; and
- (h) Distance recaps for each qualified motor vehicle for each jurisdiction in which the qualified motor vehicle is operated.

(3) In order for a fuel tax licensee to obtain credit for tax-paid fuel purchases, a receipt or invoice, a credit card receipt or automated vendor-generated invoice or transaction listing shall be maintained by the fuel tax licensee. An acceptable receipt or invoice for tax-paid fuel purchased shall not have been altered or indicate erasures and shall contain at least the following information:

- (a) The date of purchase of fuel;
- (b) The name and address of the person from whom purchased;
- (c) The number of gallons purchased;
- (d) The type of fuel;
- (e) The price per gallon of the fuel purchased or the total amount of the sale;

(f) Unit number of the motor vehicle into which the motor fuel was placed; and

(g) Purchaser's name. (In the case of a lessee/lessor agreement, receipts are acceptable in either name, provided the records firmly indicate the legal connection to the reporting party.)

(4) A fuel tax licensee may only apply for credit in the case of withdrawals from licensee-owned, tax-paid bulk fuel storage if the following detailed records are kept:

- (a) Date of withdrawal;
- (b) Number of gallons withdrawn;
- (c) Fuel type;
- (d) Unit number of the motor vehicle or equipment into which the fuel was placed; and

(e) Purchase and quarterly beginning and ending inventory records to substantiate that tax was paid on the bulk purchase.

(5)(a) Fuel tax licensees shall account separately for tax-paid fuel purchased as storage or bulk from fuel purchased over the road.

(b) Copies of all delivery tickets and receipts for storage or bulk fuel shall be retained by the licensee.

(c) Bulk fuel inventory reconciliations shall be maintained. Records shall be maintained to distinguish fuel placed in qualified motor vehicles from other uses.

(d) Each tax-paid purchases shall be supported by a receipt, invoice, credit card receipt or automated vendor-generated invoice or transaction listing.

(e) Over-the-road fuel receipts shall identify the vehicle by the registration plate number or unit number, since only vehicles identified with the fuel tax licensee's operation may be reported for mileage or fuel consumption.

(6) Separate totals shall be compiled for each of the following fuel types used by a fuel tax licensee:

- (a) Gasoline;
 - (b) Diesel;
 - (c) Kerosene;
 - (d) Gasohol;
 - (e) Liquid petroleum gas; and
 - (f) Compressed natural gas.
- (7) Each fuel tax licensee shall retain the information required by

subsections (1) through (6) of this section for a period of four (4) years from the date of filing the tax report based on these records.

(8) Each KYU licensee shall maintain the following records on the operation within Kentucky of each motor vehicle which is subject to the tax imposed by KRS 138.660(3):

- (a) Type of motor vehicle;
- (b) Declared gross weight of the motor vehicle;
- (c) Weigh bills showing the actual weight of the loaded motor vehicle;

(d) Except as provided in subsection (14) of this section, mileage operated by unit number in Kentucky as reported on trip sheets and driver logs which shall include the following:

- 1. Beginning and ending odometer readings of each trip;
- 2. Each route driven;
- 3. Beginning and ending date of each trip;
- 4. Trip origin and destination;
- 5. ~~Trip beginning and ending odometer readings; and~~

~~6.] Total trip miles; [and]~~

(e) Bills of lading; and

(f) ~~Dispatch records;~~

~~(g) Maintenance records;~~

~~(h)]~~ Off-highway mileage which includes periodical logs showing entering and leaving of public highways; and

(g) ~~(h)]~~ Manual or computer-generated mileage recaps for Kentucky.

(9)(a) Each KYU licensee shall retain the information required by subsection (8) of this section for a period of five (5) years from the date of filing the tax report based on these records.

(b) If the records required to be maintained in subsection (8) of this section are insufficient for the auditor to complete an audit, incomplete, or unavailable, the auditor may examine any other records of the motor carrier which might assist in establishing the tax liability of the motor carrier.

(10) Both the lessor and lessee involved in the short- or long-term lease of motor vehicles shall maintain sufficient records, including copies of the leases and any supplemental agreements, to allow determination at any time of the entity responsible for reporting or payment of the taxes.

(11) Records may be retained on microfilm, microfiche, or other computerized or condensed record storage system if the system has been preapproved by the Transportation Cabinet's Division of Audit Review.

(12) Failure to provide records required for the purpose of an audit shall extend the limitations set forth in subsections (7) or (9) of this section until the records are provided.

(13) If a motor carrier chooses to use on-board computer recording devices in lieu of or in addition to trip reports for tax reporting, the devices, recordkeeping, data collection, reporting and motor carrier responsibility shall be as set forth in Section III.A.5. of the IFTA "Procedures Manual" which is incorporated by reference in Section 15 of this administrative regulation.

(14)(a) A fuel tax licensee who operates exclusively in intrastate commerce and for which all of the mileage traveled is taxable may choose to maintain quarterly odometer readings on an individual motor vehicle basis rather than the more detailed records set forth in subsection (2) of this section.

(b) A KYU licensee who operates exclusively in intrastate commerce and for which all of the mileage traveled is taxable may choose to maintain quarterly odometer readings on an individual motor vehicle basis rather than the more detailed records set forth in subsection (8)(d) of this section.

(15) A fuel tax licensee applying for a refund pursuant to Section 12(5) of this administrative regulation shall in addition to the other requirements of this section maintain the following records:

(a) Proof of power-take-off exemption percentage including how the percentage was calculated;

(b) Listing of bulk fuel storage which includes:

1. Location of bulk fuel storage;
2. Capacity of bulk fuel storage; and
3. Whether tanks are designated for "on" or "non" highway use;

(c) Kentucky Revenue Cabinet Motor Fuels Tax Refund Permit Number and Kentucky Revenue Cabinet Sales and Use Tax Number, if applicable;

(d) Equipment listing for each motor vehicle on which the refund is being requested including:

1. Vehicle type;
2. Use of power-take-off;
3. Vehicle unit number;
4. Vehicle identification number; and
5. Type of fuel used in each vehicle.

Section 9. Auditing. (1)(a) The audit of the fuel tax licensees shall be performed in accordance with the provisions of the "IFTA Audit Procedures Manual" which is incorporated by reference in Section 15 of this administrative regulation.

(b) The audit of KRS 138.660(3) tax records shall be performed by verifying the following:

1. The combined license weight of each motor vehicle operated by the motor carrier;
2. Odometer correctness;
3. Reports of each trip which adequately identifies the truck, trip mileage, and route driven;
4. Weight reports;
5. Continuity of trips;
6. Off-highway mileage;
7. Seasonal variations in the motor carrier's business;
8. Electronic data processing; and
9. Sampling of representative months of operation.

(2) The Transportation Cabinet shall audit at least fifteen (15) percent of the IFTA licensees with a Kentucky base jurisdiction during a five (5) year period.

(3) At least thirty (30) days prior to conducting a routine audit, the Transportation Cabinet shall contact the motor carrier in writing advising of the approximate date that the audit is to be conducted and the time period the audit will cover.

(4) If it is determined that the fuel tax licensee's operational records are not located in Kentucky and it is necessary for the Transportation Cabinet's auditors to travel to where the records are maintained, the fuel tax licensee shall pay the Transportation Cabinet for the travel expenses incurred by its auditors in accordance with the per diem and travel rates established in 200 KAR 2:006.

(5) The auditor shall conduct and document a preaudit conference with the motor carrier outlining the motor carrier's operation, audit procedures, records to be examined, sample period, and sampling procedures. The motor carrier and auditor shall determine at the preaudit conference who has the responsibility for the final acceptance of audit findings and who should be involved in the close-out conference.

(6) The auditor shall conduct and document a close-out conference with the motor carrier outlining preliminary findings to include applicable penalty and interest, recommendations, rights of appeal, and to whom the audit report should be addressed.

(7) The Transportation Cabinet shall furnish the motor carrier a letter of audit findings and recap schedules. If requested, the cabinet shall supply any other work papers to the motor carrier.

(8) If an audit indicates that additional tax is owed, the Transportation Cabinet shall issue an audit supplemental tax statement.

(9) The motor carrier shall within forty-five (45) days of the date of the audit supplemental tax statement pay the supplemental tax or protest in writing to the Transportation Cabinet, Division of Audit Review.

(10) The motor carrier may within forty-five (45) days of the date of the audit findings, protest in writing to the Transportation Cabinet any portion of the audit.

(11) If the motor carrier does not protest pursuant to subsection (9) or (10) of this section, the audit or the audit supplemental tax statement shall be final on the beginning of the 46th ~~[45th]~~ day.

(12)(a) If a motor carrier protests pursuant to subsection (9) or (10) of this section the protest shall include a supporting statement and documents which identify ~~[identify]~~ the specific adjustments requested or the portions of the audit being protested and setting forth the reasons the protest is being made.

(b) If the supporting statement and documents are ~~[is]~~ sufficient to cause the Transportation Cabinet to change the audit or audit supplemental tax statement, the motor carrier shall be notified of the change and the amended audit or amended audit supplemental tax statement shall become final.

(c) If the supporting statement and documents are ~~[is]~~ not sufficient to cause the Transportation Cabinet to change the audit or audit supplemental tax statement exactly as requested by the motor carrier in its protest, the motor carrier shall be notified to attend an information gathering/protest conference with the Division of Audit Review. The information gathering/protest conference shall be scheduled to be held within thirty (30) days of the issuance of the written protest. It may be rescheduled only one (1) time by either party.

(d) Within twenty (20) days of the information gathering/protest conference the Transportation Cabinet shall issue the final audit or final audit supplemental tax statement.

(13) If the motor carrier so desires, he may, within thirty (30) days of the date of the final audit or final audit supplemental tax statement appeal to the Kentucky Board of Tax Appeals pursuant to KRS 131.340.

(14)(a) In the case of a fuel tax audit of an IFTA licensee, the licensee may request any other jurisdiction to audit Kentucky's audit findings.

(b) Each jurisdiction to whom a request is made may elect to accept or deny the request.

(c) Each jurisdiction electing to audit the licensee's records shall audit only for its own portion of the licensee's operations. The licensee shall make its records available at the office of the jurisdiction, at a place designated by the jurisdiction, or pay per diem and travel expenses associated with conducting an audit at the licensee's place of business.

Section 10. Assessment. (1)(a) If a fuel tax licensee fails, neglects, or refuses to file a tax report when due, the Transportation Cabinet shall, on the basis of the best information available to the cabinet, determine the fuel tax liability of the licensee for each jurisdiction.

(b) If a KYU licensee fails, neglects, or refuses to file a tax report when due, the Transportation Cabinet shall, on the basis of the best information available to the cabinet, determine the tax liability of the licensee relating to KRS 138.660(3).

(c) If a motor carrier fails, neglects, or refuses to obtain either a fuel tax license or a KYU license, the Transportation Cabinet may, on the basis of the best information available to the cabinet, determine the KRS 138.660(1) and (2) or (3) tax liability of the motor carrier for Kentucky.

(2) If an examination of a motor carrier's tax returns indicate that additional tax is owed or if the Transportation Cabinet determines a tax liability pursuant to subsection (1), (2) or (3) of this section, the Transportation Cabinet shall mail the motor carrier a supplemental tax statement.

(3) The motor carrier shall within forty-five (45) days of the date of the supplemental tax statement pay the supplemental tax or protest in writing to the Transportation Cabinet, Division of Motor Carriers.

(4) If the motor carrier does not protest pursuant to subsection (3) of this section, the supplemental tax statement shall be final at the beginning of the 46th ~~[on the 45th]~~ day.

(5)(a) If a motor carrier protests pursuant to subsection (3) of this section, the protest shall include a supporting statement which

identifies the specific adjustments requested and setting forth the reasons the protest is being made.

(b) If the supporting statement is sufficient to cause the Transportation Cabinet to change the supplemental tax statement, the motor carrier shall be notified of the change and the amended supplemental tax statement shall become final.

(c) If the supporting statement is not sufficient to cause the Transportation Cabinet to change the supplemental tax statement exactly as requested by the motor carrier in its protest, the motor carrier shall be notified to attend an information gathering/protest conference with the Division of Motor Carriers. The information gathering/protest conference shall be scheduled to be held within thirty (30) days of the issuance of the written protest. It may be rescheduled only one (1) time by either party.

(d) Within twenty (20) days of the information gathering/protest conference the Transportation Cabinet shall issue the final supplemental tax statement.

(6) If the motor carrier so desires, he may, within thirty (30) days of the date of the final supplemental tax statement appeal to the Kentucky Board of Tax Appeals pursuant to KRS 131.340.

Section 11. Trip Permits. (1) A motor carrier who does not have a required license may operate on Kentucky's highways pursuant to a temporary trip permit issued pursuant to KRS 138.665.

(2) Application for a temporary trip permit may be made by applying to the Division of Motor Carriers. The application may be made in person, in writing, or by telephone or facsimile communication.

(a) The address for written requests is P.O. Box 2007, Frankfort, Kentucky 40602;

(b) The location for in person requests is Third Floor, State Office Building, 501 High Street, Frankfort, Kentucky;

(c) The telephone number of the Division of Motor Carriers is (502) 564-4540;

(d) The telephone number for the facsimile machine in the Division of Motor Carriers is (502) 564-4138.

(3) The application for a temporary trip permit shall contain the following information:

(a) The name and address of the applicant;

(b) The year, make, and serial (vehicle identification) number of the motor vehicle for which the application is being made; and

(c) The combined gross weight of the motor vehicle.

Section 12. Fuel Tax Refunds or Credits. (1) A fuel tax licensee shall be allowed to carry forward a motor fuel tax credit for eight (8) quarters.

(2) A refund request from a fuel tax licensee shall be presented in writing and detail the reason for the requested refund.

(3)(a) A full credit shall be allowed IFTA and KIT licensees for tax-paid fuel purchases placed in a qualified motor vehicle.

(b) Any excess of fuel tax paid over tax liability in any member jurisdiction shall be credited in full to tax liability in other member jurisdictions or to the IFTA licensee's account ledger, as appropriate.

(4)(a) Motor fuel tax refunds to IFTA licensees shall be made only when all motor fuel tax liability, including audit assessments, has been satisfied to all member jurisdictions.

(b) If a fuel tax licensee's refund request is determined to be properly due, the refund shall be paid within ninety (90) days after receipt of a request for payment from a fuel tax licensee. (If an IFTA licensee requests a legitimate refund of a motor fuel tax credit balance from Kentucky, it shall be paid within ninety (90) days from the receipt of the written request.)

(5)(a) A fuel tax licensee may apply within two (2) quarters to the Transportation Cabinet for refund of the fuel tax imposed by KRS 138.660(1) or (2) when the fuel was consumed on the public highways and from the same tank that is permanently attached to the power unit of the qualified motor vehicle and serves to power the

operation of the qualified motor vehicle on the highways and when the fuel was used for power take-off equipment such as mixers, pumps, load lifts, and refrigeration units.

(b) The application for the refund of fuel defined in paragraph (a) of this subsection [(3)(a) of this section] shall be made on form TC 95-214, "Fuel Tax Refund for Power Takeoff", June 1996 edition to substantiate the nonhighway use of the fuel. This form is incorporated by reference in Section 15 of this administrative regulation.

Section 13. Tax Penalties and Interest. (1) The penalty for the late payment of the tax imposed by KRS 138.660(3) shall be as set forth in KRS 138.715.

(2) The penalty for the late payment of motor fuel tax imposed by KRS 138.660(1) and (2) or an IFTA jurisdiction shall be ten (10) percent of the tax due or fifty (50) dollars whichever is greater.

(3) The interest on the late payment of any of the taxes administered pursuant to this administrative regulation shall be as set forth in KRS 138.715.

(4) The taxes, penalties, and interest identified in KRS 138.675 shall also include the motor fuel taxes, penalties, and interest owed to other IFTA jurisdictions.

(5) The penalties and interest due for the overpayment of a refund shall being accruing fifteen (15) days after the motor carrier is notified of the overpayment.

Section 14. License Cancellation, Refusal, and Reinstatement. (1) If a motor carrier fails to comply with the provisions of KRS 138.655 through 138.7291, or this administrative regulation, the fuel tax license or KYU license may be canceled in accordance with the provisions of KRS 138.675.

(2) Reasons for cancellation of or refusal to issue a license shall include, but not be limited to the following:

(a) Improper use of license or decal;

(b) Failure to file a tax return when due;

(c) Failure to pay all of the taxes owed;

(d) Failure to produce records after written request for the records;

(e) Failure to maintain records in the required manner; or

(f) Notification from another IFTA jurisdiction of motor fuel tax violations in that jurisdiction.

(3) A motor carrier shall be notified of the pending license cancellation or license refusal and offered the opportunity for an administrative hearing pursuant to Section 14 of this administrative regulation.

(4) If a license is canceled by the Transportation Cabinet, the motor carrier shall immediately return the license.

(5) If a motor carrier desires to have a canceled license reinstated, the carrier shall meet the following criteria:

(a) Prove to the Transportation Cabinet that sufficient records are being and will be maintained to file accurate tax reports;

(b) Submit quarterly tax reports for all missed reporting periods;

(c) Pay all taxes, penalties, and interest owed;

(d) Provide a bond pursuant to Section 6 of this administrative regulation; and

(e) Provide evidence of liability insurance, operating authority, and other items of KRS Chapter 281 applicable to the motor carrier.

Section 15. Appeal Procedure. (1) An appeal of any nontax action of the Transportation Cabinet resulting from its actions relating to KRS 138.655 through 138.7295 shall be in writing and directed to the Transportation Cabinet, Office of General Counsel, 10th Floor, State Office Building, 501 High Street, Frankfort, Kentucky 40622.

(2) An administrative hearing shall be conducted in accordance with the provisions of KRS Chapter 13B.

Section 16. Incorporation by Reference. The following documents are incorporated by reference in this administrative regulation:

- (1) IFTA "Articles of Agreement," July [January] 1996 edition;
- (2) IFTA "Procedures Manual," July [February] 1996 edition;
- (3) IFTA "Audit Procedures Manual," July [February] 1996 edition;
- (4) Transportation Cabinet Form, "Application for Motor Fuel Tax Licensing for IFTA Carriers," TC 95-203, February 1996 edition;
- (5) Transportation Cabinet Form "Application for Kentucky Intrastate Tax License," TC 95-200a, January 1996 edition;
- (6) Transportation Cabinet Form TC 92-150, "Application for Intrastate Carrier Identification Number", March 1996 edition;
- (7) Transportation Cabinet Form TC 95-200, "Application for Kentucky Highway Use License," June 1995 edition;
- (8) Transportation Cabinet Form TC 95-9, "Request for Validation of Motor Carrier Control Number," June 1996 edition;
- (9) Transportation Cabinet Form TC 95-38, "Application for the Registration of Taxable Vehicles in Kentucky", June 1996 edition;
- (10) Transportation Cabinet Form TC 95-201, "Kentucky Highway Use Bond", June 1995 edition;
- (11) Transportation Cabinet Form TC 95-205, "Kentucky Fuel Users Bond", June 1996 edition;
- (12) Transportation Cabinet Form "IFTA Quarterly Fuel Tax Report" IFTA 100, November 1994 edition;
- (13) Transportation Cabinet Form "Highway Quarterly Tax Return", Form TC 95-101a, January 1996 edition;
- (14) Transportation Cabinet Form "Kentucky Weight Distance Tax", Form TC 95-101, May 1996 edition; and
- (15) Transportation Cabinet Form TC 95-214, "Fuel Tax Refund for Power Takeoff", June 1996 edition.

Section 17. Repeal. The following administrative regulations are repealed:

- (1) 601 KAR 9:074, Kentucky highway use license, records, and taxes; and
- (2) 601 KAR 1:160, Motor carrier vehicle identification.

ED LOGSDON, Commissioner

FRED N. MUDGE, Secretary

APPROVED BY AGENCY: July 11, 1996

FILED WITH LRC: July 12, 1996 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Contact person: Sandra G. Pullen Davis

(1) Type and number of entities affected: 30,000 motor carriers who operate trucks on the public highways of 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: Even though no public comment hearing was held, no change is expected in the cost of living or employment in Kentucky as a result of implementation of this administrative regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Even though no public comment hearing was held, no change is expected in the cost of doing business as a result of the implementation of this administrative regulation. The passage of HB 322 by the 1996 General Assembly imposed the tax in KRS 138.660(2) on many two-axle vehicles with a gross vehicle weight rating above 26,000 pounds which had been previously exempt. Under the taxing scheme in place prior to the General Assembly enacting HB 322, most farm vehicles were exempt from the taxes imposed by KRS 138.660(1) and (2). Implementation of the IFTA federal mandate and HB 322 through this administrative regulation continues that exemption. Likewise, all buses were exempt from the taxes imposed by KRS 138.660(2). Additionally, charter buses were exempt from the taxes imposed by KRS 138.660(1). Implementation of the IFTA federal mandate and HB 322 through this

administrative regulation provides for equal protection to all bus operators, exempting them from the taxes imposed by KRS 138.660(1) and (2).

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

1. First year following implementation: With Kentucky's entry into the International Fuel Tax Agreement the following changes in compliance, reporting and paperwork requirements will take place:

* The Kentucky-based motor carriers operating in interstate commerce will be able to file one quarterly fuel tax report with Kentucky instead of one with each of the jurisdictions in which it operates.

* The non-Kentucky-based motor carriers which operate in Kentucky will be able to file their Kentucky fuel tax report with its base jurisdiction as part of its tax report to that jurisdiction instead of filing a separate report with Kentucky.

* All KYU licensees will have to file a separate, one-page quarterly weight distance tax report with Kentucky. Currently, that report is part of the Kentucky fuel tax report.

* A KIT licensee which does not operate motor vehicles subject to the weight distance tax will be required to place a new motor carrier identification number on the side of its motor vehicles. Currently, most of these have KYU numbers on the side of the trucks, but the KYU number will now be reserved only for those motor carriers which operate trucks with a combined gross weight of 60,000 pounds or more and therefore subject to the weight distance tax. If the KIT licensee operates two-axle motor vehicles which were not previously subject to Kentucky's fuel taxes under KRS 138.660, the licensee will be required to place a KIT identification number on the side of the motor vehicle.

2. Second and subsequent years: Same as the first year, but after Kentucky has been a participating member of IFTA for one year, Kentucky auditors will perform the fuel tax audit of all Kentucky-based IFTA licensees. It is very unlikely that other jurisdictions will have need to ever audit these motor carriers for fuel tax purposes.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The startup costs for participating in IFTA include developing, printing, and distributing new forms to all of the motor carriers based in Kentucky. Because the weight distance tax is not subject to the IFTA requirements, every motor carrier operating motor vehicles with a combined gross weight of 60,000 pounds or more in Kentucky will have to have separate mailings of its tax report forms. Since these are only going to be mailed once each year instead of quarterly as is now done, there should be little change to Kentucky in the cost of the distribution of tax reports.

2. Continuing costs or savings: Same as above.

3. Additional factors increasing or decreasing costs: With other states auditing the motor carriers not based in Kentucky for fuel tax purposes that auditing cost will be decreased. However, since the auditing of the weight distance tax is still solely Kentucky's responsibility there will be no reduction in the audit responsibility of the state.

(b) Reporting and paperwork requirements: Being a member of IFTA requires much reporting and transfer of funds between states.

(4) Assessment of anticipated effect on state and local revenues: No change is expected in state or local revenues as a result of the implementation of this administrative regulation. However, the implementation of HB 322 and the federal mandate to join IFTA will cause the loss of over \$7 million each year from the repealed surtax which was imposed by KRS 138.6601. Expanding the tax base to include two-axle vehicles will increase the fuel taxes collected by about \$1 million each year. There has been much discussion of the possible increase in the collection of fuel taxes owed a jurisdiction as the result of the jurisdiction joining IFTA. However, to date no jurisdiction which has joined IFTA has been able to document a resulting increase in the amount of fuel taxes collected.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: State Road Funds which were appropriated for the Department of Vehicle Regulation in the biennium budget.

(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 public comment hearing was not held and the administrative regulation will be implemented on a state-wide basis.

(b) Kentucky: A public comment hearing was not held. However, the Transportation Cabinet cannot see an economic impact resulting from the implementation of this administrative regulation.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The following alternatives were considered in the implementation of the taxes imposed in KRS 138.660:

* Assessment of fuel taxes on buses - Non-charter over-the-road buses operating in Kentucky are subject to the fuel tax set forth in KRS 138.660(1) but not in (2). There are three motor carriers operating in Kentucky which have in the past been able to take advantage of the non-payment of the tax imposed in KRS 138.660(2). IFTA does not allow a difference in the taxes imposed on qualified motor vehicles. To comply with IFTA the Transportation Cabinet chose to not impose a fuel tax on the three carriers rather than to exceed authority by imposing a fuel tax not authorized by the General Assembly. Therefore, vehicles used in the commercial transportation of persons were excluded from the definition of qualified motor vehicles.

* Assessment of fuel taxes on farm vehicles - KRS 186.050(4)(a) provides that farmers with a truck having a gross weight of 38,000 pounds or less may have it registered as a "farm vehicle". KRS 186.650 and KRS 141.300(5)(b) exempts farm trucks of 38,000 pounds or less from including the semi-trailer for the purposes of motor carrier definition. Some farm vehicles will not include the semi-trailer while others will. The distinction being made by law will allow some of the farm vehicles to escape the surtax found in KRS 138.660(2) even though the combined weight of the tractor and trailer being operated by the farmer is in excess of 26,000 pounds. This creates two classes of farm vehicles which would be treated differently under Kentucky's statutes. Due to the requirements of IFTA and the Equal Protection Clause of the Constitution, this cannot be allowed. Therefore, the Transportation Cabinet exempted all farm trucks properly registered as such from the definition of qualified motor vehicles.

* Treatment of interstate versus intrastate motor carriers - Those portions of KRS 138.655, et seq. which conflict with IFTA, according to the Attorney General, have been preempted for motor vehicles being operated in interstate commerce. However, not addressed is the status of the same statutes as they are applicable to motor carriers operating exclusively in intrastate commerce. IFTA allows a motor carrier operating exclusively in intrastate commerce to obtain an IFTA license. (The motor carrier may be getting ready to expand its operations to other jurisdictions.) Therefore, there could be three separate ways of looking at motor carriers operating identical vehicles and performing the same functions. Due to the Equal Protection Clause of the Constitution, the Transportation Cabinet has determined that all motor carriers are to be treated the same for fuel tax purposes. Therefore, the administrative regulation identifies virtually identical requirements for IFTA and KIT licensees.

(8) Assessment of expected benefits: With the implementation of this administrative regulation, Kentucky will be able to participate in IFTA beginning with the collection of the fuel taxes required to be paid in October 1996. This participation is required by a federal mandate. Noncompliance would have meant that no interstate motor carrier would have been required to pay fuel taxes to Kentucky. This would have generated a loss to the Road Fund of at least \$35 million each year.

(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: Possibly

(c) If detrimental effect would result, explain detrimental effect: If Kentucky were not allowed to participate in IFTA, there would be a drastic cut in the amount of monies generated for the Road Fund each year. Such loss would result in a decrease in construction and/or maintenance on state highways. This would over time lead to a decrease in highway safety resulting in a detrimental effect on public health.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: As they relate to the administration of fuel taxes these statutes conflict with this administrative regulation KRS 138.660(2); 138.665(3); 138.670; 138.675; 138.695(1); 138.715; 138.729; 186.650; 141.300(5)(b). It is important to note that as these statutes relate to the administration of the weight distance tax, there is no conflict and the administrative regulation is in conformity with the statutes.

(a) Necessity of proposed regulation if in conflict: In order to participate in IFTA and then to provide equal protection to intrastate carriers, some of the procedures, record keeping, audits, etc. set forth in KRS 138.655 et. seq. must be overridden. The specific areas of concern are buses, farm trucks, audit periods, record retention periods, length of time a credit may be carried forward, and penalties imposed.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: To the extent possible, yes.

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Yes. There are different requirements for those carriers subject to the weight distance tax.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 49 USC Chapter 317.

2. State compliance standards. Kentucky adopted the provisions of the International Fuel Tax Agreement but expanded them to include those motor carriers operating exclusively in intrastate commerce.

3. Minimum or uniform standards contained in the federal mandate. By October 1, 1996 each state, except Hawaii, must only require the reporting and collection of fuel taxes from interstate motor carriers in accordance with the requirements of the International Fuel Tax Agreement. Therefore, the provisions of the International Fuel Tax Agreement become the federal mandate standards. These provisions include a requirement for uniform taxation of all qualified motor vehicles (the rate of fuel tax charged is immaterial, but each qualified motor vehicle operating in a jurisdiction must be charged the same rate); auditing for fuel tax purposes to be performed by the base jurisdiction; records are to be retained for 4 years; the penalty for the late payment of a fuel tax is 10% of the tax due or \$50 whichever is greater; bonding requirements only for those carriers who have presented a problem of some sort; and licenses and decals to be issued to each motor carrier operating qualified motor vehicles.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The federal mandate does not address the imposition and collection of fuel taxes on motor carriers which operate exclusively in intrastate commerce. The administrative regulation addressed those motor carriers as well as the motor carriers which operate in interstate commerce.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The Equal Protection Clause of the Constitution requires that entities which are essentially the same be treated the same. Therefore, the motor carriers operating in intra- and interstate commerce must be treated

the same.

CABINET FOR HEALTH SERVICES
Department for Mental Health
and Mental Retardation Services
(Amended After Hearing)

908 KAR 1:340. Narcotic treatment programs.

RELATES TO: KRS Chapter 222, 21 CFR Parts 291, 1301

STATUTORY AUTHORITY: KRS 194.050, 222.231, 21 CFR Parts 291, 1301, EO 95-79

NECESSITY AND FUNCTION: KRS 194.050 and 222.231 authorize the Cabinet for Health Services to establish guidelines and provide for the systematic evaluation of effectiveness of narcotic treatment programs. Executive Order 95-79 effective 12-28-95 reorganizes the Cabinet for Human Resources and places the Department for Mental Health and Mental Retardation Services and its programs under the Cabinet for Health Services. This administrative regulation establishes the State Narcotic Authority with the Division of Substance Abuse, within the Department for Mental Health and Mental Retardation Services, and establishes licensure and operations requirements for narcotic treatment programs.

Section 1. Definitions. (1) "Administrative detoxification" means the detoxification from the approved controlled substance for the safety and well being of the client, other clients, and staff of the narcotic treatment program.

(2) "Approved controlled substance" means the drugs methadone (powdered methadone is not an approved controlled substance) or ORLAAM (brand of levomethadyl acetate hydrochloride; levo-alpha-acetylmethadol hydrochloride) used in the treatment of narcotic addiction.

(3) "CHS or cabinet" means the Cabinet For Health Services.

(4) "Client" means any individual who receives a controlled substance for the purpose of maintenance or detoxification in an NTP.

(5) "DEA" means the Drug Enforcement Administration.

(6) "Dose" means a one (1) day quantity of an approved controlled substance, administered on site, in not less than one (1) fluid ounce of an oral solution, formulated to minimize misuse by injection.

(7) "Drug screening" means the process by which a program determines the presence or the absence of drugs in the body fluids.

(8) "FDA" means the Food and Drug Administration.

(9) "Main program" means the location where all administrative and medical information related to the narcotic treatment program is retained for the purpose of on-site reviews by federal agencies or the state narcotic authority.

(10) "Medication station" means any dosing location that obtains its drug supply from the main program site and retains all records (except dosing, urine screens) at the main location.

(11) "Narcotic detoxification program" means a program using approved controlled substances in continually reducing dosages over a period of time for the purpose of relieving or reducing withdrawal symptoms.

(12) "Narcotic maintenance" means a treatment procedure using an approved controlled substance over a period of time to relieve withdrawal symptoms, reduce narcotic craving, and permit normal functioning so that, in combination with rehabilitation services, clients can develop a productive lifestyle.

(13) "Narcotic treatment program" or "NTP" means a substance abuse program using approved controlled substances and offering a range of treatment procedures and services for the rehabilitation of persons dependent on opium, morphine, heroin or any derivative or synthetic drug of that group.

(14) "Phase treatment" means the client's progress through treatment in a graduated sequence system.

(15) "Program sponsor" means a person or representative of an individual or entity who assumes responsibilities for the operation of a narcotic treatment program as well as being responsible for the on-site conduct of all employees, and other persons providing services, and ensures that the program is operated in compliance with this administrative regulation.

(16) "Proposed program" means an individual or entity in the process of seeking a narcotic treatment license.

(17) "Public health director" means the director of the local public health department.

(18) "SNA" means the State Narcotic Authority.

(19) "Take-home dose" means a quantity of an approved controlled substance which the client is eligible to take off site.

(20) "Voluntary detoxification" means a client requested, physician supervised withdrawal from the approved controlled substance.

Section 2. State Narcotic Authority. The SNA shall be the Director, Division of Substance Abuse, within the Department for Mental Health and Mental Retardation Services.

Section 3. Alternative Distribution System. The SNA shall establish an alternative distribution system regarding the direct shipment of methadone and ORLAAM to approved treatment programs using narcotic drugs. An approved NTP shall submit a list of personnel, with a copy of the powers of attorney that authorizes them to sign order forms and receive shipments of controlled substances, pursuant to 21 CFR 1305.03, 1305.04, 1305.07, to the Hazelwood Center. Programs may not designate staff other than a physician, registered nurse, licensed practical nurse, or pharmacist to sign for or receive shipments of controlled substances. Programs shall submit a completed federal form 222 to Hazelwood Center, 1800 Bluegrass Avenue, Louisville, Kentucky 40202 to obtain methadone or ORLAAM.

Section 4. Application to Operate a NTP. (1) A proposed program desiring to operate a NTP shall meet the requirements of this administrative regulation, and shall be licensed in accordance with 908 KAR 1:150 through 1:260 prior to application.

(2) The proposed program shall submit each staff member's, including the program sponsor, administrator, and all other personnel, profile and resume of educational and professional experience, including Social Security numbers and date of birth.

(a) If the program is a corporation or partnership, the application shall list all partners' and officers' names, addresses, and Social Security numbers.

(b) Failure to provide this information shall disqualify the application for further review.

(3) The proposed program shall submit or cause to be submitted on its behalf to the SNA a written protocol which shall serve as an application for licensure by the SNA. This protocol shall include the following:

(a) A plan of operation;

(b) A description of the geographic area to be served by the program;

(c) Population and area to be served;

(d) The estimated number of persons, in the described area, addicted to heroin or other morphine-like drugs and an explanation of the basis of the estimate;

(e) The estimated number of persons in the described area addicted to heroin or other morphine-like drugs presently under treatment in methadone and other treatment programs;

(f) The number of patients in regular treatment, projected rate of intake, and factors controlling projected intake;

(g) Program goal;

(h) Plan for evaluation;

(i) Memoranda of agreement which reflect supportive services from the administrative head of the following agencies:

ADMINISTRATIVE REGISTER - 450

1. Hospitals;
2. Local law enforcement including jails;
3. Community mental health and mental retardation agencies;
4. Private, for-profit alcohol and drug services and publicly funded alcohol and drug services;
5. Department of Vocational Rehabilitation Services; and
6. Private, for-profit mental health counseling services;
- (j) Client identification system;
- (k) System to prevent client's multiple program registration;
- (l) Organizational chart which includes the persons responsible for the program;
- (m) First year budget, which list available, pending, or projected funds;
- (n) Copies of letters verifying funding;
- (o) Schedule of the amount of the client fees;
- (p) Duties and responsibilities of each staff member and the relationship between the staffing pattern and the treatment goals;
- (q) Duties and responsibilities of the medical director;
- (r) Plan for delegation of the medical director's duties, if appropriate;
- (s) Training and experience of counselors and therapists;
- (t) Counselor and therapist caseload;
- (u) Procedures and criteria for client selection;
- (v) Program rules and instructions;
- (w) Facility description;
- (x) Initial dosage levels;
- (y) Daily dosage levels;
- (z) Operational procedures including the procedures to be used in inventory maintenance and daily dosing schedules;
- (aa) Procedures, or documented efforts made, which provide for cooperation with local jails and hospitals for either withdrawal or maintenance while in custody or hospitalized in the event of client incarceration or hospitalization;
- (bb) Procedures in the event of state or national or manmade emergency or disaster.
- (cc) Urinalysis procedures which utilize random selection or unannounced collection;
- (dd) Procedures for scheduled termination, voluntary termination, and involuntary termination for cause, including reasons for termination for cause;
- (ee) Fair hearing procedures for client grievances;
- (ff) Copies of all forms developed and to be used by the proposed NTP;
- (gg) Facility address and dimensions;
- (hh) Amount of space devoted to methadone treatment, including waiting, counseling, dispensing, and storage areas;
- (ii) Days and hours of dispensing;
- (jj) Days and hours of other program services;
- (kk) Type of services provided and the hours of use, if the facility is also used for purposes other than narcotic treatment; and
- (ll) Diagram of the facility housing the NTP and an accompanying narrative which describes client flow. The diagram and narrative shall specify:
 1. Waiting areas;
 2. Office space;
 3. Dispensing area;
 4. Urine collection locations;
 5. Record storage area;
 6. Parking or transportation access; and
 7. The relation of the services to the total facility.
- (4) A protocol proposing a new program or a complete revision of the protocol of an approved program shall be submitted to the SNA.
- (5) The proposed program shall submit written policies and procedures in accordance with Sections 6, 7, 8, 9, 10, 11, 12, 13, 14 and 16 of this administrative regulation.

Section 5. SNA Application Review Process. (1) The SNA shall

review the application materials within thirty (30) working days for the following:

(a) Criminal convictions by all individuals or entities involved with the proposed program within the past five (5) years, including violations of controlled substance laws and administrative regulations;

(b) Suspension or revocation of any FDA, DEA, state narcotic licenses, or professional licenses in the past five (5) years of any staff member including the medical director, registered nurses, licensed practical nurses and registered pharmacist; and

(c) The written monitoring reports and compliance reports of other NTPs currently operated by the applicant or by any corporation or partnership with whom the applicant has been associated in the past five (5) years. These reports shall be obtained from the DEA and FDA agents, medical licensing boards, pharmacy licensing boards, nursing licensing boards, and from other SNAs.

(2) The SNA shall not grant an application to operate a NTP to any applicant that has employed staff or, if applicant is a corporation or partnership, any officer of the corporation or member of the partnership who was convicted of a misdemeanor related to controlled substances laws or any felony within the last five (5) years.

(3) The SNA shall work in collaboration with the DEA and FDA in reviewing the proposed application. Before any narcotic license shall be issued to the proposed program, the SNA, the DEA office, and the FDA office shall all agree.

(4) The SNA shall conduct an on-site inspection to review the proposed program and interview the medical director, program sponsor and dosing staff.

(5) The SNA shall not approve any application for a NTP to any entity that poses a risk to the health and safety of the public based on a history of noncompliance with state and federal regulations as verified by the DEA or FDA or state licensure agencies in states in which the entity currently legally operates.

(6) The SNA shall respond in writing, within ten (10) working days, to the proposed program upon receipt of all reports and documents from the applicant and all agencies involved.

(7) If the application to operate the NTP is approved the SNA shall, within thirty (30) working days of the completion of the review process:

(a) Issue a letter which shall indicate the approval to operate a NTP, the DEA license number, the FDA license number, and the expiration date of the license to operate; and

(b) Assign a facility responsible for the distribution of the approved controlled substances to be used in the NTP.

(8) If the application to operate a NTP is not approved within thirty (30) working days, the SNA shall respond in writing citing the deficiencies, the requirements and time frames for taking corrective actions to make the program licensable.

(9) The proposed program shall provide a plan of correction for deficiencies cited within fifteen (15) working days from date of receipt of the written deficiencies.

Section 6. Organization and Administration Policies. (1) NTPs shall develop policies and procedures that include:

(a) Waiting list criteria;

(b) Criteria for the use of ORLAAM (levomethadyl acetate hydrochloride; levo-alpha-acetylmethadol hydrochloride) for clients needing or desiring take-home doses, but who do not meet eligibility requirements for take-home doses;

(c) Policies pertaining to the preparation and labeling of client doses which shall include:

1. The quantity of approved controlled substances that is indicated on the client's narcotic sheet within the medical record;

2. Assurance that doses shall be labeled with the exact quantity of narcotic drug ordered;

3. Take-home doses shall be formulated in such a manner that shall reduce the likelihood of injecting the dose;

4. Policies that permit clients to know their dose level; and

5. Policies that shall provide for the packaging of take-home doses of the approved controlled substances in containers that meet the requirements of 15 USC 1471. The label of the doses shall include the name of the program, address and telephone number of the program, name of the controlled substance, name of the client, the name of the physician ordering the substance, and the quantity of the controlled substance, unless the client has requested in writing that the quantity of the substance not be revealed to them.

(2) The program policies shall indicate that the medical director or program physician at the individual NTP is in charge of all dose adjustments.

(3) The program policies shall indicate that dosing personnel do not alter client doses without the medical director or program physician's order.

(4) Verbal dosing orders shall be signed by the medical director or program physician within forty-eight (48) hours of the order's receipt.

(5) The medical record shall indicate any reason for dose changes and shall be signed by the medical director or program physician.

(6) Detoxification policies for voluntary and administrative detoxification shall be in compliance with 21 CFR 291.505(d)(8) and (9), i.e.: short-term (thirty (30) days or less), or long-term (more than thirty (30) days and as much as 180 days).

(7) Urine collection policies for drug screening purposes shall be developed to assure absence of falsification. Each sample shall be analyzed for the following drugs:

- (a) Methadone;
- (b) Cocaine;
- (c) Opiates;
- (d) Amphetamines;
- (e) Barbiturates;
- (f) Tetrahydrocannabinol;
- (g) Benzodiazepines; and
- (h) Any other drug(s) that has been determined by the NTP or the SNA to be abused in that program's locality or any other drugs that may have been abused by the client.

(8) NTPs shall have policies that prohibit procedures for offering a bounty, monetary or equipment or merchandise reward, or free services for individuals in exchange for recruitment of new clients into the program.

(9) NTPs shall assure compliance with the system of treatment phases outlined in Section 11 of this administrative regulation.

(10) NTPs shall develop quality assurance policies to assure that services provided are achieving beneficial effects for the clients using the services.

(11) Urine drug screens shall be reviewed by the treatment team monthly to determine client's reduction in the use of unauthorized medications.

(12) Controlled substance medications shall be considered unapproved usage if they are being used by the client without a valid prescription.

(13) A urine drug screen negative for the approved controlled substances allowed to be used in the NTP shall be considered positive for unauthorized drug use.

(14) The NTP shall assure that urine drug screens are not used as the sole criteria for dismissing clients from the program.

(15) NTPs shall develop quality assurance procedures to determine the adequacy of the NTP's organization and service delivery. The assessment shall:

(a) Examine the content of the NTP's organizational and administrative structure and shall assess the following:

- 1. Availability of services to include counseling services;
- 2. Availability of physical health services to clients;
- 3. Vocational training available to clients;
- 4. Legal assistance or referral, if indicated for the client;
- 5. Americans With Disabilities Act (ADA) defined accessibility in

the on-site programs to the clients;

6. Quality assurance of the program structure; and

7. Continuity of services and care.

(b) Be conducted semiannually by the clinical supervisor, medical director, program sponsor, and the dosing nurse supervisor;

(c) Evaluate the following:

- 1. Appropriateness of the services delivered;
- 2. Completeness of documentation in client records;
- 3. Quality of and participation in staff training programs; and
- 4. Status of licenses and certification documents.

(16) All NTPs shall be open for dosing services seven (7) days a week with the exception of the following holidays:

- (a) New Years Day, January 1;
- (b) Presidents Day;
- (c) Martin Luther King Day;
- (d) Memorial Day, last Monday in May;
- (e) Independence Day, July 4;
- (f) Labor Day, first Monday in September;
- (g) Thanksgiving Day, fourth Thursday in November; and
- (h) Christmas Day, December 25.

Section 7. Personnel Policies. (1) The NTP shall have a program sponsor who shall:

(a) Assure that KRS 222.231, 908 KAR 1:150 through 1:260, 21 CFR 291.505(g), 1301.76, KRS Chapter 218A, 902 KAR 55:010 to 55:095 and this administrative regulation, are followed by the NTP;

(b) Have two (2) years documented experience in the treatment of addictions. The program sponsor shall be a certified chemical dependency counselor recognized by the Kentucky Credentialing Board, or a physician, nurse, physician assistant, or nurse practitioner certified by the respective licensing subspecialty, or shall have a minimum of a masters degree in the field of addictions or related field; and

(c) Assure that clients:

1. Receive and sign written information describing all facets of the program in a manner that the client understands;

2. Have had the contents of the "Consent to Treatment with an Approved Narcotic Drug", Form FDA 2635 (7/93), communicated to them and voluntarily sign the consent to treatment;

3. Under eighteen (18) years of age, have parents or legal guardians of nonemancipated minors sign the consent to treatment;

4. Receive information on communicable diseases at admission, readmission, and at six (6) month intervals for the first two (2) years of treatment, and as indicated clinically after two (2) years. Communicable diseases shall include tuberculosis, hepatitis, sexually transmitted diseases, and HIV/AIDS; and

5. Receive HIV/AIDS pretest, posttest counseling, and provide for voluntary HIV testing at admission or when clinically indicated thereafter.

(2) The program sponsor shall assure:

(a) That professional staff in the NTP shall maintain current credentials and that professional skills pertinent to their job descriptions shall be updated annually;

(b) That the laboratory performing the testing required under this administrative regulation is approved by the SNA, is certified by the Health Care Financing Administration as a CLIA (Clinical Laboratory Improvement Act-1988) certified laboratory, has a protocol in place that assures the integrity of the chain of custody for all urine drug tests, and an assurance that the initial test and confirmatory tests for drugs tested on behalf of the program meets the following standards;

- 1. Marijuana metabolites - initial screen 50ng/ml, confirmation test 15ng/ml;
- 2. Cocaine metabolites - initial screen 300ng/ml, confirmation test 150ng/ml;
- 3. Opiates metabolites - initial screen 300ng/ml, confirmation test 300ng/ml;
- 4. Amphetamines - initial screen 1000ng/ml, confirmation test of

amphetamine 500ng/ml, and methamphetamine confirmation test 500ng/ml;

5. Barbiturates - initial screen 300ng/ml, confirmation test 300ng/ml; and

6. Benzodiazepines - initial screen 300ng/ml, confirmation test 300ng/ml.

(c) That drug test results shall not be used as the sole criteria for administratively detoxifying a client from the NTP;

(d) That when drug testing results are used, presumptive laboratory results shall be distinguished from results that are definitive;

(e) That urine samples used for drug screening purposes shall be coded in a manner that ensures client confidentiality;

(f) That client attendance shall not be revealed to any person or agency without the specific written authorization of the client, or a valid court order.

(3) NTPs shall have a medical director who shall:

(a) Be licensed by the Commonwealth of Kentucky to practice medicine within the Commonwealth and function autonomously within the NTP free from any protocol imposed by any NTP, sponsor, or any other entity but under the guidelines imposed by 21 CFR Part 291 and this administrative regulation; and

(b) Be a board eligible psychiatrist licensed to practice in Kentucky and have three (3) years documented experience in the provision of services to persons who are addicted to alcohol or other drugs; or

(c) Be a physician licensed to practice in Kentucky and certified as an addictionologist by the American Society of Addiction Medicine; and

(d) Be responsible for dosing staff in the NTP and shall be responsible for the NTPs adherence to 21 CFR 291.505(g), KRS Chapter 218A, 902 KAR 55:010 to 55:095, 908 KAR 1:150 through 1:260 and this administrative regulation.

(4) NTPs may have a program physician who shall:

(a) Be licensed by the Commonwealth of Kentucky to practice medicine within the Commonwealth and function autonomously within the NTP free from any protocol imposed by any NTP, sponsor, or any other entity but under the guidelines imposed by 21 CFR Part 291 and this administrative regulation; and

(b) Be a board eligible psychiatrist licensed to practice in Kentucky and have three (3) years documented experience in the provision of services to persons who are addicted to alcohol or other drugs; or

(c) Be a physician licensed to practice in Kentucky and certified as an addictionologist by the American Society of Addiction Medicine; and

(d) Be responsible for dosing staff in the NTP and shall be responsible for the NTPs adherence to 21 CFR 291.505(g), KRS Chapter 218A, 902 KAR 55:010 to 55:095, 908 KAR 1:150 through 1:260 and this administrative regulation.

(5) The medical director may be the program physician.

(6) There shall be one (1) medical director or program physician on staff for every 300 clients, or fraction thereof, enrolled in a NTP.

(7) The responsibilities of the medical director or program physician(s) shall include:

(a) Assuring there is evidence of physiologic dependence on narcotics for all clients admitted to the NTP;

(b) Assuring a history of addiction, or that any exceptions to admissions criteria are approved by the SNA and documented in the client's record before the first dose is administered;

(c) Assuring that appropriate medical histories and physical examinations have been performed before the first dose shall be administered;

(d) Assuring that appropriate laboratory studies have been performed and have a documented review by the medical director or program physician;

(e) Documenting, signing, or countersigning all medical orders,

within forty-eight (48) hours, that include the first dose of narcotic drug or other approved medications;

(f) Documenting, signing, or countersigning all subsequent medication orders within forty-eight (48) hours, including dose increases and decreases, changes in frequency of take-home doses, emergency situations, or special circumstances;

(g) Assuring that information on all communicable diseases is communicated to all clients as required; and

(h) Assuring that a review and cosignatures of all telephone or other verbal orders are documented within forty-eight (48) hours of the order.

(8) The medical director or program physician at the NTP shall:

(a) Supervise clinical staff responsible for preparation and administering of the approved controlled substances; and

(b) Assure compliance with program procedures and administrative regulations;

(9) The medical director or program physician shall order all doses and all increases or decreases of doses of medications or drugs for the client, through the NTP.

(10) Any verbal orders shall be given to nursing or pharmacy staff and shall be cosigned by the medical director or program physician within forty-eight (48) hours of the order's receipt.

(11) The medical director or program physician shall review all laboratory testing results required by the FDA, SNA, and testing indicated by the client's clinical record. Any specific additional laboratory testing shall be ordered by the medical director or program physician.

(12) The medical director or program physician, in determining the client's take-home medications, shall take into consideration the items addressed in 21 CFR 291.505(d)(6)(C)(iv)(B) and shall comply with Sections 10, 11, 12, 13 and 16 of this administrative regulation.

(13) NTPs shall provide dosing staff in sufficient numbers to meet the needs of the clients during dosing hours. Dosing staff shall:

(a) Hold a license as a registered nurse, licensed practical nurse, or pharmacist; and

(b) Not be dually assigned as primary client counselors.

(14) Programs shall provide counselors who shall have, at a minimum, a bachelors degree in a human services related field and a chemical dependency counselor certification from the Kentucky Certification Board of Chemical Dependency Professionals, Inc. or be actively engaged in the certification process.

(15) There shall be one (1) counselor for every forty (40) clients in the program.

Section 8. Physical Plant. (1) The building used for the NTP shall meet requirements in 21 CFR 1301.74(j) and shall have space for the following operations:

(a) The waiting area shall be large enough to accommodate the clients arriving for services.

(b) The waiting area shall be separated from the dosing area to permit each client privacy and confidentiality at the time of dosing.

(c) The dosing area shall be clean and sanitary, shall accommodate the dosing staff, and shall contain the following:

1. A stainless steel sink;
2. Hot and cold running water;
3. A refrigerator for dosing supplies; and
4. Pill-counting trays if tablets are being used.

(2) Security and floor plan of the dosing area may be unique to each program, but shall conform to the requirements in 21 CFR 1301.72.

(3) The NTP shall make arrangements for the facility to have two (2) restrooms which shall be handicapped accessible.

(4) The NTP shall assure that restrooms available to clients to provide urine specimens are secure, private, clean, and sanitary.

(5) The physical plant shall meet building, fire, safety, and health standards specified by state and local government laws and regulations.

(6) The physical plant shall be secured by a local security company approved by the DEA and the SNA.

(7) There shall be a minimum of two (2) panic buttons or similar devices for each NTP, one (1) in the reception area, and one (1) in the dosing area.

(8) There shall be a telephone with an outside line accessible in the dosing area.

(9) Internal security may be unique to each NTP and shall meet the requirements of 21 CFR 1301.74(b), (h), (i), (j), (k); 1301.91; 1301.92 and shall be installed only after consultation with the DEA Office and the SNA.

(10) Parking space at the clinic site shall be adequate to accommodate the maximum number of clients expected to be at the clinic site at one (1) time or have specific appointment schedules to prevent the influx of clients that would be disruptive or unsafe to the surrounding community.

(11) The NTP shall comply with all local zoning and ordinance laws and requirements.

Section 9. Security and Control. (1) The security and control segment of the NTP's assessment procedure shall be conducted quarterly by the program sponsor and dosing nurse supervisor or pharmacist who shall assure that the requirements of 21 CFR 1304.28 are met. Other items to be evaluated shall include:

(a) Security of the narcotic safe and the building perimeter shall be checked with a security company.

(b) The safe shall be locked at all times while staff are not obtaining or restocking controlled substances.

(c) Inventory reconciliation shall be conducted and all reconciliation documents shall be retained by the program for five (5) years.

(d) Five (5) percent or more inventory discrepancies shall be reported to the SNA and the DEA offices within forty-eight (48) hours of reconciliation.

(e) Dosing personnel shall count all new bottles of narcotic tablets before removing any for client doses.

(f) Any discrepancies shall be reported to the SNA, to the DEA and FDA, and the Department for Health Services' Office of Drug Control, using the DEA 1305.12 (12/85) "Report of Theft or Loss of Controlled Substances" form, within forty-eight (48) hours of the event.

(g) A system shall be devised to assure the NTP completes the DEA biennial inventory of narcotic drugs on hand.

(h) Order forms for controlled substances, the dosing records, and inventory reconciliation records shall conform to 21 CFR 1304.28 and shall be maintained in a locked, secured area separate from the storage site of the controlled substances.

(2) Utilization and effectiveness of delivered services shall be reviewed by the program sponsor and medical director annually for the following:

(a) Treatment slot utilization and cost per slot;

(b) Staff-to-client ratio;

(c) Cost per counseling session; and

(d) Cost per client for other program services.

(3) NTPs shall maintain written policies to assure the confidentiality of all client records.

(4) Quarterly, the program sponsor shall review a ten (10) percent random sample of client records for the following information and assurances:

(a) Client signed the "Consent to Treatment with an Approved Narcotic Drug," Form FDA 2635 (7/93);

(b) Client signed a release of information form, developed by the NTP, which shall include:

1. Specific type of confidential information to be obtained or released; and

2. Specific dates that the release is to cover.

(c) When the program sponsor serves as a counselor then the medical director shall review ten (10) percent of the program

sponsor's client records for the same information and assurances as cited above in paragraphs (a), (b) 1 and 2 of this subsection.

(5) The NTP shall retain a copy of internal assessment documents on file, which shall be available for review by regulatory agencies for five (5) years.

(6) The NTP shall participate in the data collection system as addressed in 908 KAR 1:300.

Section 10. Admission and Readmission Policies. (1) The admitting physician for the NTP shall comply with the admission requirements of 21 CFR 291.505(d)(1).

(2)(a) Exceptions to the admission requirements shall be those cited in 21 CFR 291.505(d)(1)(C)(iii). Programs shall adhere to the following for pregnant clients:

(b) A program shall not admit as a client any person who is pregnant, nor shall any program continue to treat any client who becomes pregnant, unless and until the medical director or program physician first determines and documents in the client's record the following:

1. The client is medically able to participate in the program.

2. The client shall be in the care of a qualified physician for her pregnancy and the physician is informed of the client's participation in the program. For the purpose of this subsection, "qualified physician" means a physician trained in the field of obstetrics.

3. If the medical director or program physician does not accept the responsibility for providing prenatal care for the term of the client's pregnancy, the program physician shall refer any applicant who is pregnant or any admitted client who becomes pregnant to another physician for care during pregnancy and shall verify that she is actually under care of the physician to whom she was referred or another qualified physician.

4. In the case of a pregnant client, the medical director or program physician shall ensure that appropriate arrangements have been made for the addiction-related medical care of both the client and the child following the birth of the child.

5. Maintenance treatment dosage levels of pregnant clients shall be maintained at the lowest possible dosage level.

6. The program shall ensure that the following services are available for pregnant addicts and are a part of the treatment plan:

a. Periodic physician consultation at least monthly;

b. Nutritional counseling;

c. Parenting training including newborn care, handling, health, and safety; and

d. Weekly full drug screen urinalysis;

(3) When a client applies for admission to a NTP the client shall be required to sign a release of information that authorizes a program to release or solicit information regarding the client's status in the NTP to another NTP.

(4) A client who has received treatment and later voluntarily detoxified may be readmitted to a NTP without evidence to support findings of current physiologic dependence, up to two (2) years after discharge if the NTP attended is able to document prior treatment of six (6) months or more, and the admitting medical director or program physician finds readmission to the NTP to be medically justified.

(5) Any client seeking readmission to a NTP after being administratively detoxified shall wait thirty (30) days prior to applying for readmission.

(a) If a client has been administratively detoxified two (2) times during a twelve (12) month period the client shall wait sixty (60) days before applying for readmission.

(b) The medical director or program physician shall find readmission to the NTP medically justified.

Section 11. Treatment Protocol. NTPs shall comply with the following treatment phase system to achieve the goals of reduced health problems, reduced criminal activity, increased productivity, stabilization of family life and eventual drug free living.

(1) Entry phase. The first ninety (90) days of treatment all clients shall adhere to the following:

(a) Clients shall be dosed with methadone seven (7) days at the clinic site.

(b) Clients shall be provided weekly counseling sessions to support the implementation of their treatment plan.

(c) Clients shall be provided HIV/AIDS education and provided or referred for HIV pretest counseling and voluntary HIV testing.

(d) Clients shall be oriented to appropriate twelve (12) step programs such as narcotics anonymous or alcoholics anonymous.

(e) During the entry phase the client shall provide an observed urine sample one (1) time per week on a random basis.

(f) There shall be documentation in the client record that treatment plans shall be reviewed and updated a minimum of every thirty (30) days for three (3) months, every ninety (90) days thereafter.

(g) The medical director or program physician shall sign the treatment plan.

(2) Phase one (1). In order for a client to enter phase one (1) the client shall not have committed any program infractions (dirty urine screens, disruptive behavior at the clinic site, threats to staff or other clients, failure to attend scheduled dosing or counseling appointments) for ninety (90) consecutive days.

(a) Once the client enters phase one (1) the client shall attend clinic six (6) times each week for observed ingestion of methadone and shall be eligible to receive a one (1) day take-home dose of methadone.

(b) Clients shall be provided weekly counseling sessions to support the implementation of their treatment plan.

(c) The client shall provide an observed urine sample on a random basis at least weekly.

(d) Clients shall be encouraged to attend an appropriate twelve (12) step program.

(e) There shall be documentation in the client record that treatment plans shall be reviewed and updated every ninety (90) days. This documentation shall include a report on the client's progress in relation to his treatment plan.

(f) The medical director or program physician shall sign the treatment plan.

(3) Phase two (2). In order for the client to enter phase two (2) the client shall:

(a) Not have committed any program infractions (dirty urine screens, disruptive behavior at the clinic site, threats to staff or other clients, failure to attend scheduled dosing or counseling appointments) for 180 consecutive days;

(b) Be pursuing gainful employment or vocational training or attending school or be engaged in volunteer work, or be attending parenting classes if they are a parent at home with children. Clients with disabilities or other circumstances which might prohibit this requirement may submit a written wavier request to the SNA justifying specific reasons for the request;

(c) Have a treatment plan to meet any special needs, including disabilities;

(d) Attend clinic five (5) times each week for observed ingestion of methadone and be eligible to receive up to two (2) days of take-home doses of methadone;

(e) Provide an observed urine sample randomly on a monthly basis, or more frequently if their treatment plan requires;

(f) Be provided monthly counseling sessions, or more frequently if their treatment plan requires;

(g) Be encouraged to attend appropriate self-help programs outside the clinic;

(h) Have documentation in the client record that treatment plans shall be reviewed and updated every ninety (90) days. This documentation shall include a report on the client's progress in relation to the treatment plan; and

(i) Have their treatment plan signed by the medical director or program physician.

(4) Phase three (3). In order for the client to enter phase three (3) the client shall:

(a) Not have committed any program infractions (dirty urine screens, disruptive behavior at the clinic site, threats to staff or other clients, failure to attend scheduled dosing or counseling appointments) for 270 consecutive days;

(b) Have met the same entry criteria requirements as noted in phase two (2);

(c) Attend clinic three (3) times each week for observed ingestion of methadone and be eligible to receive up to two (2) days of take-home doses of methadone;

(d) Provide an observed urine sample on a random basis, monthly, or more frequently if their treatment plan requires;

(e) Be provided monthly counseling sessions, or more frequently if their treatment plan requires;

(f) Be encouraged to attend appropriate self-help groups outside clinic;

(g) Have documentation in the client record that treatment plans shall be reviewed and updated every ninety (90) days. This documentation shall include a report on the client's progress in relation to their treatment plan; and

(h) Have their treatment plan signed by the medical director or program physician.

(5) Phase four (4). In order for the client to enter phase four (4), the client shall have successfully completed phase three (3) and adhered to the requirements of the maintenance treatment program for two (2) consecutive years.

(a) Clients shall be dosed at the clinic site two (2) days per week for observed ingestion of methadone and be eligible for three (3) take-home doses of methadone.

(b) The number of counseling sessions provided during this phase shall be based on the clinical judgement of the program physician and program staff.

(c) Requirements in the area of urine sample schedules, and treatment plan reviews remain the same as in subsection (4) of this section.

(d) Prior to successful completion of phase four (4), a plan shall be developed which shall assist the client toward a drug free treatment regimen for continued support.

(e) The medical director or program physician shall sign the treatment plan.

Section 12. Client Program Compliance. In order for a client to remain in a NTP and to successfully move through the treatment phases, clients shall be actively involved in the NTP by remaining in good standing at the clinic or risk being administratively detoxified. In those instances where clients have not complied with program policies:

(1) The client may be placed on a behavioral contract for a minimum of sixty (60) days during any individual program phase and shall lose all take-home dose privileges for sixty (60) days.

(2) If a client commits three (3) infractions, the medical director or program physician and staff may choose to move the client back in phases as part of the behavioral contract. The client shall lose all take-home privileges during the contract period.

(3) Following the commitment of any program infraction, the counseling staff shall assist the client in correcting the problem behavior and document this effort in the client's treatment plan.

(4) If the client continues to experience problems and breaks the behavioral contract, the client may be administratively detoxified based on the recommendation of the program physician and the program staff.

Section 13. Client Transfers. NTPs shall accept clients transferring from another program within the state, if:

(1) The NTP accepting a client voluntarily transferring from another NTP shall provide documentation that the client's medical

record and reason for the transfer was sought from the client's previous NTP [The client's medical director recommends and documents the reasons for transfer]; and

(2) The client is in compliance with readmission policies for clients who have been administratively detoxified.

(3) In order for the client to transfer to another NTP, the following requirement shall be met:

(a) The NTP that client is leaving shall forward all relevant client records to the program where the client is transferring.

(b) The NTP shall provide documentation that the client's medical record and reason for the transfer was sought from the client's previous NTP [Any client transferring shall have the medical director's recommendation for transfer] and shall meet the admission criteria of this administrative regulation.

(c) Clients who are Kentucky residents and wish to transfer to another Kentucky-based program shall be reviewed by the new program's admission program physician or medical director on an individual basis to determine their placement on the receiving program's client listing. The review shall determine the client's need, program placement availability, and the circumstances for the transfer request.

(d) Clients who are not Kentucky residents shall transfer to a Kentucky program as a new admission or "Entry Phase" as noted in this administrative regulation, Section 11(1) of this administrative regulation, unless other phase levels are approved by the SNA.

Section 14. Client Appeal Procedures. Decisions regarding a client's treatment by staff shall be subject to appeal by the client. Each NTP shall:

(1) Develop an appeal procedure that shall be approved by the SNA; and

(2) Have procedures that include a provision that a central file of all client appeals be maintained at the NTP for review by the SNA.

Section 15. Program Waiver Process. A NTP may make an application to the SNA in order to seek waivers from any requirement of this administrative regulation.

(1) This application for a waiver shall:

(a) Be in the form of a letter to the SNA;

(b) Identify the specific sections of this administrative regulation for which a waiver is being sought; and

(c) Give the rationale for such a request.

(2) A copy of the waiver request and response shall become part of the client's permanent record, if applicable.

(3) Applications for waiver requests shall be mailed to: Kentucky State Narcotic Authority, Division of Substance Abuse, 275 East Main Street, Frankfort, Kentucky 40621.

(4) The SNA shall respond, in writing, to the waiver request within fifteen (15) working days. The SNA shall provide written justification for any waiver request that has been denied.

Section 16. Take-home Doses. (1) Under emergency conditions a program may issue fourteen (14) consecutive days of take-home doses without notification of FDA. The NTP shall notify the SNA and request, in writing, an exception to dosing procedures prior to administration of the first emergency dose. This request shall include:

(a) The number of take-home doses requested;

(b) The reason for the request; and

(c) The client's standing in program phases, adherence to program policies, and the total length of time the client has been enrolled at the NTP.

(2) The medical director or program physician may grant an exception to the criteria for take-home dosages for any of the following reasons subject to the limitations in this administrative regulation and written approval from the SNA which shall be filed in the client record:

(a) The client has a serious physical disability which would

prevent frequent visits to the program facility.

(b) The client is subject to an exceptional circumstance such as acute illness, family crisis, or necessary travel, where hardship would result from requiring exact compliance with the step level schedule as noted in this administrative regulation. When a client must travel out of the program area, the medical director or program physician shall attempt to arrange for the client to receive his/her daily dosage at another program in lieu of increasing take-home dosages.

(c) The medical director or program physician shall not grant any exceptions during a calendar month which exceed three (3) exceptions or ten (10) percent of the number of patients enrolled in the program on the last day of the previous month, whichever is greater.

(d) The medical director or program physician shall document in the client's record the granting of any exception and the facts justifying the exception. Each program shall also maintain a separate record for all exceptions granted.

(e) The SNA shall not grant additional exceptions, except in cases of medical emergency or natural disaster, such as fire, flood, or earthquake.

(3) A NTP shall restrict a client's take-home dosage privileges by moving the client back at least one (1) step level on the schedule for take-home dosages if the client's urinalysis results disclose the unauthorized presence of methadone, cocaine, opiates, amphetamines, barbiturates, tetrahydrocannabinol, benzodiazepines, and any other drug(s) that has been determined by the NTP or SNA to be abused in that NTP's locality or any other drug(s) that may have been abused by the client twice or more in a sixty (60) day period.

(4) A NTP shall restrict a client's take-home dosage partially, by moving the client back on the take-home dosage schedule, if the NTP concludes that the client is no longer a suitable candidate or risk for take-home privileges as presently scheduled.

(5) A NTP shall revoke a client's take-home privileges for not less than three (3) months and shall require the client to ingest each dosage at the facility for any of the following reasons:

(a) The client's urinalysis discloses an absence of methadone, or methadone metabolite, and the medical director confirms the accuracy of such analysis. This shall not be applicable to clients whose daily dosage is ten (10) milligrams or less.

(b) The client is discovered to be misusing methadone, as defined in paragraph (e)3 of this subsection.

(c) The client attempts to register in another NTP.

(d) The client alters or attempts to alter a urinalysis.

(e) The client is not satisfactorily adhering to the requirements of the NTP by the following:

1. The client has not complied with all the rules of the NTP.

2. There is indication that the client has repeatedly used drugs improperly.

3. There is indication, including appropriate urinalysis results, that the client is misusing methadone. Misuse of methadone includes sharing, giving away, selling, or trading one's methadone dosage, or not ingesting it in accordance with methadone maintenance treatment program rules.

4. There is indication that the client is selling, distributing, or otherwise involved with illicit drugs and their use.

5. The client is not participating in an educational, vocational, or home-making activity.

(6) A client whose take-home privileges were revoked or restricted may regain take-home privileges according to the following schedule:

(a) Phase one (1) by satisfactory adherence for at least thirty (30) days.

(b) Phase two (2) by satisfactory adherence for at least thirty (30) days after regaining phase one (1) privileges.

(c) Phase three (3) by satisfactory adherence for at least thirty (30) days after regaining phase two (2) privileges.

(d) Phase four (4) by satisfactory adherence for at least thirty (30) days after regaining phase three (3) privileges.

(e) This section shall not be used to circumvent the requirements of this administrative regulation. No client shall be advanced to a phase level pursuant to this section unless he has previously been at that phase level after having satisfied the requirements of this administrative regulation.

(7) When the NTP fails to comply with the requirements in Sections 6, 7, 8, 9, 10, 11, 12, 13 or 16 of this administrative regulation, the SNA may order a NTP to suspend all or part of the take-home dosage program for a period of thirty (30) days. The SNA shall notify the NTP in writing outlining the reasons for the suspension prior to any suspension as follows:

(a) The NTP shall submit a plan of correction to the SNA within ten (10) days of receipt of the SNA notification.

(b) If the NTP does not make the corrections in the time specified due to circumstances approved by the SNA, but the NTP has responded within the ten (10) day time period, the SNA may extend the suspension for up to a second thirty (30) day period.

(c) If the NTP does not make the necessary corrections or does not submit an acceptable plan of correction with the SNA within the time frame specified in paragraph (a) of this subsection, the SNA shall suspend the NTP's take-home program until the necessary corrections have been made.

(d) If the NTP is determined by the SNA to not comply with Sections 6, 7, 8, 9, 11, 10, 11, 12, 13 or 16 of this administrative regulation and is serving clients who meet the requirements in Sections 10 and 11 of this administrative regulation, the SNA may restrict the NTP's take-home procedures to the provision of emergency take-homes according to the requirements of Section 16 of this administrative regulation. This restriction shall be in effect on a client-by-client basis until the NTP has taken corrective actions that bring the program into compliance with Sections 6, 7, 8, 9, 10, 11, 12, 13 and 16 of this administrative regulation.

(8) Maintenance treatment shall be discontinued within two (2) continuous years after the treatment is begun unless, based upon the clinical judgement of the medical director or program physician and staff which shall be recorded in the client's record by the medical director or program physician, the client's status indicates that the treatment should be continued for a longer period of time because discontinuance from treatment would lead to a return to opiate dependency.

(9) Client status relative to continued maintenance treatment shall be reevaluated at least annually after two (2) continuous years of maintenance treatment and documented in the client's record by the medical director or program physician or maintenance treatment shall be terminated.

(10) Documentation of the justification for continued maintenance treatment required by this administrative regulation shall indicate the client's progress, or lack thereof, and future expectations as required by this administrative regulation.

(11) Each NTP shall submit in its protocol a specific plan for schedule termination of maintenance treatment indicating an average period of maintenance before the scheduled termination.

(12) The termination plan shall include dosage schedules, information on counseling, and any other patient support which will be provided during withdrawal.

(13) Scheduled withdrawal shall be under the immediate direction of the medical director or program physician and shall be individualized.

(14) A client may voluntarily terminate participation in a NTP even though termination may be against the advice of the NTP.

(15) If the medical director or program physician determines that the client's continued participation in the program creates a physically threatening situation for the staff or other clients, the client's participation may be terminated immediately.

(16) A client's participation in a NTP may be involuntarily terminated for cause.

(17) If a NTP utilizes disciplinary proceedings which include

involuntary termination for cause, the program shall include in its protocol reasons and procedures for involuntarily terminating a client's participation in the program. The procedures shall provide for:

(a) Explanation to the client of when participation may be terminated for cause;

(b) Client notification of termination;

(c) Client's right to hearing; and

(d) Client's right to representation.

(18) If the NTP elects not to terminate for cause, the protocol shall state that clients shall not be involuntarily terminated for cause except as provided in subsection (15) of this section.

(19) Except as noted in subsection (15) of this section, either voluntary or involuntary termination shall take place over a period of time not less than fifteen (15) days, unless:

(a) The medical director or program physician deems it clinically necessary to terminate participation sooner and documents why in the client's record; or

(b) The client requests in writing a shorter termination period.

Section 17. Client Rights. In addition to the client rights cited in 908 KAR 1:200, Section 1, the following shall apply:

(1) Clients shall have the right to voluntary detoxification from the NTP.

(2) The client rights shall be posted in conspicuous places in the facility.

(3) The client rights shall be signed by the individual client attesting the client rights have been explained in such a manner that they are understood. This signed copy shall be maintained in the client's permanent medical record.

(4) Decisions regarding a client's treatment by staff may be subject to appeal by the client.

(5) Each NTP shall develop an appeal procedure that shall be approved by the SNA and shall include the following:

(a) Each appeal procedure shall contain a detailed description of the NTP's pretermination fair hearing procedure. The appeal procedure shall provide that a client has a right to a pretermination fair hearing in all cases of involuntary termination from the program for cause where continued participation in the program does not create a physically threatening situation for staff or others clients. The procedure shall require:

1. Identification of reasons for termination, as stated in the program rules, which may include:

a. Polydrug abuse;

b. Diversion of methadone;

c. Violence or threat of violence to program staff or other clients in the program; or

d. Multiple registration.

2. Written notification to the client of pending termination, containing:

a. Reasons for termination; and

b. Explanation of right to pretermination fair hearing, which shall explain to the client that rights shall be exercised within forty-eight (48) hours of written notice.

3. Provision for continuance of client's treatment status pending decision upon hearing;

4. Explanation of the client's rights during the hearing to:

a. Be represented at the hearing by a person or attorney of their choice;

b. Call witnesses on their behalf, who need not be under oath; and

c. Examine witnesses presented by the NTP.

5. Release of medical information in the client's file to the client or the client's representative at least forty-eight (48) hours prior to the hearing;

a. Medical information requests by the client shall be in the form of a signed consent to release of information.

b. Medical information to be released to the client or client's

representative shall be provided by the physician in charge of the client.

(b) The appeal procedure shall state whether the client is entitled to a hearing before a panel or before a single hearing officer. If the procedure states that the client is entitled to a hearing before a panel, a single hearing officer may not be substituted for the panel without the consent of the client. In the case of a hearing before a panel, a majority vote of the panel shall be necessary to terminate a person from the NTP.

(c) The NTP shall select the hearing officer or panel from impartial persons not directly involved with the client's care.

(d) A hearing shall be scheduled within seven (7) working days from the time the client requests a hearing.

(e) Unless the program procedures require a higher standard of proof, a client's participation in a program shall be terminated for cause only after the hearing officer or panel finds by a preponderance of the evidence presented that the reason stated in the notice justifies termination.

(f) The hearing officer or panel shall render a decision not later than the first working day following the hearing. The NTP shall keep a permanent record of the proceeding. The permanent record of the proceedings may be a tape recording. The decision shall be made in writing and shall be based solely on the evidence presented at the hearing. The decision shall include a summary of the proceedings and the formal findings and conclusions of the hearing officer or panel.

1. A copy of the hearing decision shall be provided to the client.

2. Copies of all written materials, including all evidence introduced at the hearing, shall be retained for one (1) year.

(g) A client may appeal an adverse action of a hearing officer or panel by the following:

1. The client may appeal the decision by filing an appeal with the Office of the Secretary, Cabinet for Health Services, 275 East Main Street, Frankfort, Kentucky 40621 within thirty (30) working days of the decision.

2. The hearing shall be conducted in accordance with the requirements of KRS Chapter 13B.

(6) All client appeals shall be maintained at the NTP for review by the SNA for two (2) years.

Section 18. Protocol for the Change of a NTP Location and the Protocol for Establishment of a Medication Station. The protocol shall be current, detailed, specific, and complete to permit evaluation by the SNA and to provide a basis for compliance inspections or surveys.

(1) If a NTP voluntarily decides to change its location or establish a medication station, the program shall notify, in writing, the DEA, FDA, the SNA and the Division of Licensing and Regulation within the cabinet within ninety (90) days of the proposed relocation. The written request to relocate shall include the following information:

(a) The reason for the relocation;

(b) The relocation site;

(c) The proposed date of the relocation;

(d) Indicate any program changes that may occur with the relocation; and

(e) If the NTP is within ninety (90) miles of the original site, the NTP shall provide the following:

1. Any dosing procedural changes; and

2. Any drug distribution problems which may occur due to the relocation.

(f) A medication station may be opened no closer than forty-five (45) miles and no further than ninety (90) miles to the main NTP.

1. The medication station shall obtain its supply of approved controlled substance from the stocks of the main NTP.

2. The medication station shall provide the following services:

a. Dosing; and

b. Urine screen collection.

3. The program sponsor shall develop a system to prevent clients from dosing at the main NTP and the medication station.

4. Any services provided at the medication station other than those listed above shall have prior approval by the FDA and SNA.

(2) The FDA, the DEA, and the SNA shall agree that the NTP may establish a medication station or relocate to the proposed relocation site. Written approval shall be forwarded to the NTP.

(3) If a NTP voluntarily decides to close its operation, it shall notify the SNA, the DEA, FDA and the Division of Licensing and Regulation within ninety (90) days before the planned closure of the program.

Section 19. Monitoring of NTPs. (1) The SNA shall monitor NTPs to assure the health and safety of program clients and the protection of the community at large. Monitoring visits shall be conducted annually, or more frequently if indicated. The SNA may:

(a) Discontinue all take-home doses of any approved controlled substance used in narcotic treatment and detoxification, on a statewide or program basis; or

(b) Discontinue the utilization of any drug approved for use in narcotic treatment programs.

(2) Focused, unannounced monitoring visits may be conducted more frequently and may occur in conjunction with the FDA and the DEA.

(3) Monitoring shall include:

(a) Inspection of the NTP licensing status;

(b) Inspection of the status of all applicable staff licenses and certificates;

(c) Inspection of the status of the NTP'S FDA, DEA, and state licenses;

(d) Inspection of the NTP's security which shall include:

1. Building security, perimeter and internal; and

2. Security of staff procedures in receipt of narcotic drug, storage of narcotic drug, and handling of the drug in preparation and dosing functions;

(e) Inspection of the records maintenance, the inventory control procedures, and the internal inventory reconciliation procedures;

(f) Inspection of the procedures the program has in place to reduce the likelihood of drug diversion by program clients and staff; and

(g) A random sample of doses prepared for administration may be pulled for quantitative analysis and the SNA shall submit to the program sponsor a receipt for any doses taken for analysis.

(4) Client records shall be reviewed for the following:

(a) Client signed consent to treatment with a controlled substance before the first dose was administered;

(b) Conformity with 21 CFR 291.505(d)(3)(i) requirements for minimum medical evaluations;

(c) Conformity with 21 CFR 291.505(d)(2)(ii), Sections 6(7) and 11(1)(e), (2)(c), (3)(e), (4)(d) of this administrative regulation for urine drug screening requirements;

(d) Conformity with client record that when the urine drug screen is positive for use of unapproved drugs, or is negative for the approved controlled substance, the client is counseled and suitable therapeutic action is taken by the treatment team, and the client's take-home doses have been discontinued for sixty (60) days. However, the urine drug screen shall not be used as the sole or primary reason for dismissing the client from the NTP; and

(e) Treatment plans have been developed and have been signed by the medical director or program physician in accordance with this administrative regulation;

(f) All physician orders for medications, doses, and dose changes and other treatments have been signed by the medical director or program physician within forty-eight (48) hours of the order's receipt;

(g) No medications are administered without the physician's orders;

(h) The SNA shall monitor for all other FDA, DEA, or SNA

administrative regulations; and

(i) Records shall be reviewed for compliance with all treatment phases and waiver requests and approvals.

Section 20. Penalties. Penalties may be issued by the SNA to NTPs that have violated FDA and DEA requirements, and this administrative regulation as follows:

(1) When a monitoring visit reveals regulatory violations, the SNA shall, within ten (10) working days issue a written report, which also shall be submitted to the FDA and DEA, with a time frame of thirty (30) days for the NTP to submit a plan of corrective action.

(2) If a plan of corrective action has been submitted within the thirty (30) days and is acceptable, the SNA shall notify the NTP in writing.

(3) A follow-up visit to verify that corrective action has been made may be performed by the SNA.

(4) If the NTP has not filed a plan of corrective action within thirty (30) days after receipt of the report, the NTP shall be notified that its license shall be suspended for a period not to exceed six (6) months or revoked.

(5) Upon notification of suspension or revocation, the NTP may appeal the suspension or revocation in accordance with Section 21 of this administrative regulation.

(6) The SNA shall immediately suspend or revoke any narcotic treatment license in cases of emergencies affecting the health and safety of the client population or the community as a whole.

(7) The grounds which justify the immediate suspension or revocation of a license shall be as follows:

(a) Take-home doses that fall outside this administrative regulation without specific FDA, DEA, or SNA approval prior to issuance of the take-home dose;

(b) The allowable difference between the labeled dosage of the approved controlled substance and the actual dosage as determined by a drug assay shall be the United States Pharmacopeia error rate [~~Labeling or dosing narcotic drug with a concentration that differs from the actual concentration in the container;~~];

(c) More than five (5) percent of the medical and dosing records reviewed are out of compliance with the administrative regulations;

(d) Discrepancies in the inventory reconciliation greater than five (5) percent;

(e) Continued dosing of clients prior to completion of the intake procedures, including physical exam, except under the most unusual emergency circumstances, which shall be recorded in the client's permanent record;

(f) Evidence in the client's record that the physician is not in control of the client's treatment;

(g) Consistent dosing of clients before the consent to treatment with controlled substances has been signed by the client;

(h) Consistent failure to conduct the required urine drug screening procedures on all drugs listed in Section 6(7) of this administrative regulation;

(i) Failure to comply with Section 8(5) of this administrative regulation; and

(j) Revocation of licensure pursuant to 908 KAR 1:150 through 1:260.

(8) The SNA shall notify the FDA monitor, DEA, and the Department for Health Services Office of Drug Control at the time revocation or suspension is taken in accordance with subsection (4) of this section.

(9) Except in cases of emergencies affecting the health and safety of the client population or the community as a whole, an appeal shall stay any decision to suspend or revoke a license to operate pending final decision of the secretary.

Section 21. Appeals. If the SNA takes action to deny, suspend, or revoke a NTP license, the SNA shall notify the NTP in writing stating the reasons for the adverse actions and the NTP's right to

appeal.

(1) If the NTP believes an action by the SNA is unfair, without reason, or unwarranted, the NTP may appeal the action in writing to the Secretary, Cabinet for Health Services, Fourth (4th) Floor, 275 East Main Street, Frankfort, Kentucky 40621, within fifteen (15) days after receipt of notice of action from the SNA.

(2) Upon receipt of the appeal, the secretary, or his designee, shall notify the NTP in writing within fifteen (15) days of the time and place of the hearing. The secretary, or his designee, shall appoint a hearing officer to conduct the hearing in accordance with KRS Chapter 13B.

(3) The hearing officer shall have authority to issue subpoenas to compel the attendance of witnesses and the production of documents to be used as evidence in hearings held pursuant to this section.

(4) Based upon the record and upon the information obtained at the hearing, the hearing officer shall affirm or overturn the initial decision of the negative action. The decision of the hearing officer shall be final. The NTP shall be notified in writing of the decision of the hearing officer.

(5) If a NTP, whose license has been suspended or revoked pursuant to Section 20(6) and (7) of this administrative regulation, requests a hearing, the cabinet shall conduct the hearing within five (5) working days of receipt of the request from the NTP. The hearing may be continued at the request of the NTP.

(a) The sole issue of the hearing shall be whether one (1) or more grounds for suspension or revocation create an immediate danger to the client population or the community as a whole.

(b) The cabinet shall render a decision within five (5) working days of the hearing. If a decision is not rendered within five (5) working days of the hearing, the NTP shall have its license returned and be allowed to operate pending action on other regulatory violations, if any.

(c) If the hearing officer decides within five (5) working days of the close of the hearing that one (1) or more of the grounds for suspension or revocation create an immediate danger to the client population or the community as a whole, the license of the NTP shall be suspended pending action of the cabinet to accept the plan of correction or revoke the license.

(6) If suspension or revocation of the license is upheld, the secretary's, or his designee's, notification shall specify the date by which the NTP shall close.

(7) A NTP that continues to operate after the closing date established by the secretary shall be subject to legal action by the cabinet as provided by law.

Section 22. Material Incorporated by Reference. (1) "Consent to Treatment with an Approved Narcotic Drug" form FDA 2635 (7/93); "Report of Theft or Loss of Controlled Substances" form DEA 1305.12 (12/85); U.S. Official Order Forms-Schedules I & II DEA form 222 (10/92) are hereby incorporated by reference.

(2) Copies of the incorporated material may be inspected, copied or obtained at the Department for Mental Health and Mental Retardation Services, Division of Substance Abuse, 100 Fair Oaks Lane, Leestown Square, 4th Floor, Frankfort, Kentucky 40601, 8 a.m. through 4:30 p.m., Monday through Friday.

Section 23. Compliance for Currently Operating NTPs. NTPs currently operating at the time this administrative regulation becomes effective shall have ninety (90) days to come into compliance with this administrative regulation.

ELIZABETH REHM WACHTEL, PH.D., Commissioner
JOHN H. MORSE, Secretary

APPROVED BY AGENCY: July 2, 1996

FILED WITH LRC: July 3, 1996 at 4 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Elizabeth Rehm Wachtel, Ph.D., Commissioner

(1) Type and number of entities affected: All programs who offer an approved controlled substance as a narcotic treatment modality.

(2) Direct and indirect cost or savings to those affected:

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented, to the extent available from the public comments received: Public comments have been received. It was stated that it may be difficult to hire and retain licensed and certified staff.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented to the extent from the public comments received: Public comments have been received. Hiring licensed and certified staff may precipitate an increase in 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: Compliance with DEA and FDA Standards, quarterly reporting and standard record keeping will be required

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

(3) Effects on the promulgating administrative body: Reviewing for compliance and record keeping for all Narcotic Treatment Programs.

(a) Direct and indirect cost or savings:

1. First year: No additional direct or indirect costs or savings.

2. Continuing cost or savings: Same as first year

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Reviewing for compliance and record keeping for all NTPs.

(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: State general funds shall be used to implement the enforcement of this administrative regulation.

(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: A public hearing was held on March 28, 1996 and no comments were made about this issue.

(b) Kentucky: A public hearing was held on March 28, 1996 and no comments were made about this issue.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered, because they are not available.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: The benefits to this administrative regulation include the reduction of AIDs and HIV among the intravenous drug using population in Kentucky, as well as establishing greater consistency in program operation policies across narcotic treatment programs, with reduction in diversion of program sponsored approved controlled substances which has been seen to increase law enforcement demands and the deaths of clients and nonclients in other states.

(b) State whether a detrimental effect on environment and public health would result if not implemented: If not implemented, the spread of AIDs and other infectious diseases among the intravenous drug using population may increase across Kentucky, as well as the breakdown in consistency of program operations of narcotic treatment programs, and the increase in the need for law enforcement oversight.

(c) If detrimental effect would result, explain detrimental effect: Maintenance and detoxification treatment would not be adequately regulated in the Commonwealth.

(9) Identify any statute, administrative regulation or governmental

policy which may be in conflict, overlapping, or duplicating:

(a) Necessity of proposed regulation if in conflict: One

(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 regulation will be applied in a like manner for all individuals or entities affected by it.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 21 CFR Part 291 and 1301.

2. State compliance standards. Establishes the State Narcotic Authority; Outlines the state alternative distribution system for controlled substance used in the treatment of narcotic addiction; Outlines the application procedures to operate a narcotic maintenance program; Outlines the organization and administration policies; Outlines the programs personnel policies; Outlines the programs physical plant requirements; Outlines the programs security and control procedures; Outlines the programs admission and readmission policies; Outlines the programs required treatment protocol; Outlines the client rights; Outlines the monitoring of the programs; Outlines the penalties imposed by the state narcotic authority on programs for noncompliance of FDA, DEA, and State Regulations; Outlines the programs appeal procedures.

3. Minimum or uniform standards contained in the federal mandate. 21 CFR 291.501: Narcotic drugs in the maintenance treatment of narcotic addiction; 21 CFR 291.505: conditions for the use of narcotic drugs; appropriate methods of professional practice for medical treatment of the narcotic addiction of various classes of narcotic addicts under Section 4 of the Comprehensive Drug Abuse Prevention and Control Act of 1970; 21 CFR 1301: Procedures governing the registration of manufacturers, distributors, and dispensers of controlled substances pursuant to Sections 1301 through 1304 of the Act (21 USC 821-824) are set forth generally by those sections and specifically by the Sections of this part.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Section 1 - State administrative regulation does not permit interim maintenance. Section 3 - The state alternative distribution system requires that approved NTPs obtain their supplies of approved controlled substances from a designated state operated facility. Section 4 - The federal regulation requires agencies to submit information regarding staff and security of the building and the drug. The state administrative regulation requires agencies to submit a detailed protocol which includes such information as letters of support from various agencies within the geographic location, first and subsequent years' budgets, detailed information about staffing qualifications and staffing patterns, criminal background checks, documentation of cooperative arrangements with local jails, hospitals, and community mental health centers. The agencies also must provide documentation of hearing procedures to guarantee the rights of clients. Section 5 - The SNA will not grant an application to any entity who has been convicted of a misdemeanor related to controlled substances laws or any felony within the last five (5) years. The SNA will not grant an application to any entity who poses risk to health and safety of the public. The SNA will review past written compliance and monitoring reports from other SNAs, DEA, and FDA. This is stricter than the federal regulations. Section 6 - The federal regulation does not require criteria for the use of ORLAAM. The state administrative regulation requires agencies to submit policies which document how ORLAAM will be dispensed. In addition, agencies must submit documentation to assure compliance with the treatment phases listed in Section 10 of the state regulation. The federal requirements do not include treatment phases. NTPs are required to have stricter drug screening policies than the federal regulations

require. Finally, the state administrative regulation requires clinics to be open seven (7) days a week, except for designated holidays. This is stricter than the federal regulations. Section 7 - The state administrative regulation requires stricter credentialing for the program sponsor, the medical director and/or the program physician, dosing personnel, and counseling staff. This is stricter than the federal regulations. Section 8 - The state administrative regulation requires that the dosing area be large enough to accommodate staff and equipment and the security of the drug. The federal regulation does not stipulate the size of the dosing area. The state administrative regulation also requires that the clinic have two (2) handicapped accessible restrooms which is not required by the federal regulation. Finally, the state administrative regulation requires adequate parking space for clients expected to be at the clinic at one time. This is stricter than the federal regulations. Section 9 - The state administrative regulation requires the agencies to quarterly evaluate the security and inventory reconciliation. The agencies must also assess the effectiveness of the utilization of the delivery services. The state administrative regulation requires that the staff to client ratio be forty (40) to one (1), which is greater than the federal requirements. The agency must also annually review ten (10) percent of the client records for compliance. Finally, the state administrative regulation requires agencies to participate in the data collection system as addressed in 908 KAR 1:300. This is stricter than the federal regulations. Section 10 - The state administrative regulation requires the program to ensure that the following services are available for pregnant addicts and are a part of the treatment plan: parenting training including newborn care, health, and safety, weekly full drug screen urinalysis: Any client seeking readmission to a NTP after being administratively detoxified shall wait thirty (30) days prior to applying for readmission. If a client has been administratively detoxified two (2) times during a twelve (12) month period the client shall wait sixty (60) days before applying for readmission. These requirements are stricter than the federal requirements. Section 11 - The state administrative regulation incorporates a five (5) phase system of treatment that outlines the counseling, take home dosages, urinalysis screening, orientation to 12-Step programs, vocational rehabilitation, job training, behavioral contracts, infractions, transfer of clients from within and outside the state, client appeal procedures, waiver procedures, the use and misuse of the approved controlled substance, SNA's ability to suspend all take home dosages, client record documentation of the continued use of the approved controlled substance after two (2) years of treatment, client's voluntary termination from a NTP and client's involuntary termination from a NTP. These requirements are stricter than the federal requirements. Section 12 - The client program compliance requirements are stricter than those addressed in the federal requirements. Section 13 - NTP client transfer policies are stricter than the federal requirements. Those clients transferring from another state must start at the "Entry Phase" in Kentucky NTPs. Section 14 - This section requires policies and procedures for clients to use when filing an appeal or grievance when their rights have been violated. These requirements are stricter than the federal requirements. Section 15 - NTPs must request all waivers from the SNA prior to any action which is out of compliance with these administrative regulations. Section 16 - This section stipulates the take-home procedures that all NTPs must follow and is stricter than the federal regulations for take-home dosage procedures. Section 17 - All NTPs must develop an appeal procedure which protects the client's rights and includes pretermination fair hearing procedures. This is stricter than the federal requirements. Section 18 - This section stipulates what protocol an NTP must follow to change a NTP location, close a NTP, or establish a medication station. This is stricter than the federal regulations. Section 19 - This section stipulates the monitoring procedures to be used by the SNA, time parameters of the on-site visits, reports issued as a result of the on-site visits, responses by the NTPs to any noncompliance issues cited as a result of the monitoring visit, and subsequent actions by the SNA. These requirements are stricter

than the federal requirements. Section 20 - This section outlines the actions to be taken by the SNA when on site visits reveal violations of federal and state regulations. These requirements are stricter than the federal requirements. Section 21 - This section outlines the specific rights of NTPs to appeal the decisions or citations of the SNA and further outlines the procedures for administrative hearings and other actions that may be in the interest of the NTP. The federal regulation includes no appeal process other than the through the courts.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. For all standards listed in number 4 above the justification for these stricter standards is: the SNA is seeking to protect the health and safety of the clients and staff of the NTPs and the health and safety of the community at large and to reduce the possible diversion of the approved controlled substances to the absolute minimum. The SNA also wishes to ensure the quality of treatment and program operations by the NTPs. Research of NTP operations in the states in the southeast region have revealed that minimal standards (FDA) have resulted in trafficking of the controlled substances outside the confines of the NTPs. Some of the trafficking has resulted in the death of nonaddicted persons, has reduced the credibility of narcotic treatment, and has resulted in the threat, real or imagined, of the removal of this treatment modality.

PROPOSED AMENDMENTS RECEIVED THROUGH NOON, JULY 15, 1996

REVENUE CABINET
Office of General Counsel
Division of Tax Policy and Research
(Amendment)

103 KAR 18:050. Withholding statements; Form K-2.

RELATES TO: KRS 141.330, 141.335

STATUTORY AUTHORITY: KRS 131.130, 141.335 [Chapter 13A]

NECESSITY AND FUNCTION: Under authority of KRS 141.335, this administrative regulation specifies the information that is required on employer income tax withholding statements.

Section 1. General. Employers must furnish to each employee, by January 31 following the close of the calendar year, the designated copies of the Withholding Statement, Revenue Form K-2 (the state portions of the combined federal and state withholding statements are also acceptable) if:

- (1) Tax has been withheld from wages, or
- (2) Tax would have been withheld if the employee had claimed no more than one (1) withholding exemption.

Section 2. Contents. (1) Revenue Form K-2 (or the state portion of the combined withholding statements) must contain the following information:

- (a) Employer's and employee's name and address,
- (b) Employer withholding account number,
- (c) Employee's social security number,
- (d) Total wages paid to employee,
- (e) Federal income tax withheld, and
- (f) Kentucky tax withheld.

(2) Withholding statements prepared incorrectly or on unacceptable forms will be returned to the employer for reissuance. Commercially printed forms must contain a designated space for state name and for state tax. They must also be legible and conform substantially in content and size with the official form. An employer must submit commercially printed substitute forms to the cabinet for written approval before they may be used.

Section 3. Interrupted and Terminated Employment. If employment ends before the close of the calendar year, the designated copy of the withholding statement must be furnished to the employee within thirty (30) days from the last payment of wages. In the case of interrupted employment, where there is reasonable expectation on the part of both employer and employee of further employment during the calendar year, the furnishing of the statement may be deferred to the date when the expectation of further employment during the calendar year ceases to exist.

Section 4. Incorrect and Duplicate Statements. If it becomes necessary to correct a Revenue Form K-2 after it has been issued to an employee, the new statement must be clearly marked "Corrected by Employer." If the statement is lost or destroyed, the employer shall prepare and issue duplicate copies to the employee. The duplicate copies must be clearly marked "Duplicate."

Section 5. Cabinet Copy. Designated copies of all withholding statements issued must be submitted to the cabinet by each employer with Revenue Form K-3 and K-3E. Employers issuing more than 250 Forms K-2 annually must utilize an acceptable form of magnetic media filing. Those employers issuing less than 250 Forms K-2 are encouraged but not required to utilize magnetic media filing. The cabinet will provide to all employers by October 31 of each year

information about the types of magnetic media that are acceptable to the cabinet. These will include all of the acceptable methods utilized by the Social Security Administration and the Internal Revenue Service that can be supported by the cabinet's equipment. [K-3B. A list totaling the tax withheld as shown on the statements must be submitted. A large number of statements may be grouped in separate units and a list may be submitted for each unit. In such case a summary must be submitted totaling all unit lists. The statements may be submitted to the department in packages of convenient size. The packages must be identified with the name of the employer and consecutively numbered. The number of packages must be indicated immediately following the employer's name on Revenue Form K-3 or K-3B. Revenue Form K-3 and K-3B and the remittance should be filed in the usual manner. Accompanied with a statement that the withholding statements are in separate packages. The employer may request permission to submit the cabinet copy in the form of a computer listing. Computer listing requirements will be furnished upon request.]

Section 6. Extension. Upon application to the cabinet, the Income Tax Division is authorized to grant employers an extension of time, not in excess of thirty (30) days, in which to furnish employees with the designated copy of withholding statements.

MARGARET HANDMAKER, Secretary

APPROVED BY AGENCY: July 12, 1996

FILED WITH LRC: July 12, 1996 at 11 am.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 30, 1996 at 10 a.m. in the Third Floor Training Room at 200 Fair Oaks Lane, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 25, 1996, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: John R. Scott, Kentucky Revenue Cabinet, Division of Tax Policy & Research, 200 Fair Oaks Drive, Frankfort, Kentucky 40620, (502) 564-6843.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John R. Scott

(1) Type and number of entities affected: This regulation affects all Kentucky employers who withhold Kentucky income tax from their employees.

(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: Indirect savings will be realized by those employers who must file reports on magnetic media with the federal government but had previously been required to file manual documents with the Revenue Cabinet.

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

1. First year following implementation: Compliance and reporting

requirements will not be changed. The only paperwork requirement to change is the substitution of magnetic media for paper documents. The content does not change.

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: Employer accounts filed on magnetic media are processed quicker and more accurately. This will reduce processing costs and the potential costs of audit and/or correction by the Revenue Cabinet.

2. Continuing costs or savings: Same as (3)(a)1. above.

3. Additional factors increasing or decreasing costs: None

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

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Revenue Cabinet general budget.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No expected impact.

(b) Kentucky: No expected impact.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods considered were more cumbersome and costly to the taxpayer/employer and the Revenue Cabinet.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

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

(c) If detrimental effect would result, explain detrimental effect: Not applicable.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None known.

(a) Necessity of proposed regulation if in conflict: Not applicable.

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. The provisions of this regulation will be applied equally to all taxpayers.

FINANCE AND ADMINISTRATION CABINET

Office of Financial Management and Economic Analysis (Amendment)

200 KAR 15:010. Formula for allocation of private activity bonds.

RELATES TO: KRS Chapter 103

STATUTORY AUTHORITY: KRS 103.286, 26 USC Sec. 146

NECESSITY AND FUNCTION: Pursuant to KRS 103.286, the Kentucky Private Activity Bond Allocation Committee shall attempt to allocate the state ceiling for the issuance of private activity bonds of Kentucky in order to foster economic development within the Commonwealth and promote the general welfare of its citizens and the public purposes of the Commonwealth. KRS 103.286 provides that the Secretary of the Finance and Administration Cabinet (as Chairman of the Kentucky Private Activity Bond Allocation Committee) shall promulgate administrative regulations in accordance with KRS Chapter 13A to provide for the allocation of the state ceiling for the issuance of private activity bonds among all issuers of such bonds within the Commonwealth of Kentucky. This administrative regulation establishes the formula by which state ceiling for the issuance of

private activity bonds will be allocated.

Section 1. Definitions. For the purposes of this administrative regulation:

(1) "Affected bonds" means "private activity bonds" as defined in the Internal Revenue Code of 1986, as amended by 26 USC sec. 146, et seq. (the "Code"), excluding any such obligations not subject to the state ceiling under the Code;

(2) "Bonds" means bonds, notes and other like obligations;

(3) "Committee" means the Kentucky Private Activity Bond Allocation Committee;

(4) "Issuer" or "issuing authority" means the public or authorized governmental body which issues the bonds;

(5) "Issued" means delivered and paid for;

(6) "Local issuer pool" means the portion of the state ceiling from which allocations for local projects are made to issuers of affected bonds issued on behalf or for the benefit of an entity which is not a state agency;

(7) "Local project" means a project for which bonds are issued on behalf or for the benefit of an entity which is not a state agency;

(8) "Single issuer pool" means the portion of the state ceiling from which allocations are made to any issuer;

(9) "Staff" means the Office of Financial Management and Economic Analysis of the Finance and Administration Cabinet.

(10) "State ceiling" means the cap imposed by Section 146 of the Code on private activity bonds issued within the Commonwealth of Kentucky;

(11) "State issuer pool" means the portion of the state ceiling from which allocations for state projects are made to issuers of affected bonds issued on behalf or for the benefit of a state agency;

(12) "State project" means a project for which bonds are issued on behalf or for the benefit of a state agency; and

(13) "Year" shall mean calendar year.

Section 2. Allocation of State Ceiling for Private Activity Bonds.

(1) On January 1 of each year, the state ceiling for private activity bonds shall be divided into two (2) separate pools, a state issuer pool and a local issuer pool. Sixty (60) percent of the state ceiling shall be reserved for the local issuer pool and forty (40) percent shall be reserved for the state issuer pool. On and after July 1 of each year, any remaining unallocated portion of the state ceiling in the state issuer pool shall revert to the single issuer pool. On October 1 of each year, any remaining unallocated state ceiling in the local issuer pool shall revert to the single issuer pool. On and after October 1 of each year, any remaining unallocated portion of the single issuer pool shall be allocated on a first come, first-served basis, subject to the limitations of KRS 103.286(2)(a).

Section 3. Allocations For Local Projects. Prior to October 1 of any year the committee shall not allocate a portion of the state ceiling for any project in an aggregate principal amount greater than ten (10) percent of the amount of the local issuer pool.

Section 4. Evaluation of Local Projects. Local projects seeking allocation from the state ceiling prior to October 1 shall be evaluated by the committee using the following criteria:

(1) Creation of new jobs, as well as preservation of existing jobs, by the project;

(2) Average salary per employee proposed for the project;

(3) Capital investment in Kentucky being made as a result of the project;

(4) Unemployment rate in the county of the project;

(5) State economic development incentives awarded to the company [project], if any;

(6) Previous private activity bond cap allocated to the company.

Section 5. Committee Meetings. The committee shall meet at

least quarterly to allocate the state ceiling. Special meetings may be held on the call of the committee (chairman).

Section 6. Obtaining Confirmations in Advance-notice of Intent. The committee shall issue a confirmation allocating to the issuer a portion of the state ceiling equal to the amount of the bonds proposed to be issued. No affected bonds shall be issued by any issuer prior to receiving confirmation by the committee of an allocation under the state ceiling. A confirmation authorizing the issuance of affected bonds shall be obtained by the filing by or on behalf of the issuer with the committee of a written notice of intention to issue such bonds (the "notice of intent"). Confirmations shall be dated and numbered in the order issued.

Section 7. Notice of Issuance. Original Confirmation Effective for Ninety (90) Days. A confirmation shall expire ninety (90) calendar days from the date of issuance by the committee, or December 15, whichever is earlier. The issuer shall deliver to the committee a notice that the affected bonds have been issued. The notice of issuance shall be transmitted by means the issuer may select, but shall be sent in time sufficient to allow the notice to reach the committee by the close of business on the 90th day after the confirmation. If such period ends on a Saturday, Sunday, or other day upon which state offices are closed for business, the notice period shall be extended to the next business day.

Section 8. Subsequent Renewals. Thirty (30) Day Waiting Period. If the applicable bonds are not issued within such ninety (90) day period no new notice of intent for a project consisting of all or any part of the project described in any prior notice of intent may be filed until the expiration of thirty (30) days following the expiration of the last confirmation. If so filed, the confirmation issued upon such new notice of intent shall expire thirty (30) days after the date of such subsequent confirmation.

Section 9. Supplementary Confirmation for Excess Amounts Required. If the amount of affected bonds proposed to be issued is insufficient to pay the costs of the proposed project, an issuer may file with the committee a supplementary notice of intention to issue additional bonds. The committee shall confirm the supplementary notice of intention to issue bonds, if any, by a supplementary confirmation. The supplementary confirmation shall expire on the date of the confirmation that it supplements.

Section 10. Issuance of Bonds in Lesser Amounts than Confirmation. Eighty-five (85) Percent Requirement. A confirmation shall be effective as to affected bonds issued in amounts less than the confirmed amount, provided that the face amount of the bonds issued is not less than eighty-five (85) percent of the confirmed amount of the affected bonds. The issuer shall notify the committee if the bonds issued are within the limits expressed herein and the unused part of the allocation shall revert to the issuer pool from which the allocation was made, or to a single issuer pool after July 1 of any year.

Section 11. Elective Carry Forward. Any issuer may file with the committee by December 31, of each year, in which the state ceiling exceeds the aggregate amount of private activity bonds issued during the preceding calendar year, a "carry forward notice of intent" and a "carry forward election of unused private activity bond volume cap" (currently, U.S. Treasury Department Form 8328), for the carry forward to the next calendar year, for any purpose authorized by Section 146(f) of the Internal Revenue Code of 1986, of an unallocated portion of the state ceiling. The committee shall issue a carry forward confirmation confirming the notice and election to carry forward the unused portion of the state ceiling. Failure to file the carry forward notice and election forms by December 31, shall not adversely affect an issuer's right to carry forward under this section,

provided such forms are filed with the committee within a reasonable time after December 31, of the preceding year, and, in any event, within a time frame acceptable to the Internal Revenue Service.

Section 12. Confirmations. No confirmations of notices of intent to issue affected bonds shall be issued by the committee after the total aggregate amount of bonds for which confirmations, including carry forward confirmations, issued during the year equals the state ceiling for that calendar year.

Section 13. Form and Manner. The forms for notices and confirmations required to be filed with and issued by the committee are incorporated by reference in Section 15 of this administrative regulation. No issuer shall file a notice of intent to issue affected bonds sooner than will reasonably permit issuance of the bonds within the time frame established by Section 7 of this administrative regulation, nor seeking an allocation of the state ceiling in excess of the amount reasonably required to pay the costs of the project to be financed through sale of the proposed bonds.

Section 14. Delegation of Functions. The committee will review and allocate all requests for state ceiling. No delegation of authority to make allocations of the state ceiling to staff shall be made except for in cases of surplus or carry-forward allocations for which the committee gives specific authority to staff. Such delegations of authority, including limits thereto, shall be recorded verbatim in the minutes of the committee meeting at which the delegation is made.

Section 15. Incorporation by Reference. (1) The following forms are incorporated by reference:

- (a) "Notice of Intent" application (July 1996 [~~September 1995~~]);
- (b) "Confirmation of Allocation of State Ceiling" (September 1995);
- (c) "Confirmation of Carry-forward Allocation of State Ceiling" (September 1995); and
- (d) "Notice of Issuance" (September 1995).

(2) Copies of the forms may be inspected, copied or obtained at the Office of Financial Management and Economic Analysis, 261 Capitol Annex, Frankfort, Kentucky 40601, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

JOHN P. MCCARTY, Secretary

APPROVED BY AGENCY: July 12, 1996

FILED WITH LRC: July 12, 1996 at 1 p.m.

PUBLIC HEARING: A public hearing on the administrative regulation shall be held on August 30, 1996 at 10 a.m. in the Capitol Annex Building, Room 264, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 25, 1996 five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by the 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: Kim Blitch, Financial Analyst, Office of Financial Management and Economic Analysis, 261 Capitol Annex, Frankfort, Kentucky 40601, Telephone: (502) 564-2924.

REGULATORY IMPACT ANALYSIS

Contact Person: Kim Blitch, Financial Analyst

(1) Type and number of entities affected: This regulation will affect the Kentucky Housing Corporation, the Kentucky Higher Education Student Loan Corporation, the Kentucky Infrastructure

Authority, the State Property and Building Commission, and local bond issuing entities in all Kentucky counties.

(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 public comments received: There are no direct or indirect costs or savings on the cost of living or employment in Kentucky, in the aggregate, as a result of this administrative regulation. However, there may be a redistribution of the savings realized by the ability to issue private purpose bonds on a tax-exempt basis within the state.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from public comments received: There are no direct or indirect costs or savings on the cost of doing business in Kentucky, in the aggregate, as a result of this administrative regulation. However, there may be a redistribution of the savings realized by the ability to issue private purpose bonds on a tax-exempt basis within the state.

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

1. First year following implementation: Each local project requesting an allocation of the state ceiling will be required to provide the Kentucky Private Activity Bond Allocation Committee with the following additional information: previous state incentives awarded to the company and previous state private activity bond cap awarded to the company.

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

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No additional staff time will be required.

2. Continuing costs or savings: No additional staff time will be required.

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: No source of revenue to be used for implementation and enforcement of this administrative regulation is necessary. Existing funds will be used.

(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.

(b) Kentucky: Statewide

(7) Assessment of alternative methods; reasons why alternatives were rejected: A work group composed of representation from the Cabinet for Economic Development and the Office of Financial Management and Economic Analysis was assigned the task of proposing changes to 200 KAR 15:010. No alternatives were suggested.

(8) Assessment of expected benefits: The proposed amendment will allow the allocation of private activity bonds in a manner which will best achieve the issuance of private activity bonds, foster economic development within the Commonwealth, and promote the general welfare of its citizens and the public purposes of the Commonwealth as required by KRS 103.286.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There are no effects on public health or environmental welfare in Kentucky as a result of this administrative regulation.

(b) State whether a detrimental effect on environment and public health would result if not implemented: There would not be a detrimental effect on the environment or public health if this administrative regulation is not implemented.

(c) If detrimental effect would result, explain detrimental effect: None

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no known statutes, administrative regulations or government policies which overlap or conflict with this administrative regulation.

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(10) Any additional information or comments: None

(11) Tiering: Is tiering applied? Yes. The administrative regulation is tiered in that established criteria will be used to evaluate local projects but no criteria will be used in evaluating state projects.

GENERAL GOVERNMENT CABINET State Board of Accountancy (Amendment)

201 KAR 1:045. Examination subjects, grading and reexamination.

RELATES TO: KRS 325.261, 325.270

STATUTORY AUTHORITY: KRS 325.240

NECESSITY AND FUNCTION: This administrative regulation governs examination subjects, grading and reexamination.

Section 1. Examination Subjects. Examinations shall include questions or problems in:

(1) Accounting and Reporting - Taxation, Managerial, and Governmental and Not-for-Profit Organizations (ARE);

(2) Financial Accounting and Reporting [~~Business Enterprises~~ (FARE)];

(3) Auditing (AUDIT); and

(4) Business Law & Professional Responsibilities (LPR).

Section 2. Grading and Reexamination Procedures. (1) A candidate shall pass all subjects of the examination to be considered for a certificate.

(2) The passing score shall be seventy-five (75) on each subject.

(3) If during one (1) examination administration a candidate receives a passing score on two (2) or more subjects and grade of fifty (50) or more on each subject not passed, he shall receive conditional credit for those subjects passed.

(4) A conditioned candidate may add conditional credits at subsequent examinations if he receives a passing grade on one (1) of the subjects reexamined and a grade of fifty (50) or more on the subject not passed. Previously attained conditional credits shall not be affected by the failure to receive a grade of fifty (50).

(5)(a) A candidate awarded conditional credit shall pass the subjects he failed within the next six (6) examinations following the examination at which the first conditional credit was earned.

(b) An additional number of examinations may be granted at the discretion of the board for good cause.

(c)1. If a candidate fails to pass all of the examination subjects within the prescribed period, he shall be considered to have failed the examination.

2. He may make a new application as an examination ~~(first-time)~~ candidate.

(6) At any examination, the candidate shall take all subjects for which he has not yet received a passing grade.

(7) The failure of a candidate to submit an answer paper for any subject of an examination shall disqualify all papers submitted by him at that examination, unless the board, in its discretion, finds good cause not to disqualify the papers submitted.

(8) A person who took the same examination given by the board in a state other than Kentucky may have conditional credits obtained

in the other state accepted by the board if:

- (a) The standards under which the conditional credits were obtained are the same as those required by this administrative regulation; and
- (b) He meets all other standards required for approval as an examination candidate in Kentucky.

~~[Section 3. Transfer of Credit. (1) Current candidates who received conditional credit for some sections of the examination prior to May 1994 shall have the credit transferred to the new sections as follows:~~

- ~~(a) Accounting Practice to Accounting & Reporting—Taxation, Managerial, and Governmental and Not for Profit Organizations, (ARE);~~
- ~~(b) Theory of Accounts to Financial Accounting & Reporting—Business Enterprises, (FARE);~~
- ~~(c) Auditing to Auditing (AUDIT); and~~
- ~~(d) Business Law to Business Law & Professional Responsibilities (LPP).~~
- ~~(2) A licensed attorney who previously obtained an exemption from the business law portion of the examination may retain the exemption if he maintains his current examination candidacy.]~~

DAVID L. ANNEKEN, CPA, President

APPROVED BY AGENCY: July 10, 1996

FILED WITH LRC: July 11, 1996 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 26, 1996, at 9 a.m. at the administrative offices of the board located at 332 W. Broadway, Suite 310, Louisville, Kentucky 40202. Individuals interested in being heard at this hearing shall notify this agency in writing by August 21, 1996, five days prior to the meeting, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for at transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Susan G. Stopher, Executive Director, Kentucky State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, (502) 595-3037.

REGULATORY IMPACT ANALYSIS

Agency Contact: Susan G. Stopher

(1) Type and number of entities affected: The type of entities affected are people scheduled to sit for the Uniform Certified Public Accountant Examination on November 6-7, 1996 and thereafter. The number of individuals affected are approximately 700 per exam administration.

(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: This administrative regulation will not create any additional reporting or paperwork requirements for individuals who sit for the examination.

2. Second and subsequent years: See #1 above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Since this administrative regulation only affects the full title of the exam session and previous transition session titles, there are no expenses.

2. Continuing costs or savings: See #1 above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There are no changes.

(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: Since there are no costs, revenue is not an issue.

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

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: No other alternative methods could be assessed since this is the only national uniform licensure examination available for CPA's. Therefore, any requirements of the testing organization must be followed by the board.

(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: Not a public health or environment issue.

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no known statutes, administrative regulations or government policy which may be in conflict with this administrative regulation.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering is unnecessary because this administrative regulation applies uniformly to all qualified examination candidates.

GENERAL GOVERNMENT CABINET State Board of Accountancy (Amendment)

201 KAR 1:130. Examination application procedure.

RELATES TO: KRS 325.261, 325.270

STATUTORY AUTHORITY: KRS 325.240, 325.270

NECESSITY AND FUNCTION: This administrative regulation establishes the procedures to apply for admission to the Uniform Certified Public Accountant Examination.

Section 1. Definitions. (1) "Official transcript" means an official statement from a college or university which indicates the college course work completed, degrees awarded and contains an authorizing signature or seal.

(2) "Quarter hour" means [equal to] 66/100ths of a semester hour.

(3) "Major or concentration" in accounting means a minimum of thirty-nine (39) semester hours in business-related subjects of which twenty-seven (27) semester hours shall consist of accounting subjects.

(4) "Business-related subjects" means courses that contain in the course prefix or title an indication that the course subject matter is one (1) of the following: business, finance, marketing, management, economics, computers, statistics, or accounting.

(5) "Accounting course" means a course that contains in the course prefix, or title, the word accounting or some variation.

Section 2. ~~[First Time]~~ Examination Applicants. The applicant shall have a Kentucky street address and submit:

(1) A completed "Application for Admission to the CPA Examination" that has been signed and acknowledged before a notary public;

(2) An official transcript which evidences completion of the educational requirements specified in KRS 325.261 which includes a major or concentration in accounting as defined in this administrative regulation. The educational requirements shall have been completed at a:

(a) College or university:

1. Within the United States; and

2. Whose course credits are accorded full recognition by a Kentucky state-funded four (4) year institution of higher education; or

(b) A postsecondary educational institution:

1. Outside the United States; and

2. Whose course credits are certified by the Foreign Academics Credentialing Service (FACS) or another credentialing agency that is a member of the National Association of Credential Evaluation Services, Inc.;

(c) The certification required by paragraph (b) of this subsection shall state that the:

1. Foreign degree is equivalent to a baccalaureate degree earned in an accredited United States college or university; and

2. Applicant had a major or concentration in accounting;

(d) A FACS application is incorporated by reference and may be inspected or obtained at the board office, 332 West Broadway, Suite 310, Louisville, Kentucky 40202, between 8:30 a.m. and 4:30 p.m., Monday through Friday; and

(3) A nonrefundable fee of \$140, in the form of a check or money order made payable to the "Kentucky State Board of Accountancy".

Section 3. ~~[An]~~ Applications and all required documents to sit for the May examination shall be received in [filed with] the board's office [or postmarked] no later than March 1st. Applications and all required documents to sit for the November examination shall be received in [filed with] the board's office [or postmarked] no later than September 1st.

Section 4. Provisional Examination Applicants. A person currently enrolled in courses which, if completed and documented prior to the time periods set forth below, shall [who expects to] satisfy the educational requirements of KRS 325.261 and this administrative regulation may [within ninety (90) days following an administration of the examination shall be eligible to] submit an application for the examination if he:

(1) Satisfies the requirements of Sections 2 and 3 of this administrative regulation;

(2) Submits an official transcript of college courses completed;

(3)~~[(a)]~~ Submits ~~[an official statement from his college or university stating that the applicant will complete the course of study required by KRS 325.261 and this administrative regulation within ninety days following the examination;~~

~~[(b)] The statement shall include~~ a list of all course titles, numbers and credit hours in which the applicant is currently enrolled; and

(4) Agrees to submit ~~[(e) Submits]~~ a final official transcript showing completion of all educational requirements no later than June 15 following the administration of the May examination and January 15 following the administration of the November examination. [within ninety (90) days following the administration of the examination.

~~[(d)]~~ If a provisional examination candidate fails to submit the

information specified in this section, the results of his examination shall not be released and for any future examinations he shall apply as a new examination ~~[first-time]~~ candidate.

Section 5. Upon approval by the board of the application, the applicant shall be considered an examination candidate.

Section 6. Reexamination Application. ~~[Letter of Intent to Attend the Examination.]~~ (1) The board shall mail a reexamination application ~~[letter of intent]~~ with information about the dates, times and location of the next scheduled examination to examination candidates who fail to pass the examination and conditioned candidates. The reexamination application [letter of intent] shall be mailed to the most recent address provided by the candidate. The board shall not be responsible if the reexamination application is not delivered by the postal service.

(2)(a) To sit for an examination the candidate shall return the reexamination application [letter of intent] to the board stating if [whether or not] he shall [intends to] sit for the next scheduled examination.

(b) The reexamination application [letter of intent] shall be received in [postmarked or filed with] the board's office no later than:

1. March 1 ~~[45]~~, for the May examination; and

2. September 1 ~~[45]~~, for the November examination.

(3)(a) ~~[Except as provided in paragraph (b) of this subsection,]~~ The candidate shall return the completed reexamination application [letter of intent] with the reexamination fee.

(b) ~~[A candidate who is taking the examination for the first time shall submit the examination fee with his application.]~~

~~[(e)]~~ The reexamination fee shall be thirty-five (35) dollars per subject.

~~[(c) [(d)]~~ The reexamination fee shall be paid by check or money order made payable to the Kentucky State Board of Accountancy.

(4) A reexamination candidate who fails to comply with the requirements of this section shall not be permitted to sit for reexamination. ~~[(a) A conditional examination candidate who fails to file a letter of intent with regard to the examination shall:~~

1. Remain a conditional examination candidate;

2. Not be permitted to sit for the examination; and

3. Forfeit deferred examination fees.

~~[(b) The examination, for which the conditional examination candidate fails to file a letter of intent, shall count as one (1) of the six (6) additional sittings.~~

~~[(5)(a) A nonconditional candidate who fails to comply with the deadlines specified in this administrative regulation shall:~~

1. Not be permitted to sit for the examination;

2. Forfeit fees paid; and

3. Have his application cancelled.

~~[(b) If an application has been cancelled under the provisions of this section, a subsequent application shall be filed as a first-time application under Section 2 of this administrative regulation.]~~

(5) The reexamination application shall not be accepted from a person who has failed to sit for two (2) consecutive examination administrations. This person is allowed to file a new examination application. This requirement shall not apply to a person who has received conditional credit as described in 201 KAR 1:045.

Section 7. ~~[(1) Except as provided by subsections (2) and (3) of this section, an]~~ Examination and reexamination fees shall not be deferred to another [the next scheduled] examination [if:

~~[(a) The candidate has filed a:~~

1. Letter of intent within the period specified in Section 5 of this administrative regulation; and

2. Written request to defer the fee; and

~~[(b) No later than five (5) days following the examination, the request specified in paragraph (a)(2) of this section has been:~~

1. Received by the board; or

2. Postmarked:

~~(2) A candidate shall be granted one (1) deferral.~~

~~(3) A candidate shall not be entitled to the refund of a deferred fee, if he fails to attend the next scheduled examination after deferral.~~

Section 8. (1) The state board of accountancy of another state may request that one (1) of their candidates be proctored in Kentucky. The board may grant the request if a seat is available and the requesting board:

(a) Agrees to be responsible for the costs incurred by the board for all accommodations required by the Americans with Disabilities Act; and

(b) Submits [A person, who is registered with another state to sit for the Uniform CPA Examination, may request to sit for the examination in Kentucky if:

(a) A seat is available; and

(b) He has submitted] the items specified in subsection (2) of this section on or before:

1. March 15, for the May examination; or

2. September 15, for the November examination.

(2) Items required by subsection (1) of this section are:

(a) A written request from the other state Board of Accountancy [of the state in which he intends to be licensed]; and

(b) A check or money order in the amount of \$100 made payable to the Kentucky State Board of Accountancy; and

(c) The letter of intent required by Section 6 of this administrative regulation].

Section 9. Candidates shall display during the examination a state driver's license or a picture identification card issued by a state motor vehicle licensing agency or a passport.

(1) The license or picture identification card shall be currently in effect and shall contain a photograph and signature.

(2) Failure to bring this document to the examination shall prohibit the candidate from sitting for the examination.

Section 10. Incorporation by Reference. (1) "Application Uniform [for Admission to the] CPA Examination" (1996) and "Reexamination Application (1996) are [1994 is] incorporated by reference.

(2) These [This] documents may be inspected, copied, or obtained at the board office, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, between 8:30 a.m. and 4:30 p.m., Monday through Friday.

DAVID L. ANNEKEN, CPA, President

APPROVED BY AGENCY: July 10, 1996

FILED WITH LRC: July 11, 1996 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 26, 1996, at 9 a.m. at the administrative offices of the Board located at 332 W. Broadway, Suite 310, Louisville, Kentucky 40202. Individuals interested in being heard at this hearing shall notify this agency in writing by August 21, 1996, five days prior to the meeting, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for at transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Susan G. Stopher, Executive Director, Kentucky State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, (502) 595-3037.

Regulatory Impact Analysis

Agency Contact: Susan G. Stopher

(1) Type and number of entities affected: The type of entities affected are people applying to sit for the Uniform Certified Public Accountant Examination on November, 1996 and thereafter. Involves approximately 700 people per examination administration.

(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: This regulation will reduce paperwork for repeat examinees. If not sitting for the exam, a response to the board is not required. This regulation will increase candidate cost if they do not show up for the examination. The fee is nonrefundable and can not be deferred.

2. Second and subsequent years: See #1 above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: See #1 above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Will reduce filings for repeat candidates not sitting and will reduce phone calls by standardizing deadlines for new and repeat candidates.

(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: Board trust and agency account.

(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: Current system was reviewed. This is the least cumbersome 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: 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:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no known statutes, administrative regulations or government policies in conflict with this regulation.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering is unnecessary because this regulation applies uniformly to all CPA examination candidates.

TOURISM CABINET
Department of Fish and Wildlife Resources
(Amendment)

301 KAR 1:201. Fishing limits.

RELATES TO: KRS 150.010, 150.170, 150.470, 150.990

STATUTORY AUTHORITY: KRS 150.170, 150.470

NECESSITY AND FUNCTION: To establish size and creel limits to protect fish species from overharvest, allocate their harvest, maintain ecological balance and improve fishing. This amendment is necessary to adjust size or creel limits on Barkley Lake, Laurel Lake, Kentucky Lake, Sympson Lake, Taylorsville Lake, and the Cumberland River below Lake Cumberland; to add Peabody and Cyprus AMAX fishing restrictions, and to incorporate the pertinent provisions of, and repeal 301 KAR 1:100. [Cave Run Lake, Lebanon City Lake, Lake Malone, Nolin River Lake and Rough River Lake.]

Section 1. Definitions. (1) "Artificial baits" means lures or flies made of wood, metal, plastic, feathers, preserved pork rind or similar inert materials and having no organic baits, such as insects, minnows, fish eggs, worms, corn, cheese, cut bait or a similar substance attached to the lure.

(2) "Daily limit" means the maximum number of a particular species or group of species a person may legally take in a day or have in possession while fishing.

(3) "Kentucky bass" means a largemouth bass, Kentucky bass or Coosa bass with a patch of teeth on its tongue.

(4) "Lake" means impounded waters.

(5) "Length" means the distance from the tip of a fish's lower jaw to the tip of its tail, measured with the fish laid flat on a rule and its tail lobes squeezed together.

(6) "Possession limit" means the maximum number of fish a person may hold in the field after two (2) or more days of fishing.

(7) "Release" means to return the fish to the water from which it was taken immediately after removing the hook, in the best physical condition possible, and in a place where no obstruction prevents the fish's immediate escape.

(8) "Single hook" means a hook with no more than ~~only~~ one (1) point.

(9) ~~{(9)}~~ "Size limit" means the minimum legal length of a fish.

(10) ~~{(10)}~~ "Slot limit" means protecting fish within a specified minimum and maximum size range.

Section 2. Statewide Size and Creel Limits. (1) Except as specified in Section 4 of this administrative regulation and by 301 KAR 1:180, persons fishing in public or private waters shall observe the following creel, possession and size limits.

(a) Black bass: daily limit six (6), possession limit, twelve (12).

1. Largemouth bass, smallmouth bass or Coosa bass: size limit, twelve (12) inches.

2. Kentucky bass: no size limit.

(b) Rock bass: daily limit, fifteen (15), possession limit, thirty (30); no size limit.

(c) Walleye and their hybrids: daily limit ten (10), possession limit, twenty (20); size limit, fifteen (15) inches.

(d) Sauger: daily limit ten (10), possession limit twenty (20); no size limit.

(e) Muskellunge: daily and possession limit, two (2); size limit, thirty (30) inches.

(f) Chain pickerel: daily limit five (5), possession limit ten (10); no size limit.

(g) White bass and yellow bass, singly or in combination: daily limit thirty (30), possession limit sixty (60); no size limit.

(h) Striped bass and their hybrids: daily and possession limit, five (5); size limit, fifteen (15) inches.

(i) Crappie: daily limit, thirty (30), possession limit, sixty (60); no

size limit.

(j) Rainbow trout and brown trout, singly or in combination: daily and possession limit, eight (8), no more than three (3) of which shall be brown trout; no size limit.

(k) Brook trout: daily and possession limit, two (2); size limit, ten (10) inches.

(2) Persons shall not remove grass carp from a lake owned and managed by the department.

(3) Persons ~~[catching illegal fish]~~ shall release fish: [immediately return the fish, in the best possible physical condition, to the water from which it was taken.]

(a) Below the minimum size limits established by this administrative regulation;

(b) Within a protected slot limit as established by this administrative regulation; or

(c) Of a particular species, when the person has a daily limit for that species, as established by this administrative regulation, in his possession.

(4) A person shall not remove any part of the head or tail of any fish for which there is a size or creel limit until he has completed fishing for the day and has left the water.

(5) Persons who wish to possess sport fish below the size limit or beyond the possession limit shall:

(a) Obtain the fish from a licensed fish propagator or other legal source; and

(b) Retain a receipt or other written proof that the fish were legally acquired.

(6) Persons not in possession of a valid trout permit shall release trout unless:

(a) They are exempted from trout stamp requirements by KRS 150.170; or

(b) They are fishing in licensed pay lakes stocked with trout by the pay lake operator.

Section 3. Fishing Season. The fishing season is open year round.

Section 4. Exceptions to Statewide Administrative Regulations. Persons fishing in the waters listed in this section shall observe the following special requirements ~~[administrative regulations]~~. Except as specified in this section, all other provisions of this administrative regulation apply to these bodies of water.

(1) Bad Branch, Letcher County: artificial baits with single hooks only.

(2) Barkley Lake.

(a) Largemouth bass and smallmouth bass:

1. Through February 28, 1997, size limit fourteen (14) inches, except that the daily limit may contain one (1) and the possession limit two (2) bass under fourteen (14) inches.

2. After February 28, 1997, size limits, fifteen (15) inches.

(b) Crappie: size limit, ten (10) inches.

(c) Sauger: size limit, fourteen (14) inches.

(3) Barren River Lake and the Barren River upstream from Barren River Lake.

(a) White bass, yellow bass, striped bass and their hybrids, singly or in combination: daily limit, twenty (20), possession limit forty (40); size limit, no more than five (5) fish in a daily limit or ten (10) fish in a possession limit shall be fifteen (15) inches or longer.

(b) Crappie: size limit, nine (9) inches.

(c) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches. Daily limit may include no more than one (1) and the possession limit no more than two (2) fish less than fifteen (15) inches.

(4) Bert Combs Lake: persons shall not possess shad or use shad for bait.

(5) Boltz Lake: persons shall not possess shad or use shad for bait.

- (6) Briggs Lake: persons shall not possess shad or use shad for bait.
- (7) Buckhorn Lake: largemouth bass and smallmouth bass: size limit, fifteen (15) inches.
- (8) Carpenter Lake: persons shall not possess shad or use shad for bait.
- (9) Carr Fork Lake.
- (a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.
- (b) Crappie: size limit, nine (9) inches.
- (10) Carter Caves Lake.
- (a) Fishing during daylight hours only.
- (b) Largemouth bass: daily and possession limit, one (1) fish; size limit, twenty (20) inches.
- (c) Persons shall not possess shad or use shad for bait.
- (11) Cave Run Lake: largemouth bass and smallmouth bass: ~~through February 29, 1996, size limit, fifteen (15) inches. After February 29, 1996,~~ slot limit - persons may keep fish less than thirteen (13) or greater than sixteen (16) inches and shall release fish between thirteen (13) and sixteen (16) inches.
- (12) Corinth Lake: persons shall not possess shad or use shad for bait.
- (13) Cumberland Lake.
- (a) Largemouth and smallmouth bass: size limit fifteen (15) inches.
- (b) Striped bass: size limit, twenty-four (24) inches; daily and possession limit, two (2) fish.
- (c) Crappie: size limit, ten (10) inches.
- (14) Cumberland River downstream from Barkley Lake Dam.
- (a) Striped bass: daily and possession limit, three (3).
- (b) Sauger: size limit, fourteen (14) inches.
- (15) Cumberland River.
- (a) Through February 28, 1997, downstream from the Highway 61 bridge. Trout: slot limit - persons may keep fish less than twelve (12) or greater than twenty (20) inches and shall release fish between twelve (12) and twenty (20) inches in length; daily and possession limit, (4) four fish under twelve (12) inches and one (1) fish over twenty (20) inches. Persons shall not possess more than these trout limits while in this area, no matter where the fish were caught.
- (b) After February 28, 1997, from Wolfe Creek Dam downstream to the Kentucky-Tennessee state line, brown trout, size limit, twenty (20) inches, creel limit, one (1).
- (16) Cyprus AMAX and Robinson Forest Wildlife Management Areas.
- (a) Through February 28, 1997:
1. On Starfire Lake:
- a. Largemouth bass: size limit, twenty (20) inches, daily and possession limit, one (1).
- b. Sunfish: daily and possession limit ten (10).
- c. Channel catfish: size limit, fifteen (15) inches, daily and possession limit, four (4).
2. On impounded waters of the area, persons shall not fish:
- a. Except during daylight hours.
- b. From January 1 through June 30.
- (b) After February 28, 1997:
1. On impounded waters of the area:
- a. Largemouth bass: size limit, fifteen (15) inches, daily and possession limit, one (1);
- b. Sunfish: daily and possession limit, ten (10);
- c. Channel catfish: size limit, fifteen (15) inches; daily and possession limit, four (4).
2. Persons shall not fish on Starfire Lake between January 1 and May 31.
- (17) ~~(146)~~ Dale Hollow Lake.
- (a) Smallmouth bass: daily limit, two (2); size limit, eighteen (18) inches.
- (b) Walleye and their hybrids: daily limit, ten (10); size limit,

sixteen (16) inches.

(c) Sauger: daily limit, ten (10); size limit, fourteen (14) inches.

(d) Muskellunge: daily limit, one (1).

(e) Rainbow trout and lake trout.

1. Daily limit, April 1 - October 31: seven (7), no more than two (2) of which may be lake trout. No size limit.

2. Daily limit, November 1 - March 31: two (2); size limit, twenty-two (22) inches.

~~(18) (147)~~ Dewey Lake.

(a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.

(b) White bass, yellow bass, striped bass and their hybrids, singly or in combination: daily and possession limit, five (5); size limit, fifteen (15) inches.

~~(19) (148)~~ Dix River for two (2) miles downstream from Herrington Lake Dam.

(a) Artificial baits only.

(b) Brown trout: size limit, fifteen (15) inches.

~~(20) (149)~~ Dix River upstream from Herrington Lake. White bass, yellow bass, striped bass and their hybrids, singly or in combination: daily limit, twenty (20) possession limit, forty (40); size limit: no more than five (5) in a daily limit or ten (10) fish in a possession limit shall be fifteen (15) inches long or longer.

~~(21) (150)~~ Elkhorn Creek downstream from the confluence of the North and South forks. Largemouth bass and smallmouth bass: slot limit - persons may keep fish less than twelve (12) or greater than sixteen (16) inches and shall release fish between twelve (12) and sixteen (16) inches. The daily limit shall not include more than two (2) fish greater than sixteen (16) inches long.

~~(22) (151)~~ Elmer Davis Lake.

(a) Largemouth bass: slot limit - persons may keep fish less than twelve (12) or greater than sixteen (16) inches and shall release fish between twelve (12) and sixteen (16) inches.

(b) Persons shall not possess shad or use shad for bait.

~~(23) (152)~~ Fishtrap Lake.

(a) Largemouth bass or smallmouth bass: size limit, fifteen (15) inches.

(b) White bass, yellow bass, striped bass and their hybrids, singly or in combination: daily and possession limit, five (5); size limit, fifteen (15) inches.

~~(24) (153)~~ Game Farm Lakes.

(a) Largemouth bass and smallmouth bass: daily limit, two (2); size limit, fifteen (15) inches.

(b) Channel catfish: daily limit, three (3).

(c) Persons shall not possess shad or use shad for bait.

~~(25) (154)~~ Grayson Lake. Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.

~~(26) (155)~~ Greenbo Lake. Persons shall not possess shad or use shad for bait.

~~(27) (156)~~ Green River Lake. Crappie: size limit, nine (9) inches.

~~(28) (157)~~ Gulst Creek Lake. White bass, yellow bass, striped bass and their hybrids, singly or in combination: daily and possession limit, five (5); size limit, fifteen (15) inches.

~~(29) (158)~~ Herrington Lake. White bass, yellow bass, striped bass and their hybrids, singly or in combination: daily limit, twenty (20); possession limit, forty (40); size limit: no more than five (5) in a daily limit or ten (10) fish in a possession limit shall be fifteen (15) inches long or longer.

~~(30) (159)~~ Kentucky Lake and the canal connecting Kentucky and Barkley lakes.

(a) Largemouth bass and smallmouth bass:

1. Through February 28, 1997, size limit fourteen (14) inches, except that the daily limit may contain one (1) and the possession limit two (2) bass under fourteen (14) inches.

2. After February 28, 1997, size limit, fifteen (15) inches.

(b) Crappie: size limit, ten (10) inches.

(c) Sauger: size limit, fourteen (14) inches.

ADMINISTRATIVE REGISTER - 470

(31) Laurel Lake. After February 28, 1997, largemouth bass and smallmouth bass, size limit, fifteen (15) inches.

(32) [(30)] Lebanon City Lake. [After February 20, 1996:]

(a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.

(b) Crappie: size limit, nine (9) inches; daily limit, fifteen (15).

(c) Bluegill and shellcrackers (singly or in aggregate): creel limit, thirty (30).

(d) Channel catfish: creel limit, five (5).

(33) [(34)] Leary Lake.

(a) Fishing is permitted during daylight hours only.

(b) Largemouth bass: daily limit, one (1); size limit, fifteen (15) inches.

(c) Bluegill: daily limit, twelve (12).

(d) Channel catfish: daily limit two (2).

(34) [(32)] Lincoln Homestead Lake.

(a) Fishing is permitted during daylight hours only.

(b) Largemouth bass: daily limit three (3); size limit, fifteen (15) inches.

(c) Bluegill and redear sunfish: daily limit, ten (10) fish over seven (7) inches, singly or in combination; no limit on fish less than seven (7) inches.

(d) Channel catfish: daily limit, three (3).

(e) Persons shall not possess shad or use shad for bait.

(35) [(33)] Lake Malone. Largemouth bass: [through February 20, 1996, daily limit may include no more than two (2), and the possession limit no more than four (4), fish under twelve (12) inches. After February 20, 1996,] slot limit - persons may keep fish less than twelve (12) or greater than fifteen (15) inches and shall release fish between twelve (12) and fifteen (15) inches.

(36) [(34)] Marion County Lake.

(a) Largemouth bass: size limit, fifteen (15) inches.

(b) Persons shall not possess shad or use shad for bait.

(37) [(35)] Martins Fork and its tributaries in Harlan County from the Left Fork upstream two and three-tenths (2.3) miles to the Cumberland Gap National Park boundary. Artificial baits with single hooks only.

(38) [(36)] Mauzy Lake. Largemouth bass; no size limit.

(39) [(37)] McNeely Lake. Persons shall not possess shad or use shad for bait.

(40) [(38)] Mill Creek Lake. Persons shall not possess shad or use shad for bait.

(41) [(39)] Nolin River Lake.

(a) Largemouth bass and smallmouth bass: [After February 20, 1996,] size limit, fifteen (15) inches except that the daily limit may contain one (1) and the possession limit two (2) bass under fifteen (15) inches.

(b) Crappie: size limit, nine (9) inches.

(42) [(40)] Ohio River.

(a) Walleye, sauger and their hybrids: no size limit; daily limit, ten (10) fish, singly or in combination.

(b) White bass, yellow bass, striped bass and their hybrids: daily limit, thirty (30); no more than four (4) in a daily limit may be fifteen (15) inches long or longer.

(43) [(41)] Paintsville Lake. Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.

(44) [(42)] Parched Corn Creek, Wolfe County. Artificial baits with single hooks only.

(45) Peabody Wildlife Management Area (Goose Lake, Island Lake or South Lake):

(a) Largemouth bass: size limit, twenty (20) inches; daily and possession limit, one (1).

(b) Bluegill: daily and possession limit, fifteen (15).

(c) Redbreast sunfish: daily and possession limit, fifteen (15).

(d) Channel catfish: size limit; fifteen (15) inches; daily and possession limit, two (2).

(e) Walleye: size limit, fifteen (15) inches; daily and possession

limit, one (1).

(f) Crappie: daily and possession limit, ten (10).

(g) Persons shall not fish:

1. Except during daylight hours;

2. From October 16 through June 30 on South Lake or Island Lake, and, until February 28, 1997, on Goose Lake;

3. After February 28, 1997, from October 16 through the last day of February on Goose Lake.

(h) Persons shall not gig frogs.

(46) [(43)] Poor Fork and its tributaries in Letcher County downstream to the first crossing of Highway 392. Artificial baits with single hooks only.

(47) [(44)] Lake Reba.

(a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.

(b) Persons shall not possess shad or use shad for bait.

(48) [(45)] Rough River Lake.

(a) Crappie: size limit, nine (9) inches.

(b) Largemouth bass and smallmouth bass: [after February 20, 1996,] size limit, fifteen (15) inches, except that the daily limit may contain one (1) and the possession limit two (2) bass under fifteen (15) inches.

(c) White bass: for [after February 20, 1996, for] size and creel limit purposes anglers shall consider fish of the Morone family with an unseparated, U-shaped rear tooth patch on the tongue to be white bass.

(d) Hybrid striped bass: for [after February 20, 1996, for] size and creel limit purposes anglers shall consider fish of the Morone family with a separated rear tooth patch on the tongue to be hybrid striped bass.

(49) [(46)] Shanty Hollow Lake.

(a) Largemouth bass: size limit, fifteen (15) inches.

(b) Persons shall not possess shad or use shad for bait.

(50) [(47)] Shillalah Creek, Bell County, outside the Cumberland Gap National Park. Artificial baits with single hooks only.

(51) [(48)] Spurlington Lake. Persons shall not possess shad or use shad for bait.

(52) Simpson Lake: after February 28, 1997, largemouth bass: size limit, fifteen (15) inches.

(53) [(49)] Taylorsville Lake.

(a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.

(b) Crappie: daily limit, fifteen (15), possession limit, thirty (30); after February 28, 1997, size limits: nine (9) inches.

(c) White bass, yellow bass, striped bass and their hybrids, singly or in combination: daily and possession limit, five (5); size limit, fifteen (15) inches.

(54) [(50)] Tennessee River downstream from Kentucky Lake Dam.

(a) Striped bass: daily and possession limit, three (3).

(b) Sauger: size limit, fourteen (14) inches.

(55) [(51)] Yatesville Lake. Largemouth bass and smallmouth bass; size limit, fifteen (15) inches.

Section 5. 301 KAR 1:100 is hereby repealed.

C. THOMAS BENNETT, Commissioner

ANN R. LATTA, Secretary

MIKE BOATWRIGHT, Chairman

APPROVED BY AGENCY: June 14, 1996

FILED WITH LRC: July 11, 1996 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Monday, August 28, 1995 at 9 a.m. in the meeting room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky. Individuals interested in being heard shall notify this agency in writing by August 23, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend

ADMINISTRATIVE REGISTER - 471

the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Peter W. Pfeiffer, Director, Division of Fisheries, Department of Fish & Wildlife Resources, Frankfort, Kentucky 40601, (502) 564-3596.

REGULATORY IMPACT ANALYSIS

Contact Person: Peter Pfeiffer

(1) Type and number of entities affected: Approximately one million anglers fish Kentucky waters each year. Only a fraction of those will be affected by the provisions of the amendments to this administrative regulation.

(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 comments received. This amendment to an existing administrative regulation should have no impact on costs of living or employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No comments received. This amendment to an existing administrative regulation should have no impact on costs 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: This amendment to an existing administrative regulation will not affect compliance, reporting or paperwork requirements.

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

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: This amendment to an existing administrative regulation will create no additional direct or indirect costs or savings.

2. Continuing costs or savings: Same as for 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: To the extent that this administrative regulation improves fishing, the sale of fishing licenses and local tourist revenue could be positively impacted.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Fish and Game 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 comments received. This amendment to an existing administrative regulation should have no negative impact, and may have some positive impact in the geographical areas where implemented.

(b) Kentucky: This amendment to an existing administrative regulation should have no negative impact, and may have some positive impact on Kentucky.

(7) Assessment of alternative methods; reasons why alternatives were rejected: At every body of water affected by the amendment to this administrative regulation, the alternative chosen was considered the most viable means of protecting fishery resources while allowing

optimum angling opportunity for the species involved.

(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 administrative regulation will allow outdoor recreation while protecting the ecological balance of Kentucky's waters.

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

(c) If detrimental effect would result, explain detrimental effect: Fishing size and creel limits prevent overfishing and population imbalances between predator and prey species. Without the size and creel limits imposed by this administrative regulation, both the recreational fishery and ecological balance in Kentucky's waters would suffer.

(9) Identify and statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: Not applicable.

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Tiering was used to the extent that specific regulations are applied to different bodies of water in an effort to create maximum recreational fishing opportunities while maintaining adequate fish populations and favorable environmental conditions. In other instances, tiering is not appropriate because the administrative regulation applies equally to all individuals or entities it regulates. Disparate treatment of any persons of 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.

TOURISM DEVELOPMENT CABINET Department of Fish and Wildlife Resources (Amendment)

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

RELATES TO: KRS 150.170, 150.175, 150.990

STATUTORY AUTHORITY: KRS 150.170

NECESSITY AND FUNCTION: To specify procedures for those exempt from purchasing sport hunting or fishing licenses because of disabilities to obtain an exemption certificate to carry in lieu of a license. This administrative regulation is necessary to provide a standardized way for law enforcement officers to verify the license-exempt status of persons encountered in the field. This amendment is necessary to add application procedures for persons declared disabled by the U. S. Railroad Retirement Board, and to require persons receiving disability certificates to include personal information on the certificate to facilitate identification.

Section 1. Persons exempt from purchasing sport hunting or fishing licenses under the provisions of KRS 150.170(7) or (8) shall:

(1) Obtain a card from the department verifying their exempt status before engaging in an act for which a license is required; ~~and~~

(2) Complete the information requested on the card before hunting or fishing; and

(3) Carry this card, along with other proof of identity, while hunting or fishing.

Section 2. To verify their exempt status, Kentucky residents:

(1) Declared totally and permanently disabled by the federal Social Security Administration shall submit to the department a letter of verification from their local federal Social Security office.

(2) Who are at least fifty (50) percent disabled as the result of a military service-connected disability shall submit to the department a letter of verification from their regional VA representative.

(3) Declared totally and permanently disabled by the Kentucky State Workers' Compensation Board shall:

(a) Obtain a Disability Workers Compensation Exemption form from the department.

(b) Complete the form and mail it to the address given on the form.

(4) Declared totally and permanently disabled by another state's workers' compensation board shall provide the department a letter, on that state board's letterhead, confirming the percentage of the disability.

(5) Declared totally and permanently disabled by the United States Railroad Retirement Board shall submit to the department a letter of verification from the United States Railroad Retirement Board, P.O. Box 3705, Louisville, Kentucky 40201.

Section 3. Upon receipt of the verification stipulated in Section 2 of this administrative regulation, the department shall issue a card certifying the person is exempt from sport hunting or sport fishing license requirements.

(1) Certification by the Social Security Administration, the United States Railroad Retirement Board, or a state worker's compensation board shall remain valid for three (3) years after issue.

(2) Certification by the Veterans Administration shall remain valid for the life of the applicant.

Section 4. Incorporation by Reference. (1) "Disability Workers Compensation Exemption Form", January 1, 1995 edition, is incorporated by reference.

(2) It may be inspected, copied, or obtained at the Department of Fish and Wildlife Resources, Division of Fiscal Control, #1 Game Farm Road, Frankfort, Kentucky, 40601, Monday through Friday, 8 a.m. through 4:30 p.m.

C. THOMAS BENNETT, Commissioner

ANN R. LATTI, Secretary

MIKE BOATWRIGHT, Chairman

APPROVED BY AGENCY: June 14, 1996

FILED WITH LRC: July 11, 1996 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 28, 1996 at 9 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 23, 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: John Wilson, Assistant Director, Public Affairs/Policy, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-4338 FAX 502 564-6508.

REGULATORY IMPACT ANALYSIS

Contact Person: John Wilson

(1) Type and number of entities affected: Approximately 37,500 qualify for exemptions from hunting and fishing licenses.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. This administrative regulation should have no effect on 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. This administrative regulation will have no impact on costs 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: Applicants for disability waivers must complete application forms as specified in this administrative regulation.

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

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Ongoing indirect costs of handling applications and issuing waivers.

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

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No additional reporting or paperwork costs for the agency.

(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: Game and Fish 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 anticipated impact.

(b) Kentucky: No anticipated impact.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The alternative of not requiring any form of verification of exempt status was rejected because it is impossible for a law enforcement officer to gauge exempt status in the field.

(8) Assessment of expected benefits: Primary benefits will accrue to disabled persons exempt from purchasing sport licenses.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environmental and public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify and statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No conflicts have been identified.

(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:

(11) TIERING: IS tiering applied? Tiering was not used because all who qualify for exemptions will be treated similarly.

TOURISM DEVELOPMENT CABINET Department of Fish and Wildlife Resources (Amendment)

301 KAR 4:200. Cyprus AMAX and Robinson Forest Wildlife Management Areas use requirements and restrictions.

RELATES TO: KRS 150.170, 150.175, 150.250, 150.620, 150.990

STATUTORY AUTHORITY: KRS 150.025, 150.620 ~~150.350,~~

~~150.015, 150.021, 150.170, 150.175, 150.240, 150.700]~~

NECESSITY AND FUNCTION: To provide for the protection, conservation, use and management of the lands, waters, and wildlife associated with the Cyprus AMAX Wildlife Management Area and Robinson Forest Wildlife Management Area by detailing requirements and restrictions for permit agents and users of these areas. This amendment is necessary to remove fishing restrictions, which are now included in 301 KAR 1:201; and remove the sections dealing with permit agents, since all license agents can now sell area permits.

Section 1. Definitions. (1) "The area" means the Cyprus AMAX Wildlife Management Area and the Robinson Forest Wildlife Management Area, those lands in Breathitt, Knott and Perry counties owned by the Cyprus AMAX Mineral Company or the University of Kentucky and managed by the department pursuant to agreements between the department, Cyprus AMAX Mineral Company and the University of Kentucky.

(2) "Group" means any family, organization or gathering using the area for a specific event.

(3) "Private inholding" means lands completely surrounded by the area but not owned by the University of Kentucky or the Cyprus-AMAX Mineral Company.

(4) "Security deposit" means a bond, irrevocable letter of credit from a financial institution, or benefits on a certificate of deposit irrevocably assigned to the department.

Section 2. User Permits. Persons sixteen (16) years of age or older on the area for any purpose shall have in their possession a nontransferable user permit except:

(1) Employees, agents or persons under contract to Cyprus AMAX Mineral Company, the University of Kentucky or the department performing their official duties; or

(2) Persons on the area as a necessary part of their jobs or to protect public safety or well-being; or

(3) Persons on the area for educational purposes and accompanied by officials of the University of Kentucky; or

(4) Persons conducting research on the area with the written approval of the department, Cyprus AMAX Mineral Company or the University of Kentucky; or

(5) Persons hiking on the Boardinghouse Interpretive Trail from the mouth of Boardinghouse Branch to the Robinson Forest Fire Tower.

Section 3. Private Inholdings and Closed Watersheds. (1) Private inholdings shall be open to hunting or fishing only when the area is open to hunting or fishing.

(2) Persons shall not hunt, fish, train dogs or conduct field trials on lands owned by the University of Kentucky in the Clemons Fork, Coles Fork and Lewis Fork watersheds or in the Buckhorn Creek watershed below Hurricane Branch and above Lewis Fork.

Section 4. Event Permits. (1) In lieu of individual user permits, a person representing a group using the area may have in possession an event permit.

(2) The event permit shall apply to all members of the group.

(3) An event permit shall specify:

(a) Its period of validity, not to exceed four (4) days;

(b) The activity in which the group will engage;

(c) The name of the group;

(d) The approximate number of persons in the group; and

(e) The name and address of the person representing the group.

(4) The department shall not issue event permits for activities in which game or fish are taken.

Section 5. Permit Applications. (1) Persons shall apply for individual or event permits on forms provided by the department.

(2) Persons shall not knowingly provide false information on

permit applications.

(3) Fees.

(a) Individual permits: ten (10) dollars annually;

(b) Event permits: twenty-five (25) dollars per event.

(4) Persons applying by mail shall include a certified check or money order for the correct amount.

(5) Applicants shall provide all information required on the application form. The department shall return incomplete applications to the applicant.

(6) Permits issued before February 29, 1996, shall be valid through that date. After February 29, 1996, permits shall be valid from March 1 through the end of February of each year.

(7) The department may:

(a) Limit the number of event permits issued; or

(b) Assign specific locations for events; or

(c) Deny applications for events which would interfere with management objectives for the area or unduly interfere with other uses or users; or

(d) Revoke individual or event permits for violations of the terms of the application or this administrative regulation.

(8) The department shall keep all applications, waivers of liability and copies of permits for a minimum of two (2) years after the permits expire.

Section 6. Permit Replacement or Refund. (1) Persons who lose their permits may make a written request to the department for a duplicate and include a four (4) dollar replacement fee. The department shall issue a duplicate upon verification that a permit was purchased.

(2) The department shall issue refunds only to persons who have purchased multiple individual permits valid for the same period of time.

(3) The department shall issue refunds only to representatives of groups who have purchased multiple event permits for the same event.

(4) Persons wishing a refund for multiple permits shall make a written request to the department and enclose the permit for which a refund is sought.

(5) The department shall issue refunds if it can verify that multiple permits were issued.

Section 7. Prohibited Activities. Except for persons exempted from permit requirements by Section 2(1), (2), (3), and (4) of this administrative regulation, persons on the area shall not:

(1) Swim for recreational purposes;

(2) Camp except in designated camping areas;

(3) Have a fire, except in designated camping areas;

(4) Operate motorized vehicles off existing roads or beyond where signs indicate vehicles are not allowed;

(5) Operate vehicles not licensed or legal for use on public streets;

(6) Block roads or gates;

(7) Discharge firearms, except while hunting;

(8) Construct structures or stands except portable deer stands, which hunters shall remove daily;

(9) Use boats;

(10) Hunt or fish in areas designated by signs as closed to hunting or fishing;

(11) Enter areas designated by signs as no trespassing areas;

(12) Act contrary to instructions from officials of the department, the University of Kentucky or the Cyprus AMAX Mineral Company.

Section 8. ~~Fishing Restrictions. (1) Persons fishing on all impounded bodies of water on the area shall:~~

~~(a) Fish only from July 1 through December 31; and~~

~~(b) Fish only during daylight hours.~~

~~(2) Persons fishing on Starfire Lake shall abide by the following~~

limits:

Species	Creel Limit	Size Limit
Largemouth bass	1	20"
Sunfish	10	none
Channel catfish	4	16"

~~Section 9. Permit Agent Qualifications, Issuing Fees, Issuance Requirements, and Reporting Requirements. (1) Event permits are available only from the department.~~

~~(2) The department may designate as permit agents to sell individual permits:~~

~~(a) The county clerks of Breathitt, Knott, Perry, Floyd, Lee or Letcher counties; or~~

~~(b) Businesses in Breathitt, Knott, Perry, Floyd, Lee or Letcher counties customarily open at least fifty-six (56) hours per week, year round.~~

~~(3) Businesses wishing to become permit agents shall:~~

~~(a) Complete an issuing agent application form and agreement; and~~

~~(b) Pay in advance for permits consigned; or~~

~~(c) Furnish a security deposit equal in value to the permits consigned.~~

~~(4) Permit agents:~~

~~(a) Shall retain an issuing fee of forty (40) cents from each permit sold.~~

~~(b) Shall not charge additional fees for issuing permits.~~

~~(c) Shall issue permits sequentially.~~

~~(d) Shall not knowingly record false information on the permit.~~

~~(e) Shall, on or before the tenth day of the month following the month of sale:~~

~~1. Report to the department the number of permits issued;~~

~~2. Remit monies collected, less the issuing fee; and~~

~~3. Send the department completed and signed permit applications.~~

~~(f) Shall, on or before March 25:~~

~~1. Report to the department the number of permits issued for the preceding year and the amount of money remitted; and~~

~~2. Return all unissued permits.~~

~~(g) Shall pay the department for unissued permits not returned.~~

~~(h) Shall file reports on forms supplied by the department.~~

~~(5) If the permit agent does not remit monies due, the department shall make collection through the agent's security deposit.~~

~~(6) If an error is made in issuing that cannot be clearly and legibly corrected, permit agents shall void the permit, issue a new one and return the voided permit in its entirety with the next monthly report.~~

~~Section 10. Revoking Permit Agent Designations. (1) The department may revoke permit agent designations if:~~

~~(a) The permit agent is delinquent in submitting reports and monies four (4) times in a twelve (12) month period; or~~

~~(b) The permit agent fails to respond to a reminder notice and does not report and remit by the 25th of the month the report is due; or~~

~~(c) The permit agent's check will not clear the bank and the permit agent does not make restitution by a certified check, cashier's check or money order within five (5) working days of notification.~~

~~(d) The permit agent does not remit fees owed as a result of an audit.~~

~~(2) A permit agent whose designation is revoked shall not be eligible for reinstatement for a period of twelve (12) months.~~

~~(3) If a designation is revoked the department shall:~~

~~(a) Collect all unissued permits and unreported sales; and~~

~~(b) Collect all monies due through the permit agent's security deposit.~~

~~Section 11. Audits. The department may audit the consignment,~~

~~records and reports pertaining to the sale of permits without prior notice during the permit agent's regular business hours.~~

~~Section 12.] Material Incorporated by Reference. (1) The following forms are incorporated by reference:~~

~~(a) [Application for Appointment as Issuing Agent, Cyprus AMAX and Robinson Forest User Permit.~~

~~(b) Issuing Agent Agreement for Cyprus AMAX and Robinson Forest User Permits.~~

~~(c) Agreement For Access to Designated Cyprus AMAX - Robinson Forest Lands: Individual Permit, 1994.~~

~~(b) [(d)] Agreement for Access to Designated Cyprus AMAX - Robinson Forest Lands: Event Permit, 1994.~~

~~(2) This material may be obtained from, or examined or copied at, the offices of the Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky, between the hours of 8 a.m. and 4:30 p.m. eastern time.~~

C. THOMAS BENNETT, Commissioner

ANN R. LATTA, Secretary

MIKE BOATWRIGHT, Chairman

APPROVED BY AGENCY: June 14, 1996

FILED WITH LRC: July 11, 1996 at 9 a.m.

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REGULATORY IMPACT ANALYSIS

Agency Contact: John Wilson

(1) Type and number of entities affected: Approximately 5,000 persons use this area annually.

(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. The amendment to this administrative regulation will have no impact on costs of living or employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. The amendment to this administrative regulation will have no impact on costs 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: The amendments to this administrative regulation will not change the requirements that users of this area purchase permits and sign waivers of liability.

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

(3) Effects on the promulgating administrative body:

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

- (a) Direct and indirect costs or savings:
1. First year: The amendment to this administrative regulation will have no impact on agency costs or savings.
 2. Continuing costs or savings: Same as first year.
 3. Additional factors increasing or decreasing costs: No additional factors have been identified.

(b) Reporting and paperwork requirements: The amendment to this administrative regulation represents a reduction in reporting and paperwork requirements. All license agents can now sell area permits, and the results of these sales are reported electronically to the department. There is no longer a need for separate permit agents in the vicinity of the area.

(4) Assessment of anticipated effect on state and local revenues: The amendments to this administrative regulation will have no impacts on state or local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Fish and Game 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 public comments received. The amendments to this administrative regulation will have no economic impacts.

(b) Kentucky: No public comments received. The amendments to this administrative regulation will have no economic impacts.

(7) Assessment of alternative methods; reasons why alternatives were rejected: If the department did not develop the cooperative relationship to manage these lands, they would have remained closed to outdoor recreation. Our relationship allows public recreation where it has not been provided. Since these lands are not eligible for federal aid cost sharing the department decided to apply a user fee to the area under the assumption that all users had some impact on the lands.

(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 major impact to either public health or environmental welfare will result from amending this administrative regulation.

(b) State whether a detrimental effect on environmental and public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect: Not applicable.

(9) Identify and statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None have been identified.

(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:

(10) Any additional information or comments: Fishing seasons and limits, deleted from this administrative regulation by this amendment, have been placed in 301 KAR 1:201, Fishing seasons and limits.

(11) TIERING: Is tiering applied? Tiering was applied to recognize two classes of users, individuals and groups. Availability of group permits was restricted to accommodate only short term, sporadic users as opposed to those that utilized the area frequently.

401 KAR 30:010. Adoption without change. [Definitions for 401 KAR Chapters 30 to 49.]

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.46, 224.50, 224.99, 40 CFR 260.10 to 260.11, Appendix X of 40 CFR Part 261

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 and the waste management provisions of KRS Chapter 224 require the cabinet to adopt administrative regulations for the management of solid, special, and hazardous wastes. This chapter establishes the general administrative procedures that are applicable to 401 KAR Chapters 31 to 49. This administrative regulation defines essential terms used in connection with the waste management administrative regulations.

Section 1. Definitions. The definitions previously found in this section have been relocated to the applicable definition administrative regulations of 401 KAR Chapters 30 through 49. [Unless otherwise specifically defined in KRS Chapter 224, terms in KRS Chapter 224 and in 401 KAR Chapters 30 to 49 shall have the meanings given in this administrative regulation.

(1) "Aboveground tank" see either "hazardous waste management unit hazardous waste tanks aboveground tank" or "solid waste site or facility tank aboveground tank."

(2) "Accumulated speculatively" see Section 1 of 401 KAR 31:010.

(3) "Active fault" means a land area which, according to the weight of geological evidence, has a reasonable probability of being affected by movement along a fault to the extent that a waste site or facility would be damaged and thereby pose a threat to human health and the environment.

(4) "Active life" of a facility means the period from the initial receipt of waste at a waste site or facility until the cabinet receives certification of final closure.

(5) "Active portion" means any area of a facility where treatment, storage or disposal operations are being or have been conducted and which have not been closed. It includes the treated area of a landfarm and the active face of a landfill. Covered, closed, or inactive portions of landfills, building roofs, and roads are excluded unless designated as "active portions" by the cabinet.

(6) "Administrative application" see "application administrative application."

(7) "Administrator" means the administrator of the United States Environmental Protection Agency, or his designee.

(8) "Admixed liner" means a liner made from a mixture of any of a multitude of materials, often asphalt or cement, with widely varying physical and chemical properties. Admixed liners shall be demonstrated to be structurally sound and chemically resistant to the waste placed in it so as to be capable of supporting the waste without cracking or disintegrating or allowing waste or leachate to escape.

(9) "Agricultural waste" means any nonhazardous waste resulting from the production and processing of on the farm agricultural products, including manures, prunings and crop residues.

(10) "Airport" means public use airport open to the public without prior permission and without restrictions within the physical capacities of available facilities.

(11) "Ampule" means a small sealed glass container for one (1) dose of sterile medicine.

(12) "Ancillary equipment" means any device including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps, that is used to distribute, meter, or control the flow of

hazardous waste from its point of generation to hazardous waste management units including tanks between hazardous waste storage and treatment tanks to a point of disposal on site, or to a point of shipment for disposal off site.

(13) "Application" means the form approved by the cabinet for applying for a permit, including any additions, revisions or modifications and any narrative and drawings required by 401 KAR Chapters 30 to 48. The term includes the following:

(a) "Part A of the application" or "Part A" means the standard forms or format for applying for a hazardous waste site or facility permit as required in 401 KAR 38:080.

(b) "Part B of the application" or "Part B" means the standard format for applying for a hazardous waste site or facility permit as required in 401 KAR 38:090 to 401 KAR 38:210.

(c) "Notice of intent" means the standard forms for applying for:

1. A solid waste site or facility permit as required by 401 KAR 47:160, 401 KAR 47:170 and 401 KAR 48:200; or
2. A special waste landfarming or composting permit as required by 401 KAR 45:030 and 401 KAR 45:100.

(d) "Administrative application" means the standard forms and format used for applying for a solid waste site or facility permit as specified in 401 KAR 47:160 and 401 KAR 47:180.

(e) "Special waste application" means the forms approved by the cabinet for applying for a formal permit as specified in 401 KAR 45:030.

(f) "Technical application" means the standard format for applying for a solid waste site or facility permit as specified in 401 KAR 47:160 and 401 KAR 47:190.

(14) "Aquifer" means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of groundwater to wells or springs.

(15) "Attenuation" means any decrease in the maximum concentration or total quantity of an applied chemical or biological constituent in a fixed time or distance traveled resulting from a physical, chemical, or biological reaction or transformation occurring in the zone of aeration or zone of saturation.

(16) "Authorized representative" means the person responsible for the overall operation of a facility or an operational unit or part of a facility, such as the plant manager, superintendent, or person of equivalent responsibility.

(17) "Base flood" means a flood that has a one (1) percent or greater chance of recurring in any year, or a flood of a magnitude equaled or exceeded once in 100 years on the average over a significantly long period.

(18) "Bird hazard" means an increase in the likelihood of bird or aircraft collisions that may cause damage to the aircraft or injury to its occupants.

(19) "Board" shall have the meaning specified in KRS 224.46-810.

(20) "Boiler" see "hazardous waste site or facility boiler."

(21) "By product" see Section 1 of 401 KAR 31:010.

(22) "Cabinet" shall have the meaning specified in KRS 224.01-010.

(23) "Carbon regeneration unit" means any enclosed thermal treatment device used to regenerate spent activated carbon.

(24) "Cation exchange capacity" means the sum of exchangeable cations a soil can absorb expressed in milliequivalents per 100 grams of soil as determined by sampling the soil to the depth of cultivation or solid waste placement, whichever is greater, and analyzing by the summation method for distinctly acid soils or the sodium acetate method for neutral, calcareous, or saline soils.

(25) "Cell" means a portion of any landfill which is isolated, usually by means of an approved barrier.

(26) "Certificate" shall have the meaning specified in KRS 224.46-810.

(27) "Certification" means a statement of professional opinion based upon knowledge and belief.

(28) "Closed portion" means that portion of a facility which an

owner or operator has closed in accordance with the approved facility closure plan and all applicable closure requirements.

(29) "Closed unit" means any solid waste unit that no longer receives waste as of May 8, 1990 and has received all required final layers of cover material, or a special waste unit that no longer receives waste and has received all required final layers of cover material.

(30) "Closure" shall have the meaning specified in KRS 224.01-010.

(31) "Closure care" or "postclosure" means the routine care, maintenance, monitoring, and any required corrective action of a special waste or solid waste disposal site or facility following certification of closure until the applicable requirements are met.

(32) "Coal mining solid waste" means solid waste as defined by KRS 224.01-010 which is generated at, and is incidental to, a coal exploration operation or surface mining and reclamation operation regulated under KRS Chapter 350, and shall not include wastes generated by households, communities, cities, counties, or any person or business other than those regulated under KRS Chapter 350.

(33) "Coal mining waste" means earth materials which are combustible, physically unstable, or acid forming or toxic forming, that are generated during and incidental to the mining and extraction of coal and to the washing and crushing of coal. The term does not include used oil, paints or flammable liquids. The term includes the following:

(a) Refuse which is that waste material in the raw coal which it is the object of cleaning to remove;

(b) Overburden which includes all of the earth and other geologic materials, excluding topsoil, which lie above a natural deposit of coal and also means such earth and other material after removal from their natural state in the process of mining; and

(c) Coal mining by products which include any material that is not one (1) of the primary products of a particular coal mining operation, is a secondary and incidental product of the particular operation and would not be solely and separately mined by the particular operation. The term does not include an intermediate mining product which results from one (1) of the steps in a mining process and is processed through the next step of the process within a short time. An example of a coal mining by product is that part of the ore deposit that is too low in grade to be of economic value at the time, but which is stored separately in the hope that it can be profitably treated later.

(34) "Commercial solid waste" shall have the meaning specified in KRS 224.01-010.

(35) "Component" see "hazardous waste management unit—hazardous waste tanks component" or "solid waste site or facility tank component."

(36) "Compost" shall have the meaning specified in KRS 224.01-010.

(37) "Composting" shall have the meaning specified in KRS 224.01-010.

(38) "Confined aquifer" means an aquifer bounded above and below by impermeable beds or by beds of distinctly lower permeability than that of the aquifer itself; an aquifer containing confined groundwater.

(39) "Constituent" or "hazardous waste constituent" means a constituent which caused the cabinet to list the hazardous waste in 401 KAR 31:040, or a constituent listed in Section 5(3) of 401 KAR 31:030.

(40) "Construction/demolition debris landfill" see "solid waste site or facility construction/demolition debris landfill."

(41) "Construction/demolition waste" see "solid waste site or facility."

(42) "Construction materials" means nonhazardous nonsoluble material, including but not limited to steel, concrete, brick, asphalt roofing material, or lumber from a construction or demolition project. Mixture of construction and demolition debris with any amount of

other types of waste may cause it to be classified as other than construction materials.

(43) "Contained landfill" see "solid waste site or facility—contained landfill."

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

(45) "Contaminate" means introduce a substance that would cause:

(a) The concentration of that substance in the groundwater to exceed the maximum contaminant level specified in 401 KAR 30:031, Sections 5 and 6 of 401 KAR 47:030, or Section 8 of 401 KAR 34:060; or

(b) An increase in the concentration of that substance in the groundwater where the existing concentration of that substance exceeds the maximum contaminant level specified in 401 KAR 30:031, 401 KAR 47:030, or Section 8 of 401 KAR 34:060.

(c) For substances that do not have an established maximum contamination level, a significant increase above established background levels.

(46) "Contamination" means the degradation of naturally occurring water, air, or soil quality either directly or indirectly as a result of human activities.

(47) "Contingency plan" means a document setting out an organized, planned, and coordinated course of action to be followed in the event of a fire, explosion, or release of waste or waste constituents into the environment which has the potential for endangering human health and the environment. Financial planning to identify resources for initiation of such action is a part of contingency plan development.

(48) "Corrosion expert" means a person who by reason of his knowledge of the physical sciences and the principles of engineering and mathematics acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks documented by credentials submitted to the cabinet. Such a person shall be certified as being qualified by the National Association of Corrosion Engineers (NACE) or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control on buried or submerged metal piping systems and metal tanks.

(49) "Cover material" means soil or other suitable material that is spread and compacted on the top and side slopes of disposed waste in order to control disease vectors, gases, erosion, fires, and infiltration of precipitation or run on; support vegetation; provide trafficability; or assure an aesthetic appearance.

(50) "Designated facility" means a hazardous waste treatment, storage, or disposal facility which has received a hazardous waste site or facility permit (or a facility with interim status) in accordance with the requirements of 401 KAR Chapter 38, a permit from a state authorized in accordance with 40 CFR Part 271, and EPA permit (or a facility with interim status) in accordance with 40 CFR Parts 270 and 124, or that is regulated under Section 6(3)(b) of 401 KAR 31:010 or 401 KAR Chapter 36, 40 CFR 261.6(e)(2) or 40 CFR Part 266, and that has been designated on the manifest by the generator pursuant to Section 1 of 401 KAR 32:020. If a waste is destined to a hazardous waste site or facility in an authorized state which has not yet obtained authorization to regulate that particular waste as hazardous, then the designated facility shall be a facility allowed by the receiving state to accept that waste.

(51) "Destruction or adverse modification" means an alteration of critical habitat which appreciably diminishes the likelihood of the survival and recovery of threatened or endangered species using that habitat.

(52) "Dike" means an embankment or ridge of either natural or manmade materials used to prevent the movement of liquids, sludges, solids, or other materials.

(53) "Director" means the director of the cabinet's division of waste management.

(54) "Disease vector" means all insects, birds or gnawing animals such as rats, mice or ground squirrels, which are capable of transmitting pathogens.

(55) "Disposal" shall have the meaning specified in KRS 224.01-010.

(56) "Disposal facility" see "hazardous waste site or facility—disposal facility" or "solid waste site or facility—disposal facility".

(57) "Drip pad" means an engineered structure consisting of a eurbed, free-draining base, constructed of nonearthen materials and designed to convey preservative kick back or drippage from treated wood, precipitation, and surface water run on to an associated collection system at wood preserving plants.

(58) "Elementary neutralization unit" see "hazardous waste site or facility—elementary neutralization unit."

(59) "Emergency permit" see "permit—emergency/permit".

(60) "Endangered or threatened species" means any species listed as such pursuant to Section 4 of the Endangered Species Act, as amended, 16 USC 1536.

(61) "Engineer" shall have the meaning specified in KRS 322.010. An independent, professional engineer shall be registered in Kentucky pursuant to KRS 322.040 and shall be qualified to engage in waste management engineering practices.

(62) "Environmental emergency" shall have the meaning specified in KRS 224.01-400.

(63) "EPA hazardous waste number" means the number assigned by EPA and the cabinet to each hazardous waste listed in 401 KAR 31:040, and to each characteristic identified in 401 KAR 31:030.

(64) "EPA identification number" means the number assigned by EPA or the cabinet to each generator, transporter, and treatment, storage, or disposal facility.

(65) "EPA region" means the states and territories found in any one (1) of the ten (10) regions recognized by the U.S. EPA.

(66) "Ephemeral stream" means a stream which flows only 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.

(67) "Equivalent method" means any testing or analytical method, approved jointly by the administrator and the secretary under 401 KAR Chapter 31, or methods in 401 KAR Chapters 47 and 48, approved by the secretary of the cabinet.

(68) "Existing hazardous waste site or facility" or "existing facility" means a hazardous waste facility which was in operation, or for which continuous construction had commenced, on or before November 10, 1980. A facility has commenced construction if:

(a) The owner or operator had obtained the federal, state and local approvals or permits necessary to begin physical construction; and

(b) Either:

1. A continuous on-site, physical construction program has begun; or

2. The owner or operator has entered into contractual obligations, which cannot be canceled or modified without substantial loss, for physical construction of the facility to be completed within a reasonable time.

(69) "Existing portion" means that land surface area of an existing hazardous waste management unit, included in the original Part A permit application, on which wastes have been placed prior to the issuance of a permit.

(70) "Existing tank system" see "hazardous waste management unit—hazardous waste tank—existing tank system."

(71) "Explosive gas" means methane (CH₄).

(72) "Existing unit" means any solid waste disposal unit that was receiving solid waste as of May 8, 1990, and any special waste site or facility that was receiving waste as of the effective date of this amendment, and has not received the final layers of cover material.

(73) "Facility" means all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of waste. A facility may consist of several treatment, storage, or disposal operational units, such as one (1) or more landfills, surface impoundments, or combination of them.

(74) "Facility structures" means any buildings and sheds or utility or drainage lines on the solid waste site or facility.

(75) "Federal agency" means any department, agency, or other instrumentality of the federal government, any independent agency or establishment of the federal government including any government corporation, and the United States Government Printing Office.

(76) "Federal, state, and local approvals or permits necessary to begin physical construction" means permits and approvals required under federal, state, or local hazardous waste control statutes, administrative regulations, or ordinances.

(77) "Final closure":

(a) Of a hazardous waste site or facility means the closure of all hazardous waste management units at the facility in accordance with all applicable closure requirements so that hazardous waste management activities under 401 KAR Chapters 34 and 35 are no longer conducted at the facility unless subject to the provisions in Section 5 of 401 KAR 32:030;

(b) Of a solid waste site or facility means the approved closure of a solid waste site or facility in accordance with 401 KAR 30:031, 401 KAR 47:030 and the applicable requirements of 401 KAR 48:060, 401 KAR 48:090, 401 KAR 48:170, or 401 KAR 48:200; and

(c) Of a special waste site or facility means the approved closure of a special waste site or facility in accordance with the applicable requirements of 401 KAR 45:100, 401 KAR 45:110, and 401 KAR 30:031.

(78) "Flood plain" means areas adjoining inland waters which are inundated by the base flood, unless otherwise specified in 401 KAR 30:031 or 401 KAR 47:030, and includes:

(a) "100 year floodplain" means any land area which is subject to a one (1) percent or greater chance of flooding in any given year from any source.

(b) "100 year flood" means a flood that has a one (1) percent chance of being equalled or exceeded in any given year.

(c) "Floodway" means the channel of the waterway, stream or river and that portion of the adjoining floodplain which provides for passage of the 100 year flood flow without increasing the floodwater depth across the 100 year floodplain by more than one (1) foot.

(79) "Feed chain crops" means tobacco, crops grown for human consumption, and crops grown for feed for animals whose products are consumed by humans.

(80) "Freeboard" means the vertical distance between the top of a tank or surface impoundment dike and the surface of the waste contained therein.

(81) "Free liquids" means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure.

(82) "Generator" means any person, by site, whose act or process produces hazardous waste identified or listed in 401 KAR Chapter 31 or whose act first causes a hazardous waste to become subject to administrative regulation.

(a) "Small quantity generator" means a generator who generates more than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month.

(b) "Limited quantity generator" means a generator who generates less than 100 kilograms of hazardous waste in a calendar month.

(c) If a limited quantity generator generates acutely hazardous waste listed in Sections 2, 3, and 4(5) of 401 KAR 31:040 in a calendar month in quantities greater than one (1) kilogram, all quantities of that acutely hazardous waste are subject to administrative regulation under 401 KAR Chapters 32 to 39, and the notification and permitting requirements of KRS 224.01 400, 224.40 310, 224.46 510 to 224.46 580, and 224.60 130 to 224.60 413.

(83) "Groundwater" means water which is in the zone of perennial

saturation. It is differentiated from water held in the soil, from water in downward motion under the force of gravity in the perennially unsaturated zone, and from water held in chemical or electrostatic bondage. It is synonymous with the term "phreatic water."

(84) "Groundwater table" means the upper boundary of the saturated zone in which the hydrostatic pressure of the groundwater is equal to the atmospheric pressure.

(85) "Hazardous constituent" shall have the meaning specified in KRS 224.01 010.

(86) "Hazardous substance" shall have the meaning specified in KRS 224.01 400.

(87) "Hazardous waste" shall have the meaning specified in KRS 224.01 010.

(88) "Hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous waste.

(89) "Hazardous waste management unit" is a contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is significant likelihood of mixing hazardous waste constituents in the same area. Examples of hazardous waste management units include a surface impoundment, a waste pile, a land treatment area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system and a container storage area. A container alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed. Hazardous waste management units include:

(a) "Aboveground tank" means a device meeting the definition of "tank" in this section and that is situated in such a way that the entire surface area of the tank is completely above the plane of the adjacent surrounding surface and the entire surface area of the tank (including the tank bottom) is able to be visually inspected.

(b) "Component" means either the tank or ancillary equipment of a tank system.

(c) "Existing tank system" or "existing component" means a tank system or component that is used for the storage or treatment of hazardous waste and that is in operation, or for which installation commenced on or prior to July 14, 1986. Installation will be considered to have commenced if the owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system and if either:

1. A continuous on site physical construction or installation program has begun; or

2. The owner or operator has entered into contractual obligations, which cannot be cancelled or modified without substantial loss, for physical construction of the site or installation of the tank system to be completed within a reasonable time.

(d) "In ground tank" means a device meeting the definition of "tank" in this section whereby a portion of the tank wall is situated to any degree within the ground, thereby preventing visual inspection of that external surface area of the tank that is in the ground.

(e) "New tank system" or "new tank component" means a tank system or component that will be used for the storage or treatment of hazardous waste and for which installation commenced after July 14, 1986; however, for purposes of Section 4(7)(b) of 401 KAR 34:100 and Section 4(7)(b) of 401 KAR 35:100, a new tank system is one for which construction commenced after July 14, 1986.

(f) "On ground tank" means a device meeting the definition of "tank" in this section that is situated in such a way that the bottom of the tank is on the same level as the adjacent surrounding surface so that the external tank bottom cannot be visually inspected.

(g) "Tank system" means a hazardous waste storage or treatment tank and its associated ancillary equipment and containment system.

(h) "Underground tank" means a device meeting the definition of "tank" in this section whose entire surface area is totally below the surface of and covered by the ground.

(i) "Unfit for use tank system" means a tank system that has been

determined through an integrity assessment or other inspection to be no longer capable of storing or treating hazardous waste without posing a threat of release of hazardous waste to the environment.

(90) "Hazardous waste site or facility" means any place at which hazardous waste is treated, stored, or disposed of by landfilling, incineration, or any other method.

(a) "Boiler" means an enclosed device using control flame combustion and having the following characteristics:

1. a. The unit shall have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases; and

b. The unit's combustion chamber and primary energy recovery section(s) shall be of integral design. To be of integral design, the combustion chamber and the primary energy recovery section (such as water walls and superheaters) shall be physically formed into one (1) manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery section are joined only by ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment (such as economizers or air preheaters) need not be physically formed into the same unit as the combustion chamber and the primary energy recovery section. The following units are not precluded from being boilers solely because they are not of integral design: process heaters (units that transfer energy directly to a process stream) and fluidized bed combustion units; and

c. While in operation, the unit shall maintain a thermal energy recovery efficiency of at least sixty (60) percent, calculated in terms of the recovered energy compared with the thermal value of the fuel; and

d. The unit shall export and utilize at least seventy-five (75) percent of the recovered energy, calculated on an annual basis. In this calculation, no credit shall be given for recovered heat used internally in the same unit. (Examples of internal use are the preheating of fuel or combustion air, and the driving of induced or forced draft fans or feedwater pumps); or

2. The unit is one (1) which the cabinet has determined, on a case-by-case basis, to be a boiler, after considering the standards in 401 KAR 30:080.

(b) "Disposal facility" means a facility or part of a facility at which hazardous waste is intentionally placed into or on any land or water and at which waste will remain after closure.

(c) "Elementary neutralization unit" means a device which:

1. Is used for neutralizing wastes that are hazardous only because they exhibit the corrosivity characteristic defined in Section 3 of 401 KAR 31:030, or they are listed in 401 KAR 31:040 only for this reason; and

2. Meets the definition of tank, tank system, container, transport vehicle, or vessel in this section.

(d) "Incinerator" means any enclosed device that:

1. Uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or

2. Meets the definition of infrared incinerator or plasma arc incinerator.

a. "Infrared incinerator" means any enclosed device that uses electric powered resistance heaters as a source of radiant heat and which is not listed as an industrial furnace.

b. "Plasma arc incinerator" means any enclosed device using a high intensity electrical discharge or arc as a source of heat and which is not listed as an industrial furnace.

(e) "Industrial furnace" means any of the following enclosed devices that are integral components of manufacturing processes and that use thermal treatment to accomplish recovery of materials or energy:

1. Cement kilns.
2. Lime kilns.
3. Aggregate kilns.

4. Phosphate kilns.

5. Coke ovens.

6. Blast furnaces.

7. Smelting, melting, and refining furnaces (including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machines, roasters, and foundry furnaces);

8. Titanium dioxide chloride process oxidation reactors.

9. Methane reforming furnaces.

10. Pulping liquor recovery furnaces.

11. Combustion devices used in the recovery of sulfur values from spent sulfuric acid.

12. Halogen acid furnaces (HAFs) for the production of acid from halogenated hazardous waste generated by chemical production facilities where the furnace is located on the site of a chemical production facility, the acid product has a halogen acid content of at least three (3) percent, the acid product is used in a manufacturing process, and, except for hazardous waste burned as fuel, hazardous waste fed to the furnace has a minimum halogen content of twenty (20) percent as generated.

13. Other devices as the cabinet may, after notice and comment, add to this list on the basis of criteria and Section 5 of 401 KAR 30:080.

(f) "Hazardous waste transfer facility" means any transportation related facility including loading docks, parking areas, storage areas, and other similar areas where shipments of hazardous waste are held during the normal course of transportation.

(g) "Injection well" means a well into which fluids are injected to achieve subsurface emplacement.

(h) "Landfill" means a disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, or an underground injection well, a salt dome formation, a salt bed formation, an underground mine, or a cave.

(i) "Land treatment facility" means a facility or part of a facility at which hazardous waste is applied onto or incorporated into the soil surface. These facilities are disposal facilities if the waste will remain after closure.

(j) "Miscellaneous unit" means a hazardous waste management unit where hazardous waste is treated, stored, or disposed of, that is not a container, tank, surface impoundment, pile, land treatment unit, landfill, incinerator, boiler, industrial furnace, underground injection well with appropriate technical standards under 40 CFR Part 146, or unit eligible for a research, development, and demonstration permit under Section 6 of 401 KAR 38:060.

(k) "Pile" or "waste pile" means any noncontainerized accumulation of solid, nonflowing hazardous waste that is used for treatment or storage.

(l) "Replacement unit" means a landfill, surface impoundment, or waste pile unit from which all or substantially all of the waste is removed, and that is subsequently reused to treat, store, or dispose of hazardous waste. "Replacement unit" does not apply to a unit from which waste is removed during closure, if the subsequent reuse solely involves the disposal of waste from that unit and other closing units or corrective action areas at the facility, in accordance with an approved closure plan or approved corrective action.

(m) "Storage facility" means a facility or part of a facility at which hazardous waste is held for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere. A generator who accumulates his own hazardous wastes in an approved manner for less than ninety (90) days for subsequent transport on site or off site is not operating or maintaining a storage facility.

(n) "Sludge dryer" means any enclosed thermal treatment device that is used to dehydrate sludge and that has a maximum total thermal input, excluding the heating value of the sludge itself, of 2,500 Btu per pound of sludge treated on a wet weight basis.

(o) "Surface impoundment" means a facility or part of a facility

which is a natural topographic depression, manmade excavation, or diked area formed primarily of earthen materials (although it may be lined with manmade materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

(p) "Tank" means a stationary device designed to contain an accumulation of hazardous waste that is constructed primarily of nonearthen materials (for example, wood, concrete, steel, or plastic) which provide structural support and which does not meet the definition of any other unit.

(q) "Thermal treatment facility" means a facility or part of a facility which uses elevated temperatures as the primary means to change the chemical, physical or biological character or composition of hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge.

(r) "Totally enclosed treatment facility" means a facility for the treatment of hazardous waste which is directly connected to an industrial production process and which is constructed and operated in a manner which prevents the release of any hazardous waste or any constituent thereof into the environment during treatment. An example is a pipe in which acid is neutralized.

(s) "Treatment facility" means a facility or part of a facility using any method, technique or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste nonhazardous or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume.

(t) "Wastewater treatment unit" means a device that:

1. Is part of a wastewater treatment facility that is subject to administrative regulation under either section 402 or 307(b) of the CWA; and

2. Receives and treats or stores an influent wastewater which is a hazardous waste as defined in 401 KAR 31:010, Section 3; or generates and accumulates a wastewater treatment sludge that is a hazardous waste as defined in 401 KAR 31:010, Section 3; or treats or stores a wastewater treatment sludge which is a hazardous waste as defined in Section 3 of 401 KAR 31:010; and

3. Meets the definition of tank or tank system in this administrative regulation.

(91) "Holocene" means the most recent epoch of the quaternary period, extending from the end of the pleistocene to the present.

(92) "Household solid waste" shall have the meaning specified in KRS 224.01-010.

(93) "Inactive portion" means that portion of a hazardous waste site or facility which was not operated after November 10, 1980.

(94) "Incinerator" see "hazardous waste site or facility incinerator" or "solid waste site or facility incinerator".

(95) "Incompatible waste" means a hazardous waste which is unsuitable for placement in a particular device or facility because it may cause corrosion or decay of containment materials, or unsuitable for commingling with another waste or material under uncontrolled conditions because the commingling might produce heat or pressure, fire or explosion, violent reaction, toxic dusts, mists, fumes, or gases, or flammable fumes or gases.

(96) "Individual generation site" means the contiguous site at or on which one (1) or more hazardous wastes are generated. An individual generation site, such as a large manufacturing plant, may have one (1) or more sources of hazardous waste but is considered a single or individual generation site if the site or property is contiguous.

(97) "Industrial furnace" see "hazardous waste site or facility industrial furnace."

(98) "Industrial solid waste" shall have the meaning specified in

KRS 224.01-010.

(99) "Inert landfill" see "solid waste site or facility inert landfill."

(100) "Infectious waste" means those wastes which may cause disease or reasonably be suspected of harboring pathogenic organisms; included are wastes resulting from the operation of medical clinics, hospitals, and other facilities producing wastes which may consist of, but are not limited to, diseased human and animal parts, contaminated bandages, pathological specimens, hypodermic needles, contaminated clothing, and surgical gloves.

(101) "Inground tank" see "hazardous waste management unit hazardous waste tank inground tanks" or "solid waste site or facility tanks inground tanks".

(102) "Injection well" see "hazardous waste site or facility injection well", "solid waste site or facility injection well", or "special waste site or facility injection well".

(103) "Inner liner" means a continuous layer of material placed inside a tank or container which protects the construction materials of the tank or container from the contained hazardous waste or reagents used to treat the hazardous waste.

(104) "In operation" refers to a facility which is treating, storing, or disposing of hazardous waste.

(105) "Installation inspector" means a person who, by reason of his knowledge of the physical sciences and the principles of engineering, acquired by a professional education and related practical experience, is qualified to supervise the installation of a hazardous waste management unit including tank systems.

(106) "Interim status" means the designation of a hazardous waste site or facility which was in existence on November 10, 1980, and has submitted a Part A application under 401 KAR Chapter 38 or under 40 CFR Part 270 and is treated as having a permit until final administrative disposition of the application is made.

(107) "Intermittent stream" means a stream or reach of stream that drains a watershed of one (1) square mile or more but does not flow continuously during the calendar year.

(108) "International shipment" means the transportation of hazardous waste into or out of the jurisdiction of the United States.

(109) "Karst terrain" means a type of topography where limestone, dolomite or gypsum is present and is characterized by naturally occurring closed topographic depressions or sinkholes, caves, disrupted surface drainage, and well developed underground solution channels formed by dissolution of these rocks by water moving underground.

(110) "Key personnel" shall have the meaning specified in KRS 224.01-010.

(111) "Lab pack" means any large container equal to or smaller than fifty-five (55) gallons that holds many smaller containers of various content tightly secured with packing material.

(112) "Land disposal" shall have the meaning specified in KRS 224.01-010.

(113) "Landfarming facility" see "solid waste site or facility landfarming facility" or "special waste site or facility landfarming facility".

(114) "Landfill" see "hazardous waste site or facility landfill."

(115) "Landfill cell" means a discrete volume of a hazardous waste landfill which uses a liner to provide isolation of wastes from adjacent cells or wastes. Examples of landfill cells are trenches and pits.

(116) "Land treatment facility" see "hazardous waste site or facility land treatment facility."

(117) "Lateral expansion" means a horizontal expansion of the waste boundaries of an existing special waste or solid waste landfill unit.

(118) "Leachate" means any liquid including any suspended components in the liquid, that has percolated through or drained from waste.

(119) "Leak detection system" means a system capable of detecting the failure of either the primary or secondary containment

system or the presence of a release of hazardous waste, hazardous waste constituents or accumulated liquid in the secondary containment system. Such a system shall employ operational controls (daily visual inspections for releases into the secondary containment system of aboveground tanks) or consist of an interstitial monitoring device designed to detect continuously and automatically the failure of the primary or secondary containment system or the presence of a release of hazardous waste constituents or accumulated liquids into the secondary containment system.

(120) "Limited quantity generator" see "generator—limited quantity generator."

(121) "Liner" means a continuous layer of natural or manmade material, beneath or on the sides of a waste site or facility, including but not limited to a waste pile, surface impoundment, landfill, or landfill cell, or beneath or on the sides of a waste site or facility which restricts the movement of the wastes, waste constituents, or leachate.

(122) "Lower explosive limit" means the lowest percent by volume of a mixture of explosive gases which will propagate a flame in air at twenty-five (25) degrees Celsius and atmospheric pressure.

(123) "Major modification" means:

(a) For hazardous waste sites or facilities, a change in ownership where the cabinet determines that other changes in the permit are necessary as a result of the change in ownership or operational control, area occupied, disposal method, or other significant change in the operation of a waste site or facility (Note: Minor modifications are described in Section 3 of 401 KAR 38:040); and

(b) For solid waste sites and facilities, a change meeting the criteria in Section 3 of 401 KAR 47:130.

(124) "Management facility" see "solid waste site or facility—management facility."

(125) "Manifest" shall have the meaning specified in KRS 224.01-010.

(126) "Manifest document number" means the EPA twelve (12) digit identification number assigned to the generator plus a unique, serially increasing, five (5) digit document number assigned to the manifest by the generator for recordkeeping and reporting purposes.

(127) "Materials recovery facility" shall have the meaning specified in KRS 224.01-010.

(128) "Mining overburden returned to the mine site" means any material overlying an economic mineral deposit which is removed to gain access to that deposit and is then used for reclamation of a surface mine.

(129) "Miscellaneous unit" see "hazardous waste site or facility—miscellaneous unit" or "solid waste site or facility—miscellaneous unit."

(130) "Monitoring" means the act of systematically inspecting and collecting data on operational parameters or on the quality of the air, soil, groundwater, or surface water.

(131) "Monitoring well" means a well used to obtain water samples for water quality and quantity analysis and groundwater levels.

(132) "Movement" means that hazardous waste transported to a facility in an individual vehicle.

(130) "Municipal solid waste" shall have the meaning specified in KRS 224.01-010.

(133) "Municipal solid waste" shall have the meaning specified in KRS 224.01-010.

(134) "Municipal solid waste reduction" shall have the meaning specified in KRS 224.01-010.

(135) "New" means any hazardous waste site or facility that commenced construction after November 10, 1980.

(136) "New tank system" see "hazardous waste management unit—hazardous waste tank—new tank system."

(137) "Notice of intent to apply for a solid waste permit" see "application—notice of intent to apply for a solid waste permit."

(138) "Off site" means properties noncontiguous to the generation site.

(139) "Onground tanks" see "hazardous waste management unit—hazardous waste tanks—onground tanks" or "solid waste site or facility—tank—on ground tanks".

(140) "On site" means on the same or geographically contiguous property which may be divided by public or private right of way, provided the entrance and exit between the properties is at a crossroads intersection, and access is by crossing, as opposed to going along the right of way. Noncontiguous properties owned by the same person but connected by a right of way which he controls and to which the public does not have access is also considered on site property.

(141) "Open burning" means the combustion of any material or solid waste without:

(a) Control of combustion air to maintain adequate temperature for efficient combustion;

(b) Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

(c) Control of emission of the gaseous combustion products.

(142) "Open dump" shall have the meaning specified in KRS 224.01-010.

(143) "Operational plan" means the approved plan of operations filed with the cabinet which describes the method of operation that the permittee will use in the treatment, storage, and disposal of wastes.

(144) "Operator" means any person responsible for overall operation of an on-site or off-site waste facility, including any private contractor conducting operational activities at a federal facility.

(145) "Owner" means any person who owns an on-site or off-site waste facility, or any part of a facility.

(146) "Part A of the application" or "Part A" see "application—Part A application."

(147) "Part B of the application" or "Part B" see "application—Part B application."

(148) "Partial closure" means the closure of a hazardous waste management unit in accordance with the applicable closure requirements of 401 KAR Chapters 34 and 35 at a facility that contains other active hazardous waste management units. For example, partial closure may include the closure of a tank (including its associated piping and underlying containment systems), landfill cell, surface impoundment, waste pile, or other hazardous waste management unit, while other units of the same facility continue to operate.

(149) "Perennial stream" means a stream or that part of a stream that flows continuously during all of the calendar year as a result of groundwater discharge or surface run off. The term does not include "intermittent stream" or "ephemeral stream".

(150) "Periodic application of cover material" means the application and compaction of soil or other suitable material over disposed waste at a solid waste site or facility at the end of each operating day or at such frequencies and in such a manner as to reduce the risks of fire and to impede disease vector's access to the waste.

(151) "Permit" means the authorization or other control document issued by the cabinet to implement the requirements of the waste management administrative regulations. The term "permit" includes "permit by rule," "registered permit by rule," "research, development, and demonstration permit", and "emergency permit." However, the term "permit" does not include "draft permit" or "proposed permit."

(a) "Emergency permit" means a permit issued by the cabinet to temporarily store, treat or dispose of hazardous waste in accordance with the provisions of Section 2 of 401 KAR 38:060, to temporarily manage, process, or dispose of a solid waste in accordance with the provisions of Section 2 of 401 KAR 47:150 or to temporarily store, treat, or dispose of special waste in accordance with the provisions of Section 1 of 401 KAR 45:135.

(b) "Permit by rule" means authorization allowing certain classes of sites or facilities to manage waste consistent with 401 KAR Chapters 30 to 49, without submission of a registration or permit application to the cabinet.

1. Examples of hazardous waste sites or facilities which are permitted by rule include facilities operating under an interim status permit and facilities identified in Section 1 of 401 KAR 38:060.

2. Examples of solid waste sites or facilities which are permitted by rule include facilities identified in 401 KAR 47:150.

3. Examples of special waste sites or facilities which are permitted by rule include facilities identified in 401 KAR 45:060.

(c) "Registered permit by rule" means that certain classes of solid waste sites or facilities as specified in 401 KAR 47:080 have a permit as provided in 401 KAR 47:110 or 401 KAR 48:200 or that certain classes of special waste sites or facilities as specified in 401 KAR 45:020 have a permit as provided in 401 KAR 45:070.

(d) "Research, development, and demonstration permit" means a special waste site or facility or solid waste treatment or disposal facility using innovative and experimental technology as specified in sections of 401 KAR 47:150.

(152) "Permittee" means any person holding a valid permit issued by the cabinet to manage, treat, store, or dispose of waste.

(153) "Person" shall have the meaning specified in KRS 224.01-010.

(154) "Personnel" or "facility personnel" means all persons who work at or oversee the operations of a waste facility, and whose actions or failure to act may result in noncompliance with the requirements of the waste management administrative regulations.

(155) "Pile" or "waste pile" see "hazardous waste site or facility—pile" or "solid waste site or facility—pile" or "special waste site or facility—pile".

(156) "Point of compliance" means for special waste sites or facilities or solid waste site and facilities, groundwater monitoring wells located within 250 feet of the waste boundary as approved by the cabinet.

(157) "Point source" means any discernible, confined, and discrete conveyance including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

(158) "Postclosure care" means the manner in which a facility shall be maintained when it no longer accepts waste for disposal.

(159) "Postclosure monitoring and maintenance" shall have the meaning specified in KRS 224.01-010.

(160) "Processing facility" see "solid waste site or facility—processing facility".

(161) "Proposed permit" or "draft permit" means a document prepared by the cabinet indicating the cabinet's tentative decision to issue or deny, modify, revoke or terminate a permit.

(162) "Publicly owned treatment works" or "POTW" shall have the meaning specified in KRS 224.01-010.

(163) "Putrescible" means susceptible to rapid decomposition by bacteria, fungi, or oxidation sufficient to cause nuisances such as odors, gases, or other offensive conditions.

(164) "Qualified groundwater scientist" means a geologist registered in Kentucky who has received a baccalaureate or postgraduate degree in the natural sciences or engineering, and has sufficient training and experience in groundwater hydrology and related fields to enable that individual to make sound professional judgments regarding groundwater monitoring and contaminant fate and transport.

(165) "Recharge zone" means an area supplying the water which enters an underground drinking water source.

(166) "Reclaimed" see Section 1 of 401 KAR 31:010.

(167) "Recovered material" shall have the meaning specified in KRS 224.01-010.

(168) "Recovered material processing facility" shall have the meaning specified in KRS 224.01-010.

(169) "Recycling" shall have the meaning specified in KRS 224.01-010.

(170) "Recycling center" see "solid waste site or facility—recycling

center".

(171) "Recycling facility" see "solid waste site or facility—recycling facility".

(172) "Refuge derived fuel" shall have the meaning specified in KRS 224.01-010.

(173) "Regional Administrator" means the regional administrator for the EPA region in which the facility is located, or his designee.

(174) "Regional integrated waste treatment and disposal demonstration facility" shall have the meaning specified in KRS 224.01-010.

(175) "Regulated unit" means hazardous waste land disposal sites or facilities, or portions of existing hazardous waste land disposal sites or facilities that continued to receive waste after January 26, 1983.

(176) "Research, development and demonstration permit" see "permit—research, development and demonstration permit".

(177) "Residential landfill" see "solid waste site or facility—residential landfill."

(178) "Residual landfill" see "solid waste site or facility—residual landfill."

(179) "Representative sample" means a sample of a universe or whole (for example, waste pile, lagoon, or groundwater) which can be expected to exhibit the average properties of the universe or whole.

(180) "Resource recovery" means the recovery of material or energy from waste.

(181) "Run off" means any rainwater, leachate, or other liquid that drains overland from any part of a facility.

(182) "Run on" means any rainwater, leachate, or other liquid that drains overland onto any part of a facility.

(183) "Salvaging" means the controlled removal of waste materials for utilization in a manner approved by the cabinet.

(184) "Sanitary landfill" see "solid waste site or facility—sanitary landfill".

(185) "Saturated zone" or "zone of saturation" means that part of the earth's crust containing groundwater in which all voids, large and small, are filled with liquid.

(186) "Seavenging" means the removal of waste materials from a waste management site or facility in a manner deemed by the cabinet to be dangerous to the health and safety of any person.

(187) "Schedule of compliance" means a schedule of remedial measures included in a permit or cabinet order, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with KRS Chapter 224 and 401 KAR Chapters 30 to 40.

(188) "Scrap metal" see Section 1 of 401 KAR 31:010.

(189) "Secretary" shall have the meaning specified in KRS 224.01-010.

(190) "Sewage system" shall have the meaning specified in KRS 224.01-010.

(191) "Site" means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the waste facility or activity.

(192) "Sludge" means any solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant or any other waste having similar characteristics and effects.

(193) "Small quantity generator" see "generator—small quantity generator".

(194) "Solid waste management" shall have the meaning specified in KRS 224.01-010.

(195) "Solid waste management area" or "area" shall have the meaning specified in KRS 224.01-010.

(196) "Solid waste management facility" shall have the meaning specified in KRS 224.01-010.

(197) "Solid waste site or facility" means any place at which solid waste is managed, processed or disposed by landfilling, incineration, landfarming or any other method. The term includes the following:

(a) "Construction/demolition debris landfill" means a solid waste site or facility for the disposal of solid waste resulting from the construction, remodeling, repair, and demolition of structures and roads, and for the disposal of uncontaminated solid waste consisting of vegetation resulting from land clearing and grubbing, utility line maintenance, and seasonal and storm related cleanup. The technical requirements for construction/demolition debris landfills are found in 401 KAR 47:080, 401 KAR 48:050, and 401 KAR 48:060.

(b) "Collection box" shall have the meaning specified in KRS 224.01-010.

(c) "Contained landfill" means a solid waste site or facility that accepts for disposal solid waste. The technical requirements for contained landfills are found in 401 KAR 47:080, 401 KAR 48:050, and 401 KAR 48:070 to 401 KAR 48:090.

(d) "Convenience center" shall have the meaning specified in KRS 224.01-010.

(e) "Disposal facility" means a facility or part of a facility at which solid waste is intentionally placed into or on any land or water and at which waste will remain after closure.

(f) "Incinerator" means any enclosed device using controlled flame combustion for burning solid waste.

(g) "Injection well" means a well into which fluids are injected to achieve subsurface emplacement.

(h) "Landfarming facility" means a facility for land application of sludges or other solid waste by any method for purposes of disposal. It can be on any piece or pieces of land and may improve the physical and chemical qualities of the land for agricultural purposes, but does not alter the topography of the application area as revealed by contours and will not disturb the soil below three (3) feet from the surface.

(i) "Management facility" means a facility or part of a facility at which solid waste is held for a temporary period, at the end of which solid waste is processed, disposed or managed elsewhere.

(j) "Miscellaneous unit" means a solid waste management unit where waste is disposed of and that is not a container, tank, surface impoundment, pile, landfarming unit, landfill, incinerator, underground injection well with appropriate technical standards under 40 CFR Part 146, or unit eligible for a research, development, and demonstration permit under Section 3 of 401 KAR 47:150.

(k) "Municipal solid waste disposal facility" shall have the meaning specified in KRS 224.01-010.

(l) "Pile" or "waste pile" means any noncontainerized accumulation of nonflowing solid waste that is used for processing or management.

(m) "Processing facility" means a facility or part of a facility using any method, technique or procedure, including neutralization, designed to change the physical, chemical, or biological character or composition of any solid waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for handling or reduced in volume.

(n) "Recycling center" means a facility or a part of a facility at which solid waste is received and managed in a manner amenable for the recovery of material or energy. This term does not include recycling facilities.

(o) "Recycling facility" means a facility or a part of a facility at which solid waste is processed to reclaim material or energy from the solid waste.

(p) "Residual landfill" means a facility for the disposal of specific solid waste(s), including special waste, which is located, designed, constructed, operated, maintained, and closed in conformance with 401 KAR 30:031 and 401 KAR 47:030 and which receives a case-by-case design review by the cabinet.

(q) "Sanitary landfill" means a facility for the disposal of solid waste that complies with 401 KAR 30:031 and 401 KAR 47:030.

(r) "Surface impoundment" means a facility or part of a facility

which is a natural topographic depression, manmade excavation, or diked area formed primarily of earthen materials (although it may be lined with manmade materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

(s) "Tank" means a stationary device designed to contain an accumulation of leachate or liquid solid waste which is constructed primarily of nonearthen materials (for example, wood, concrete, steel, or plastic) which provide structural support.

1. "Aboveground tank" means a device meeting the definition of "tank" in this subsection and that is situated in such a way that the entire surface area of the tank is completely above the plane of the adjacent surrounding surface and the entire surface area of the tank (including the tank bottom) is able to be visually inspected.

2. "Component" means either the tank or ancillary equipment of a tank system.

3. "Inground tank" means a device meeting the definition of "tank" in this subsection whereby a portion of the tank wall is situated to any degree within the ground, thereby preventing visual inspection of that external surface area of the tank that is in the ground.

4. "Onground tank" means a device meeting the definition of "tank" in this subsection and that is situated in such a way that the bottom of the tank is on the same level as the adjacent surrounding surface so that the external tank bottom cannot be visually inspected.

5. "Tank system" means a solid waste tank and its associated piping, ancillary equipment, and containment system.

6. "Underground tank" means a device meeting the definition of "tank" in this subsection whose entire surface area is totally below the surface of and covered by the ground.

7. "Unfit for use tank system" means a tank system that has been determined through an integrity assessment or other inspection to be no longer capable of managing or processing solid waste without posing a threat of release of waste to the environment.

(t) "Transfer facility" shall have the meaning specified in KRS 224.01-010.

(u) "Unit" or "solid waste unit" means a contiguous area of land on or in which solid waste is placed, or the largest area in which there is significant likelihood of mixing waste constituents in the same area. Examples of solid waste units include a surface impoundment, a waste pile, a land processing area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system, and a container storage area. A container alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed.

(v) "Wastewater treatment unit" means a tank which is part of a wastewater treatment facility which is subject to administrative regulation under either Section 402 or Section 307(b) of the Clean Water Act of 1972 and which receives, treats, stores, generates, or accumulates influent wastewater or receives, manages, processes, generates or accumulates wastewater treatment sludge, either of which is a solid waste.

(w) 1. "Inert landfill" means a facility for the proper disposal of inert, nonsoluble and nonputrescible solid waste, including construction materials, certain industrial or special wastes, and other waste material with specific approval from the cabinet. Certain putrescible wood product wastes (such as cardboard, paper, sawdust, wood chips, and tree trimmings) may be considered by the cabinet for disposal at inert landfills.

2. "Residential landfill" means a facility for the proper disposal of solid waste including residential waste, commercial waste, institutional waste, and those sludges, industrial or special waste with specific approval from the cabinet.

(108) "Solid waste unit" see "solid waste site or facility unit".

(109) "Special wastes" shall have the meaning specified in KRS 224.60-760.

(200) "Special waste site or facility" means any place at which

special waste is managed, processed, or disposed by landfilling, landfarming, composting, or any other method. The term includes:

(a) "Injection well" means a well into which fluids are injected to achieve subsurface emplacement.

(b) "Landfarming facility" means a facility for land application of sludges or other special waste for purposes of disposal. It can be on any piece or pieces of land and may improve the physical and chemical qualities of the land for agricultural purposes, but does not alter the topography of the application area as revealed by contours and will not disturb the soil below three (3) feet from the surface.

(c) "Landfill" means a special waste site or facility for the disposal of specific wastes that is located, designated, constructed, operated, maintained, and closed in conformance with 401 KAR Chapter 45 and 401 KAR 30.031, and receives a case-by-case design review by the cabinet.

(d) "Pile" or "waste pile" means any noncontainerized accumulation of nonflowing special waste that is used for processing or management.

(e) "Surface impoundment" means a facility or part of a facility that is a natural topographic depression, manmade excavation, or diked area formed primarily of earthen materials, although it may be lined with manmade materials, which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

(201) "Spent material" see Section 1 of 401 KAR 31.010.

(202) "Spill" means any accidental spilling, leaking, pumping, pouring, emitting, or dumping of hazardous wastes or materials which, when spilled, become hazardous wastes into or on any land or water.

(203) "State" means any of the fifty (50) states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Northern Mariana Islands or Guam but does not include any foreign country.

(204) "Storage" shall have the meaning specified in KRS 224.01-010.

(205) "Storage facility" see "hazardous waste site or facility—storage facility."

(206) "Storage of hazardous waste" means the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed, or stored elsewhere.

(207) "Sump" means any pit or reservoir that meets the definition of tank, and those troughs and trenches connected to it, that serves to collect hazardous waste for transport to hazardous waste storage, treatment, or disposal facilities; except that as used in the landfill, surface impoundment, and waste pile administrative regulations, "sump" means any lined pit or reservoir that serves to collect liquids drained from a leachate collection and removal system or leak detection system for subsequent removal from the system.

(208) "Surface impoundment" see "hazardous waste site or facility—surface impoundment", "solid waste site or facility—surface impoundment", or "special waste site or facility—surface impoundment".

(209) "Tank" see "hazardous waste site or facility—tank" or "solid waste site or facility—tank".

(210) "Tank system" see "hazardous waste management unit—hazardous waste tank—tank system" or "solid waste sites or facility—tank system".

(211) "Technical application" see "application—technical application".

(212) "Termination" shall have the meaning specified in KRS 224.01-010.

(213) "Thermal treatment" means the treatment of hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge (see also "incinerator" and "open

burning").

(214) "Thermal treatment facility" see "hazardous waste site or facility—thermal treatment facility."

(215) "Totally enclosed treatment facility" see "hazardous waste site or facility—totally enclosed treatment facility."

(216) "Transfer facility" shall have the meaning specified in KRS 224.01-010.

(217) "Transport vehicle" means a motor vehicle or rail car used for the transportation of cargo by any mode. Each cargo-carrying body is a separate transport vehicle.

(218) "Transportation" shall have the meaning specified in KRS 224.01-010.

(219) "Transporter" means a person engaged in the off-site transportation of hazardous waste by air, rail, highway or water.

(220) "Treatment" shall have the meaning specified in KRS 224.01-010.

(221) "Treatability study" means a study in which a hazardous waste is subjected to a treatment process to determine:

(a) Whether the waste is amenable to the treatment process;

(b) What pretreatment, if any, is required;

(c) The optimal process conditions needed to achieve the desired treatment;

(d) The efficiency of a treatment process for a specific waste or wastes; or

(e) The characteristics and volumes of residuals from a particular treatment process.

Also included in this definition for the purpose of 401 KAR 31.010, Section 4(5) and (6), exemptions are liner compatibility, corrosion, and other material compatibility studies and toxicological and health effects studies. A "treatability study" is not a means to commercially treat or dispose of hazardous waste.

(222) "Treatment facility" see "hazardous waste site or facility—treatment facility."

(223) "Treatment zone" means a soil area of the unsaturated zone of a land treatment unit within which hazardous constituents are degraded, transformed, or immobilized.

(224) "Trenching or burial operation" means the placement of sewage sludge or septic tank pumpings in a trench or other natural or manmade depression and the covering with soil or other suitable material at the end of each operating day such that the waste does not migrate to the surface.

(225) "Underground drinking water source" means:

(a) An aquifer supplying drinking water for human consumption; or

(b) An aquifer in which the groundwater contains less than 10,000 mg/l total dissolved solids.

(226) "Underground injection" means the subsurface emplacement of fluids through a bored, drilled, or driven well; or through a dug well, where the depth of the dug well is greater than the largest surface dimension. (See also "hazardous waste site or facility, injection well.")

(227) "Underground tank" see "hazardous waste management unit—hazardous waste tank—underground tank" or "solid waste site or facility—tank—underground tank".

(228) "Universal collection" shall have the meaning specified in KRS 224.01-010.

(229) "Unsaturated zone" or "zone of aeration" means that region of the soil or rock between the land surface and the nearest saturated zone in which the interstices are occupied partially by air.

(230) "Unfit for use" see "hazardous waste management unit—hazardous waste tank—unfit for use" or "solid waste site or facility—tank—unfit for use".

(231) "Unit" see "solid waste site" or "facility—unit".

(232) "Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

(233) "Used or reused" see Section 1 of 401 KAR 31:010.

(234) "Vapor recovery system" means that equipment, device, or apparatus capable of collecting vapors and gases discharged from a storage tank, and a vapor processing system capable of affecting such vapors and gases so as to prevent their emission into the atmosphere.

(235) "Vessel" means any watercraft used or capable of being used as a means of transportation on the water.

(236) "Washout" means the carrying away of waste by waters as a result of flooding.

(237) "Waste" shall have the meaning specified in KRS 224.01-010.

(238) "Waste boundary" means:

(a) The outermost perimeter of the waste (projected in the horizontal plane) as it would exist at completion of the disposal activity; or

(b) An alternative boundary for a solid or special waste disposal facility which may be used in lieu of paragraph (a) when the cabinet finds that such a change would not result in the contamination of groundwater which may be needed or used for human consumption. Such a finding shall be based on an analysis and consideration of all the factors identified in the following subparagraphs of this paragraph that are relevant:

1. The hydrogeological characteristics of the facility and surrounding land including any natural attenuation and dilution characteristics of the aquifer;

2. The volume and physical and chemical characteristics of the leachate;

3. The quantity, quality, and direction of flow of groundwater underlying the facility;

4. The proximity and withdrawal rates of groundwater users;

5. The availability of alternative drinking water supplies;

6. The existing quality of the groundwater, including other sources of contamination and their cumulative impacts on the groundwater; and

7. Public health, safety, and welfare effects.

(239) "Waste site or facility" shall have the meaning specified in KRS 224.01-010.

(240) "Waste management district" shall have the meaning specified in KRS 224.01-010.

(241) "Waste pile" see either "hazardous waste site or facility—pile," "solid waste site or facility—pile," or "special waste site or facility—pile."

(242) "Wastewater treatment unit" see "hazardous waste site or facility—wastewater treatment unit" or "solid waste site or facility—wastewater treatment unit."

(243) "Water (bulk shipment)" means the bulk transportation of hazardous waste which is loaded or carried on board a vessel without containers or labels.

(244) "Water" or "waters of the Commonwealth" shall have the meaning specified in KRS 224.01-010.

(245) "Well" means any shaft or pit dug or bored into the earth, generally of cylindrical form, and often walled with bricks or tubing to prevent the earth from caving in.

(246) "Wetlands" means land that has a predominance of hydric soils and 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, where:

(a) "Hydric soils" means soils that, in their undrained condition, are saturated, flooded, or ponded long enough during a growing season to develop an anaerobic condition that supports the growth and regeneration of hydrophytic vegetation.

(b) "Hydrophytic vegetation" means a plant growing either in water, or in a substrate that is at least periodically deficient of oxygen during a growing season as a result of excessive water content.

(247) "Water pollution" shall have the meaning specified in KRS

224.01-010.

(248) "Zone of engineering control" means an area under the control of the owner or operator that upon detection of a hazardous waste release, can be readily cleaned up prior to the release of hazardous waste or hazardous constituents to waters of the Commonwealth.

(249) "Zone of incorporation" means the depth to which the soil on a landfarm is plowed, tilled, or otherwise designed to receive waste.]

Section 2. Acronyms and Abbreviations. The acronyms and abbreviations previously found in this section have been relocated to Section 2 in the applicable definition administrative regulations of 401 KAR Chapters 30 through 49. [used in 401 KAR Chapters 30 to 49 can be found in Table 1.

Table 1. Acronyms and Abbreviations

Am.	Amended
C	Corrosive waste
CAA	Clean Air Act, as amended
CFR	Code of Federal Regulations
cm	Centimeter
cm ²	Centimeter squared
CO	Carbon monoxide
CO ₂	Carbon dioxide
CWA	Clean Water Act, as amended
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act of 1980
DOT	United States Department of Transportation
DRE	Destruction and removal efficiency
E	Explosive waste
eff.	Effective
EPA	United States Environmental Protection Agency
FIA	Federal Insurance Administration
FR	Federal Register
H	Acutely hazardous waste
ha	Hectare
I	Ignitable waste
KAR	Kentucky Administrative Regulation
kg	Kilogram
KPDES	Kentucky Pollution Discharge Elimination System
KRS	Kentucky Revised Statute
Ky.R.	Administrative Register of Kentucky
l	Liter
LC	Lethal concentration
LD	Lethal dose
ml	Milliliter
mm	Millimeter
N	Normal
NESHAPS	National Emissions Standards for Hazardous Air Pollutants
NPDES	National Pollutant and Discharge Elimination System
PCB	Polychlorinated biphenyl
pCi/l	Picocuries per liter
PHC	Principal hazardous constituent
Permit POHC	Permitted principal organic hazardous constituent
POHC	Principal organic hazardous constituent
ppm	parts per million
Trial POHC	Trial burn principal organic hazardous constituent
POTW	Publicly owned treatment works
PSD	Prevention of significant deterioration
psi	Pounds per square inch
psig	Pounds per square inch gauge
R	Reactive waste
RCRA	Resource Conservation and Recovery Act, as amended

SDWA — Safe Drinking Water Act, as amended
 SEC — Securities and Exchange Commission
 SIC — Standard Industrial Classification Code
 SPCC — Spill Prevention, Control, and Countermeasures Plan
 T — Toxic waste
 UIC — Underground Injection Control
 UICP — Underground Injection Control Program
 USC — United States Code
 U.S. EPA — United States Environmental Protection Agency
 USGS — United States Geological Survey
 USPS — United States Postal Service]

Section 3. References. (1) The following document is ~~is~~ ~~are~~ hereby adopted without change: ~~[incorporated by reference:~~

~~(a) 40 CFR 260.11 as of July 1, 1995, which incorporates SW 846 "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods", Third Edition (November, 1986), as amended by Updates I (July, 1992), II (September, 1994), IIA (August, 1993), and IIB (January, 1995). [February 21, 1994]~~

~~[(b) Appendix X of 40 CFR 261 as of January 14, 1985.]~~

(2) The document[s] referenced in subsection (1) of this section is available for inspection and copying, subject to copyright law, at ~~[may be obtained from]~~ the Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716, from 8 a.m. to 4:30 p.m. eastern time, Monday through Friday, excluding state holidays.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: July 11, 1996

FILED WITH LRC: July 12, 1996 at 9 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Thursday, August 29, 1996, at 7 p.m. Eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing, at the address noted below, by August 24, 1996. If by that date Mr. Hale has not received any notification of intent to attend the hearing, the hearing will be canceled. This hearing is open to the public. Any person wishing to comment on the proposed administrative regulation will be given an opportunity to do so. Persons testifying at the hearing are requested to provide a written copy of their testimony, if available. A transcript of the hearing will not be made unless a request for such is filed with Mr. Hale by August 24, 1996 and arrangements for payment of the transcript are made by that date. Written comments may also be submitted on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than the date of the close of the public hearing on August 29, 1996. Persons submitting written comments are also requested to provide an electronic copy of their comments, if available. The preferred format for the electronic format is any version of Word Perfect on 3.5 inch diskettes; however, any other format would be greatly appreciated, should Word Perfect or 3.5 inch diskettes not be available. The Natural Resources and Environmental Cabinet does not discriminate on the basis of color, national origin, sex, religion, age, or disability in employment or the provision of services. upon request, the Cabinet will provide reasonable accommodation, including auxiliary aids and services, necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as a interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by August 24, 1996.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221.

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: The proposed amendments affect hazardous waste treatment, storage, and disposal facilities; solid waste facilities; and special waste facilities. It also affects all hazardous waste generators. There are over 3000 entities currently regulated in Kentucky for their waste management activities.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the 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. Effect on the 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. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No public comments were received.

2. Second and subsequent years: No public comments were received.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First Year: The Cabinet will experience no additional costs or savings by promulgating the amendments to this regulation. However, the combined effect of adopting the federal amendments will result in an increased workload on existing staff. Partial funding via EPA grants are anticipated to cover the costs associated with the proposed amendments.

2. Continuing costs or savings: There will be no continuing costs or savings after the first year.

3. Additional factors increasing or decreasing costs: There will be no additional factors affecting costs.

b. Reporting and paperwork requirements: There will be no extra paperwork requirements.

4. Assessment of anticipated effect on state and local revenues: There are no anticipated effects on the state and local revenue with the promulgation of this regulation.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: The source of revenue for implementation and enforcement of this administrative regulation will be EPA grants.

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

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 were no other alternatives. These changes are consistent with federal standards.

8. Assessment of expected benefits of the administrative regulation: These amendments will ensure compliance with KRS Chapter 13A, and provide consistency with federal requirements. This consistency will result in continued funding from the U.S. EPA.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: The adoption and implementation of these amendments will improve the protection of the environment and public health across the commonwealth.

b. State whether a detrimental effect on the environment and public health would result if not implemented: Kentucky must continue to upgrade its hazardous waste program to be consistent with the federal program.

c. If detrimental effect would result, explain detrimental effect: Not applicable.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no statutes, regulations, or policies that conflict, overlap, or duplicate this regulation.

a. Necessity of proposed regulation if in conflict: Not applicable.

b. If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

11. Any additional information or comments: No additional comments.

12. TIERING: Is tiering applied? Tiering is applied to all of Kentucky's waste regulations, based on type and quantity of waste generated and managed and type of management activities performed by the owner or operator.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the Cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution.

2. State compliance standards: The proposed amendments adopt changes that include standards for the definitions of hazardous waste generators and the clarification of certain definitions. These changes are necessary to maintain consistency between the state and federal programs. Additions have been made to clarify the definitions and the applicability of standards regarding hazardous waste facilities. In addition, the regulation has been modified to reflect the requirements of regulation construction specified in KRS Chapter 13A.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Not applicable.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part, or division of local government this administrative regulation will affect. This administrative regulation will affect any state, county, or local office of government that manages hazardous waste.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the Cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224 Subchapter 46 requires that the Cabinet to establish a comprehensive program for the proper management of hazardous waste. Any agencies applicable that handle hazardous waste will be subject to these requirements.

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 impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): The only expenditures to a state, county, or local office of government will be those expenditures related to compliance with this administrative regulation. If this administrative regulation does not apply to a state, county, or local office of

government, there will be no expenditures.

Other Explanation: None

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

401 KAR 30:031. Environmental performance standards.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.46, 224.50, 224.70, 224.99, 16 USC 1531 et. seq., 33 USC 1251 et. seq.

STATUTORY AUTHORITY: KRS 224.10-100, 224.40-305

NECESSITY AND FUNCTION: KRS Chapter 224 requires the cabinet to adopt administrative regulations for the treatment, storage, recycling and disposal of wastes. KRS 224.40-305 requires that persons engaging in the treatment, storage, recycling and disposal of waste obtain a permit. This chapter establishes the general administrative procedures that are applicable to 401 KAR Chapters 31 to 49. This administrative regulation sets forth the minimum environmental performance standards with which all waste sites or facilities shall comply.

Section 1. Purpose, Scope and Applicability. The standards in this administrative regulation are for use under the waste management provisions of KRS Chapter 224 in determining which waste sites or facilities pose a reasonable probability of adverse effects on human health or the environment. Waste sites or facilities failing to satisfy the requirements of this administrative regulation shall be considered open dumps, which are prohibited by KRS 224.40-100. No owner or operator shall cause, suffer, or allow a waste site or facility or any unit of a waste site or facility to violate any provision of this administrative regulation.

Section 2. Floodplains. No waste site or facility shall restrict the flow of the 100-year flood, reduce the temporary water storage capacity of the floodplain, or be placed in a manner likely to result in washout of waste, so as to pose a hazard to human health, wildlife, or land or water resources.

Section 3. Endangered Species. No waste site or facility shall:

- (1) Cause or contribute to the taking of any endangered or threatened species or candidate species listed pursuant to 16 USC 1531 et seq. (the Endangered Species Act of 1983 as amended); or
- (2) Result in the destruction or adverse modification of the critical habitat of an endangered or threatened species or candidate species listed pursuant to 16 USC 1531 et seq. (the Endangered Species Act of 1983 as amended).

Section 4. Surface Waters. No waste site or facility shall:

- (1) Cause a discharge of pollutants into waters of the Commonwealth, including wetlands, that violate any requirements of KRS Chapter 224, or the surface water standards of 401 KAR Chapter 5 or 8; or
- (2) Cause a discharge of dredged material or fill material to waters of the Commonwealth that is in violation of the requirements under 33 USC 1251 et. seq. (Section 404 of the Clean Water Act of 1977 as amended).

Section 5. Groundwater. No waste site or facility shall contaminate an underground drinking water source beyond the point of compliance in excess of the maximum contaminant levels specified in 401 KAR Chapter 8. [-

Maximum Contaminant

ADMINISTRATIVE REGISTER - 488

(1) Chemical	Level (mg/l)
Arsenic	0.05
Barium	1.0
Benzene	0.005
Cadmium	0.01
Carbon Tetrachloride	0.005
Chromium (Hexavalent)	0.05
2,4 Dichlorophenoxy Acetic Acid	0.1
1,4 Dichlorobenzene	0.075
1,1 Dichloroethylene	0.007
1,2 Dichloroethane	0.005
Endrin	0.0002
Fluoride	4.0
Lindane	0.004
Lead	0.05
Mercury	0.002
Methoxychlor	0.1
Nitrate	10.0
Selenium	0.01
Silver	0.05
Toxaphene	0.005
1,1,1 Trichloroethane	0.200
Trichloroethylene	0.005
2,4,5 Trichlorophenoxy Acetic Acid	0.01
Vinyl Chloride	0.002

(2) Maximum microbiological contaminant levels. The maximum contaminant level for coliform bacteria from any one (1) well shall be:

(a) Using the membrane filter technique:

1. One (1) coliform colony per 100 milliliters if one (1) sample is taken; or

2. One (1) coliform colony per 100 milliliters in more than one (1) sample of all the samples analyzed in one (1) month; or

(b) Using the five (5) tube most probable number procedure (the fermentation tube method) in accordance with the analytical procedures approved by the cabinet, and using a standard sample, each portion being one fifth (1/5) of the sample:

1. If the standard portion is ten (10) milliliters, coliform in any five (5) consecutive samples from a well shall not be present in three (3) or more of the twenty-five (25) portions; or

2. If the standard portion is 100 milliliters, coliform in any five (5) consecutive samples from a well shall not be present in five (5) samples or in more than fifteen (15) of the twenty-five (25) portions.

(3) Maximum turbidity limit. The maximum contaminant level for turbidity is one (1) turbidity unit (TU), as determined by a monthly average of daily samples, and no more than five (5) turbidity units, based on an average for two (2) consecutive days.

(4) Maximum trihalomethane limits. The maximum contaminant level for total trihalomethanes (TTHMs) is one-tenth (0.10) milligram per liter (mg/l).

(a) How computed. The results of all analyses performed each quarter shall be averaged and reported in a format supplied by the cabinet. All samples collected shall be used in computing the average, unless the analytical results are invalidated by the cabinet.

(b) Running average. Compliance will be determined on a running annual average of the four (4) most recent quarterly samples.

(5) Analytical methods approved by the cabinet shall be used in evaluating compliance with subsection (1) of this section.]

Section 6. Application to Land Use for the Production of Food Chain Crops. No waste site or facility shall exist or occur that applies waste within three (3) feet of the surface of land used for the production of food chain crops unless in compliance with all the requirements of subsection (1) or (2) of this section:

(1)(a) The pH of the waste and soil mixture is six and five-tenths (6.5) or greater at the time of each waste application, except for

waste containing cadmium at concentrations of two (2) mg/kg (dry weight) or less;

(b) The annual application of cadmium from waste does not exceed 0.44 pounds per acre on land used for production of tobacco or food chain crops. The annual cadmium application rate does not exceed 0.44 pounds per acre; and

(c) The maximum cumulative application of cadmium from the waste does not exceed the levels in Table 1 of this paragraph.

Table 1
Maximum cumulative application

Soil Cation Exchange Capacity (meq/100g)	Background Pounds/per/Acre Soil pH	
<5	>6.5	4.46
5-15	>6.5	8.92
>15	>6.5	17.84
>15	<6.5*	4.46

*For soils with a background pH of less than six and five-tenths (6.5), the maximum cumulative cadmium applications rate for soils with a background pH equal to or greater than six and five-tenths (6.5) may be used if the pH of the sludge-soil mixture is adjusted to and maintained at six and five-tenths (6.5) or greater whenever food chain crops are grown.

(2) If animal feed is the only food chain crop produced, there is no limit to the cadmium application rate, as long as the pH of sludge and soil mixture is six and five-tenths (6.5) or greater at the time of sludge application or at the time the crop is planted, whichever occurs later, and this pH level is maintained whenever food chain crops are grown. A plan shall also be developed that demonstrates how the animal feed shall be distributed to preclude human ingestion, and the measures to be taken to safeguard against possible health hazards from cadmium entering the food chain, which may result from alternative land uses. Future property owners shall also be notified by a stipulation in the land record or property deed that states that the property received sludge at high cadmium application rates and that food chain crops, except for animal feed, shall not be grown due to possible health hazards.

Section 7. Polychlorinated Biphenyls. No waste site or facility shall exist or occur that places waste containing concentrations of polychlorinated biphenyls (PCBs) equal to or greater than one (1) mg/kg (dry weight) on the land. However, residual landfills may dispose of PCBs in accordance with their permit, and special waste and contained landfills may dispose of wastes containing PCBs equal to forty-nine (49) mg/kg (dry weight) or less.

Section 8. Disease. (1) Disease vectors. No waste site or facility shall exist or occur unless the on-site population of disease vectors is prevented or controlled through the periodic application of cover material or other techniques as appropriate to protect human health and the environment.

(2) Sewage sludge and septic tank pumpings. No waste site or facility shall exist or occur that applies sewage sludge or septic tank pumpings within three (3) feet of the surface of the land unless a process to significantly reduce pathogens has been utilized.

Section 9. Air. (1) No waste site or facility shall engage in open burning of wastes. This requirement does not apply to infrequent burning of agricultural wastes in the field, silvicultural wastes for forest management purposes, land-clearing debris, diseased trees, debris from emergency cleanup operations, or ordinance.

(2) No waste site or facility shall violate applicable air pollution

requirements contained in KRS Chapter 224 or 401 KAR Chapters 50 to 63.

Section 10. Safety. (1) Explosive gases. No waste site or facility shall allow the concentration of explosive gases generated by the facility to exceed:

(a) Twenty-five (25) percent of the lower explosive limit for the gases in facility structures, excluding gas control or recovery system components; and

(b) The lower explosive limit for the gases at the facility property boundary.

(2) Fires. No waste site or facility shall pose a hazard to the safety of persons or property from fires. This may be accomplished through compliance with Section 9 of this administrative regulation and this section, through the periodic application of cover material or other techniques as appropriate.

(3) Access. No waste site or facility shall allow uncontrolled public access, unauthorized vehicular traffic, or illegal dumping of wastes. This requirement to ensure protection of human health and the environment may be met by using artificial barriers, natural barriers, or other methods as appropriate.

Section 11. Public Nuisance. No waste site or facility shall result in a public nuisance because of blowing litter, debris, or other waste or material.

Section 12. Wetlands. No new or expanded waste site or facility shall be located in wetlands.

Section 13. Karst. No waste site or facility shall allow contamination of karst terrain.

Section 14. Compliance. No waste site or facility shall violate any requirement of KRS Chapter 224 or administrative regulations promulgated pursuant thereto.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: July 11, 1996

FILED WITH LRC: July 12, 1996 at 9 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Thursday, August 29, 1996, at 7 p.m. Eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing, at the address noted below, by August 24, 1996. If by that date Mr. Hale has not received any notification of intent to attend the hearing, the hearing will be canceled. This hearing is open to the public. Any person wishing to comment on the proposed administrative regulation will be given an opportunity to do so. Persons testifying at the hearing are requested to provide a written copy of their testimony, if available. A transcript of the hearing will not be made unless a request for such is filed with Mr. Hale by August 24, 1996 and arrangements for payment of the transcript are made by that date. Written comments may also be submitted on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than the date of the close of the public hearing on August 29, 1996. Persons submitting written comments are also requested to provide an electronic copy of their comments, if available. The preferred format for the electronic format is any version of Word Perfect on 3.5 inch diskettes; however, any other format would be greatly appreciated, should Word Perfect or 3.5 inch diskettes not be available. The Natural Resources and Environmental Cabinet does not discriminate on the basis of color, national origin, sex, religion, age, or disability in employment or the provision of services. Upon request, the Cabinet will provide reasonable accommodation, including auxiliary aids and services, necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for

reasonable accommodation for this public hearing, such as a interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by August 24, 1996.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221.

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: The proposed amendment affects owners and operators of all hazardous waste facilities. This amendment replaces outdated maximum contaminate levels (MCLs) with the appropriate cross reference to 401 KAR Chapter 8, where current contaminant levels are maintained.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the 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. Effect on the 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. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No public comments were received.

2. Second and subsequent years: No public comments were received.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First year: The cabinet will experience no additional costs or savings by promulgating this amendment to this regulation.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: There will be no additional factors affecting costs.

b. Reporting and paperwork requirements: There will be no extra paperwork requirements.

4. Assessment of anticipated effect on state and local revenues: There are no anticipated effects on the state and local revenue due to amendment of this regulation.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: The source of revenue for implementation and enforcement of this administrative regulation will be EPA grants.

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

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: Other alternatives would not provide the same level of consistency with other departmental programs.

8. Assessment of expected benefits of the administrative regulation: The expected benefit is consistency with other departmental programs.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: Not applicable.

b. State whether a detrimental effect on the environment and public health would result if not implemented: Not applicable.

c. If detrimental effect would result, explain detrimental effect: Not applicable.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no statutes, regulations, or policies that conflict, overlap, or duplicate this regulation.

a. Necessity of proposed regulation if in conflict: Not applicable.

b. If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

11. Any additional information or comments: No additional comments.

12. TIERING: Is tiering applied? (Explain why tiering was or was not used): Tiering is applied to all of Kentucky's waste regulations, based on type and quantity of hazardous waste generated or managed and type of management activities performed by the owner or operator.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the Cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution.

2. State compliance standards: The proposed amendment replaces outdated maximum contaminate levels (MCLs) with the appropriate cross reference to 401 KAR Chapter 8, where current contaminant levels are maintained.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part, or division of local government this administrative regulation will affect. This administrative regulation will affect any state, county, or local office of government that manages waste.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. The amendment to this administrative regulation replaces outdated maximum contaminate levels (MCLs) with the appropriate cross reference to 401 KAR Chapter 8, where current contaminant levels are maintained.

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 impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): Because this administrative regulation only replaces existing text with a cross reference to the appropriate regulatory chapter, expenditures will not be effected.

Other Explanation: None

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

401 KAR 30:040. Transfer of regulatory responsibility.

RELATES TO: KRS 224.10, 224.40, 224.43

STATUTORY AUTHORITY: KRS 224.10-100(24)

NECESSITY AND FUNCTION: KRS 224.10-100 and the waste management provisions of KRS Chapter 224 require the cabinet to adopt rules and regulations for the management of solid and hazardous wastes. This chapter establishes the general administrative procedures which are applicable to 401 KAR Chapters 31 through 49. This administrative regulation transfers regulatory responsibility for coal mining solid waste to the Department for Surface Mining Reclamation and Enforcement.

Section 1. Regulatory Authority. As provided in KRS 224.50-760(1)(c), coal mining wastes as defined in 401 KAR 30:005 [040] are to be regulated under KRS Chapter 350. Coal mining solid wastes as defined in Section 1(20) of 401 KAR 30:010 are regulated under KRS Chapter 224, as provided by KRS 224.40-100.

Section 2. Transfer of Responsibility. The cabinet is transferring the regulatory responsibility for coal mining solid waste disposal, which is subject to waste management regulations, to the Department for Surface Mining Reclamation and Enforcement at sites regulated under KRS Chapter 350. Coal mining solid waste may be disposed of in the areas regulated under KRS Chapter 350 and is exempt from the permit requirements in 401 KAR 47:020 provided that:

(1) No hazardous waste is placed, stored, treated, disposed or otherwise managed under the provisions of this section; and

(2) The general requirements of KRS Chapter 224 are maintained.

Section 3. Variance and Termination. This transfer of regulatory responsibility includes the regulatory authority in 401 KAR 47:040, Section 1, to request information from the applicant, and the regulatory authority to grant a variance pursuant to 401 KAR 30:020, Section 2. This transfer of regulatory responsibility may be terminated by the cabinet at an individual mining site when any of the provisions of Section 2 of this administrative regulation are violated, and the Department for Environmental Protection will reassume full regulatory responsibility for the individual site at such time.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: July 11, 1996

FILED WITH LRC: July 12, 1996 at 9 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Thursday, August 29, 1996, at 7 p.m. Eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing, at the address noted below, by August 24, 1996. If by that date Mr. Hale has not received any notification of intent to attend the hearing, the hearing will be canceled. This hearing is open to the public. Any person wishing to comment on the proposed administrative regulation will be given an opportunity to do so. Persons testifying at the hearing are requested to provide a written copy of their testimony, if available. A transcript of the hearing will not be made unless a request for such is filed with Mr. Hale by August 24, 1996 and arrangements for payment of the transcript are made by that date. Written comments may also be submitted on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than the date of the close of the public hearing on August 29,

1996. Persons submitting written comments are also requested to provide an electronic copy of their comments, if available. The preferred format for the electronic format is any version of Word Perfect on 3.5 inch diskettes; however, any other format would be greatly appreciated, should Word Perfect or 3.5 inch diskettes not be available. The Natural Resources and Environmental Cabinet does not discriminate on the basis of color, national origin, sex, religion, age, or disability in employment or the provision of services. Upon request, the Cabinet will provide reasonable accommodation, including auxiliary aids and services, necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as a interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by August 24, 1996.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221.

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: None. The only amendment being made is a change to the cross reference to the definition regulation for this chapter. Definitions have been moved from 401 KAR 30:010 to 401 KAR 30:005 to conform to KRS Chapter 13A requirements.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the 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. Effect on the 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. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No public comments were received.

2. Second and subsequent years: No public comments were received.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First year: The cabinet will experience no additional costs or savings by promulgating this amendment to this regulation.

2. Continuing costs or savings: There will be no continuing costs or savings after the first year.

3. Additional factors increasing or decreasing costs: There will be no additional factors affecting costs.

b. Reporting and paperwork requirements: There will be no extra paperwork requirements.

4. Assessment of anticipated effect on state and local revenues: There are no anticipated effects on the state and local revenue with the promulgation of this regulation.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: The source of revenue for implementation and enforcement of this administrative regulation will be EPA grants.

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

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 were no other alternatives. This change is consistent with KRS Chapter 13A requirements.

8. Assessment of expected benefits of the administrative regulation: This amendment will ensure compliance with KRS Chapter 13A.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: The adoption and implementation of this amendment will have no effect on the protection of the environment and public health across the Commonwealth.

b. State whether a detrimental effect on the environment and public health would result if not implemented: Kentucky must continue to upgrade its hazardous waste program to be consistent with the federal program, and conform to KRS Chapter 13A requirements.

c. If detrimental effect would result, explain detrimental effect: Not applicable.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no statutes, regulations, or policies that conflict, overlap, or duplicate this regulation.

a. Necessity of proposed regulation if in conflict: Not applicable.

b. If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

11. Any additional information or comments: No additional comments.

12. TIERING: Is tiering applied? (Explain why tiering was or was not used): Yes, tiering was applied in this regulation. This administrative regulation only applies to waste generators and to owners and operators of facilities regulated by 401 KAR Chapters 30 through 49. Tiering is applied to all of Kentucky's waste regulations, based on type and quantity of waste generated and managed and type of management activities performed by the owner or operator.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the Cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution.

2. State compliance standards: The proposed amendment establishes the cross reference on definitions from 30:040 to 30:005 of hazardous waste terms and the clarification of certain definitions. This regulation is necessary to maintain consistency between state and federal programs. In addition, the regulation has been modified to reflect regulation construction specified in KRS Chapter 13A.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part, or division of local government this administrative regulation will affect. This administrative regulation will affect any state, county, or local office of government that manages waste.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. This administrative regulation establishes cross reference for definitions for all terms within 401 KAR Chapter 30. These terms are assimilated from existing state and federal regulatory definitions and existing statutory definitions where applicable.

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 impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): Because this administrative regulation only establishes the cross reference for definitions for 401 KAR Chapter 30, this administrative regulation will not affect state, county, or local expenditures.

Other Explanation: None

**NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Amendment)**

401 KAR 30:080. Standards for variances.

RELATES TO: KRS 224.10, 224.43, 224.99

STATUTORY AUTHORITY: KRS 10-100, 224.40-310, 224.46-530

NECESSITY AND FUNCTION: KRS 224.10-100 and the waste management provisions of KRS Chapter 224 require the cabinet to adopt rules and administrative regulations for the generation, treatment, storage, recycling and disposal of hazardous wastes and the disposal of solid wastes. KRS 224.46-530 authorizes the cabinet to exclude a waste generated at a particular facility from being regulated as a hazardous waste and to regulate production, burning and transportation of hazardous waste derived fuels. This chapter establishes the general administrative procedures which are applicable to 401 KAR Chapters 31 through 49. This administrative regulation sets forth standards and procedures which enable a recycled material to be granted a variance from classification as a waste, and an enclosed-flame device to be classified as a boiler or an industrial furnace.

Section 1. Types of Variances. (1) As referenced in the waste management administrative regulations, a variance is a written waiver from a specific regulatory requirement issued by the cabinet. A variance must be requested in writing and must include all appropriate information required by the cabinet. All variances issued by the cabinet are subject to the conditions specified in the approved variance.

(2) Individual types of variances are specified in this administrative regulation, in Section 2 of 401 KAR 30:020, and in Sections 8 and 9 of 401 KAR 31:010.

Section 2. Variances from Classification as a Waste. In accordance with the standards and criteria in Section 3 of this administrative regulation and the procedures in Section 6 of this administrative regulation and Section 2 of 401 KAR 30:020, the cabinet may determine on a case-by-case basis that the following recycled materials are not wastes:

(1) Materials that are accumulated speculatively without sufficient amounts being recycled; or

(2) Materials that are reclaimed and then reused within the original [primary] production process in which they were generated; or

(3) Materials that have been reclaimed but must be reclaimed further before the materials are completely recovered.

Section 3. Standards and Criteria for Variances from Classification as a Waste. (1) The cabinet may grant requests for a variance from classifying as a waste those materials that are accumulated speculatively without sufficient amounts being recycled if the applicant demonstrates that sufficient amounts of the material will be recycled or transferred for recycling in the following year. If a variance is granted, it is valid only for the following year, but can be renewed on an annual basis by filing a new application. The cabinet's decision will be based on the following [standards and] criteria:

(a) The manner in which the material is expected to be recycled, when the material is expected to be recycled, and whether this expected disposition is likely to occur (for example, because of past practice, market factors, the nature of the material, or contractual arrangements for recycling);

(b) The reason that the applicant has accumulated the material for one (1) or more years without recycling seventy-five (75) percent of the volume accumulated at the beginning of the year;

(c) The quantity of material already accumulated and the quantity expected to be generated and accumulated before the material is recycled;

(d) The extent to which the material is handled to minimize loss; and

(e) Other relevant factors.

(2) The cabinet may grant requests for a variance from classifying as a waste those materials that are reclaimed and then reused as feedstock within the original [primary] production process in which the materials were generated if the reclamation operation is an essential part of the production process. This determination will be based on the following criteria:

(a) How economically viable the production process would be if it were to use virgin materials rather than reclaimed materials;

(b) The prevalence of the practice on an industry-wide basis;

(c) The extent to which the material is handled before reclamation to minimize loss;

(d) The time periods between generating the material and its reclamation and between reclamation and return to the original primary production process;

(e) The location of the reclamation operation in relation to the production process;

(f) Whether the reclaimed material is used for the purpose for which it was originally produced when it is returned to the original process and whether it is returned to the process in substantially its original form;

(g) Whether the person who generates the material also reclaims it; and

(h) Other relevant factors.

(3) The cabinet may grant requests for a variance from classifying as a waste those materials that have been reclaimed but must be reclaimed further before recovery is completed if, after initial reclamation, the resulting material is commodity-like (even though it is not yet a commercial product, and has to be reclaimed further). This determination will be based on the following factors:

(a) The degree of processing the material has undergone and the degree of further processing that is required;

(b) The value of the material after it has been reclaimed;

(c) The degree to which the reclaimed material is like an analogous raw material;

(d) The extent to which an end market for the reclaimed material is guaranteed;

(e) The extent to which the reclaimed material is handled to minimize loss; and

(f) Other relevant factors.

Section 4. Variance to be Classified as a Boiler. In accordance with the standards and criteria in Section 1 of 401 KAR 30:005 [040] (definition of "boiler"), and the procedures in Section 6 of this administrative regulation the cabinet may determine on a case-by-case basis that certain enclosed devices using controlled flame combustion are boilers, even though they do not otherwise meet the definition of boiler contained in Section 1 of 401 KAR 30:005 [040] after considering the following criteria:

- (1) The extent to which the unit has provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases;
- (2) The extent to which the combustion chamber and energy recovery equipment are of integral design;
- (3) The efficiency of energy recovery, calculated in terms of the recovered energy compared with the thermal value of the fuel;
- (4) The extent to which exported energy is utilized;
- (5) The extent to which the device is in common and customary use as a "boiler" functioning primarily to produce steam, heated fluids, or heated gases; and
- (6) Other factors as appropriate.

Section 5. Variance to be Classified as an Industrial Furnace. In accordance with the standards and criteria in Section 1 of 401 KAR 30:005 [040] (definition of "industrial furnace"), and the procedures in Section 6 of this administrative regulation the cabinet may determine on a case-by-case basis that certain enclosed devices using controlled flame combustion are industrial furnaces, even though they do not otherwise meet the definition of industrial furnace contained in Section 1 of 401 KAR 30:005 [040] after considering the following criteria:

- (1) The design and use of the device primarily to accomplish recovery of material products;
- (2) The use of the device to burn or reduce raw materials to make a material product;
- (3) The use of the device to burn or reduce secondary materials as effective substitutes for raw materials, in processes using raw materials as principal feedstocks;
- (4) The use of the device to burn or reduce secondary materials as ingredients in an industrial process to make a material product;
- (5) The use of the device in common industrial practice to produce a material product; and
- (6) Other factors, as appropriate.

Section 6. Procedures for Variances from Classification as a Waste or to be Classified as a Boiler or an Industrial Furnace. The cabinet will use the following procedures in evaluating applications for variances from classification as a waste or applications to classify particular enclosed controlled flame combustion devices as boilers or industrial furnaces:

- (1) For applicants requesting a variance under Section 1 of this administrative regulation from classification as a waste:
 - (a) The applicant must apply to the cabinet; and
 - (b) The application must address the relevant criteria contained in Section 3, 4, or 5 of this administrative regulation.
- (2) For persons requesting a variance for classifying a particular controlled enclosed flame combustion device as a boiler or an industrial furnace:
 - (a) The applicant must apply to the cabinet; and
 - (b) The application must address the relevant criteria contained in Sections 4 and 5 of this administrative regulation.
 - (3) The cabinet will evaluate the application and issue a draft notice tentatively granting or denying the application. Notification of this tentative decision will be provided by newspaper advertisement or [and] radio broadcast in the locality where the recycler is located. The cabinet will accept comment on the tentative decision for thirty

(30) days and may also hold a public hearing upon request or at its discretion. The cabinet will issue a decision after receipt of comments and after the hearing, if any.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: July 11, 1996

FILED WITH LRC: July 12, 1996 at 9 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Thursday, August 29, 1996, at 7 p.m. Eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing, at the address noted below, by August 24, 1996. If by that date Mr. Hale has not received any notification of intent to attend the hearing, the hearing will be canceled. This hearing is open to the public. Any person wishing to comment on the proposed administrative regulation will be given an opportunity to do so. Persons testifying at the hearing are requested to provide a written copy of their testimony, if available. A transcript of the hearing will not be made unless a request for such is filed with Mr. Hale by August 24, 1996 and arrangements for payment of the transcript are made by that date. Written comments may also be submitted on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than the date of the close of the public hearing on August 29, 1996. Persons submitting written comments are also requested to provide an electronic copy of their comments, if available. The preferred format for the electronic format is any version of Word Perfect on 3.5 inch diskettes; however, any other format would be greatly appreciated, should Word Perfect or 3.5 inch diskettes not be available. The Natural Resources and Environmental Cabinet does not discriminate on the basis of color, national origin, sex, religion, age, or disability in employment or the provision of services. Upon request, the Cabinet will provide reasonable accommodation, including auxiliary aids and services, necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as an interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by August 24, 1996.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221.

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: The proposed amendment affects hazardous waste recyclers and owners and operators of industrial furnace and boiler facilities.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the 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. Effect on the 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. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No public comments were received.

2. Second and subsequent years: No public comments were received.

3. Effects on the promulgating administrative body: The effects on the cabinet will be the increased workload to process the new entities

that will need to be regulated.

a. Direct and indirect costs or savings:

1. First year: There will be some costs due to the increased workload of the agency in order to get the new entities processed and regulated.

2. Continuing costs or savings: After the new entities processed, there should be no extra costs involved.

3. Additional factors increasing or decreasing costs: There are no additional factors affecting costs or savings.

b. Reporting and paperwork requirements: The amendments made to this regulation will result in no new paperwork or reporting burdens.

4. Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenue with the promulgation of this regulation.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: Partial funding from EPA grants are anticipated to pay the increased costs for the implementation and enforcement of these standards.

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

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 were no other alternatives. These amendments are consistent with federal standards.

8. Assessment of expected benefits of the administrative regulation: The benefit of these amendments are compliance with KRS Chapter 13A and consistency with federal requirements.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: In being consistent with federal standards, these amendments will improve the public health and environmental welfare of Kentucky.

b. State whether a detrimental effect on the environment and public health would result if not implemented: Not applicable.

c. If detrimental effect would result, explain detrimental effect: Not applicable.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no statutes, regulations, or policies that conflict, overlap, or duplicate this regulation.

a. Necessity of proposed regulation if in conflict: Not applicable.

b. If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

11. Any additional information or comments: No additional comments.

12. TIERING: Is tiering applied? (Explain why tiering was or was not used): Yes, tiering was used based on the amounts of waste that recyclers and industrial furnace or boilers emit.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution.

2. State compliance standards: The proposed amendments adopt changes that include standards for hazardous waste facilities to be granted a variance from classification as an industrial furnace, waste, or boiler. There have been exclusions and additions to clarify the standards of variances, in order to maintain consistency between the state and federal programs. In addition, the regulation has been modified to reflect the requirements of regulation construction

specified in KRS Chapter 13A.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part, or division of local government this administrative regulation will affect. This administrative regulation will affect any state, county, or local office of government that is the owner of a hazardous waste recycling facility, industrial furnace, or boiler facility.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224 Subchapter 46 requires that the cabinet establish a comprehensive program for the proper management of hazardous waste. Any agencies applicable that manage hazardous waste will be subject to these requirements.

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 impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): The only expenditures to a state, county, or local office of government will be those expenditures related to compliance with this administrative regulation. If this administrative regulation does not apply to a state, county, or local office of government, there will be no expenditures.

Other Explanation: None

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

401 KAR 31:010. General provisions for hazardous wastes.

RELATES TO: KRS 224.01, 224.40, 224.43, 224.46, 224.99, 40 CFR 260.40, 260.41, 261 Subpart A

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-510(3)

NECESSITY AND FUNCTION: KRS 224.46-510(3) requires the cabinet to identify the characteristics of and to list hazardous wastes. This chapter identifies and lists hazardous waste. This administrative regulation establishes the general provisions necessary for identification and listing of a hazardous waste.

Section 1. Purpose and Scope. (1) This chapter identifies those wastes which are subject to administrative regulation as hazardous wastes under 401 KAR Chapters 32 to 40 and which are subject to the notification and permitting requirements of KRS 224.01, 224.40, 224.43, and 224.46. In this chapter:

(a) This administrative regulation identifies those materials that

are a ~~[defines the terms]~~ "waste" and "hazardous waste," and identifies those wastes which are excluded from administrative regulation under 401 KAR Chapters 32 to 40 and establishes special management requirements for hazardous waste produced by conditionally exempt small [limited] quantity generators and hazardous waste which is recycled.

(b) 401 KAR 31:020 sets forth the criteria used by the cabinet to identify characteristics of hazardous waste and to list particular hazardous wastes.

(c) 401 KAR 31:030 identifies characteristics of hazardous waste.

(d) 401 KAR 31:040 lists particular hazardous wastes.

(2)(a) The definition of waste contained in this chapter applies only to wastes that are also hazardous for purposes of the administrative regulations implementing those provisions of KRS Chapter 224 relating to hazardous waste management. This chapter identifies only some of the materials which are hazardous wastes under KRS 224.01-400, 224.10-100(10), and 224.10-410. For example, it does not apply to materials (such as nonhazardous scrap, paper, textiles, or rubber) that are not otherwise hazardous wastes and that are recycled.

(b) This chapter identifies only some of the materials which are wastes and hazardous wastes for purposes of KRS 224.01-400, 224.10-100(10), and 224.10-410. A material which is not identified [defined] as a waste in this chapter, or is not a hazardous waste identified or listed in this chapter is still a waste and a hazardous waste for purposes of this administrative regulation if:

1. In the case of KRS 224.10-100(10), the cabinet has reason to believe that the material may be a waste within the meaning of KRS 224.10-010 and a hazardous waste within the meaning of KRS 224.10-010; or

2. In the case of KRS 224.10-410, the statutory elements are established.

(3) Terms previously defined in this subsection may be found in 401 KAR 31:005. ~~[For the purposes of Sections 2, 6, 8 and 9 of this administrative regulation:~~

(a) ~~A "spent material" is any material that has been used and as a result of contamination can no longer serve the purpose for which it was produced without processing;~~

(b) ~~"Sludge" has the meaning in Section 1 of 401 KAR 30:010;~~

(c) ~~A "by-product" is a material that is not one (1) of the primary products of a production process and is not solely or separately produced by the production process. Examples are process residues such as sludge or distillation column bottoms. The term does not include a coproduct that is produced for the general public's use and is ordinarily used in the form it is produced by the process.~~

(d) ~~A material is "reclaimed" if it is processed to recover a usable product, or if it is regenerated. Examples are recovery of lead values from spent batteries and regeneration of spent solvents.~~

(e) ~~A material is "used or reused" if it is either:~~

1. ~~Employed as an ingredient (including use as an intermediate) in an industrial process to make a product (for example, distillation bottoms from one (1) process used as feedstock in another process). However, a material shall not satisfy this condition if distinct components of the material are recovered as separate end products (as when metals are recovered from metal-containing secondary materials); or~~

2. ~~Employed in a particular function or application as an effective substitute for a commercial product (for example, spent pickle liquor used as phosphorous precipitant and sludge conditioner in wastewater treatment).~~

(f) ~~"Scrap metal" is bits and pieces of metal parts (for example, bars, turnings, rods, sheets, or wire) or metal pieces that may be combined together with bolts or soldering (for example, radiators, scrap automobiles, or railroad boxcars), which when worn or superfluous can be recycled.~~

(g) ~~A material is "recycled" if it is used, reused, or reclaimed.~~

(h) ~~A material is "accumulated speculatively" if it is accumulated~~

~~before being recycled.~~

1. ~~A material is not accumulated speculatively, if the person accumulating it can show:~~

a. ~~That the material is potentially recyclable and has a feasible means of being recycled; and~~

b. ~~That during the calendar year (commencing on January 1) the amount of material that is recycled, or transferred to a different site for recycling, equals at least seventy five (75) percent by weight or volume of the amount of that material accumulated at the beginning of the calendar year (including any material accumulated from previous years).~~

2. ~~In calculating the percentage of turnover, the seventy five (75) percent requirement is to be applied to each material of the same type that is recycled in the same way. Materials accumulating in units that would be exempt from administrative regulation under Section 4(3) of this administrative regulation are not to be included in making the calculation. (Materials that are already defined as wastes also are not to be included in making the calculation.) Materials are no longer in this category once they are removed from accumulation for recycling.]~~

Section 2. Definition of a Waste. (1)(a) A waste includes "waste" ~~is~~ any discarded material that is not excluded by Section 4(1) of this administrative regulation or that is not excluded by a variance granted under Section 1 or 2 of 401 KAR 30:080, or Section 8 or 9 of this administrative regulation.

(b) A "discarded material includes" ~~is~~ any material which is:

1. "Abandoned," as explained in subsection (2) of this section;

or

2. "Recycled," as explained in subsection (3) of this section; or

3. Listed in subsection (4) of this section.

(2) Materials are waste if they are "abandoned" by being:

(a) Disposed of; or

(b) Burned or incinerated; or

(c) Accumulated, stored, or treated (but not recycled) before or in lieu of being abandoned by being disposed of, burned, or incinerated.

(3) The following materials are wastes if they are "recycled" - or accumulated, stored, or treated before recycling - as specified in paragraphs (a) to (d) of this subsection.

(a) "Used in a manner constituting disposal."

1. Materials noted with a "(waste)" in column (1) of Table 1 in paragraph (e) of this subsection are wastes when they are:

a. Applied to or placed on the land in a manner that constitutes disposal; or

b. Used to produce products that are applied to or placed on the land or are otherwise contained in products that are applied to or placed on the land (in which case the product itself remains a waste).

2. However, commercial chemical products listed in Section 4 of 401 KAR 31:040 are not wastes if they are applied to the land and that is their ordinary manner of use.

(b) The following materials are "burned for energy recovery:"

1. Materials noted with a "(waste)" in column (2) of Table 1 in paragraph (e) of this subsection are wastes when they are:

a. Burned to recover energy;

b. Used to produce a fuel or are otherwise contained in fuels (in which cases the fuel itself remains a solid waste).

2. However, commercial chemical products listed in Section 4 of 401 KAR 31:040 are not wastes if they are themselves fuels.

(c) The following materials are "reclaimed." Materials noted with a "(waste)" in column (3) of Table 1 in paragraph (e) of this subsection are wastes when reclaimed.

(d) The following materials are "accumulated speculatively." Materials noted with a "(waste)" in column (4) of Table 1 in paragraph (e) of this subsection are wastes when accumulated speculatively.

(e) The following Table 1 identifies materials which are wastes when "used in a manner constituting disposal," "burned for energy recovery," "reclaimed," or "accumulated speculatively."

ADMINISTRATIVE REGISTER - 496

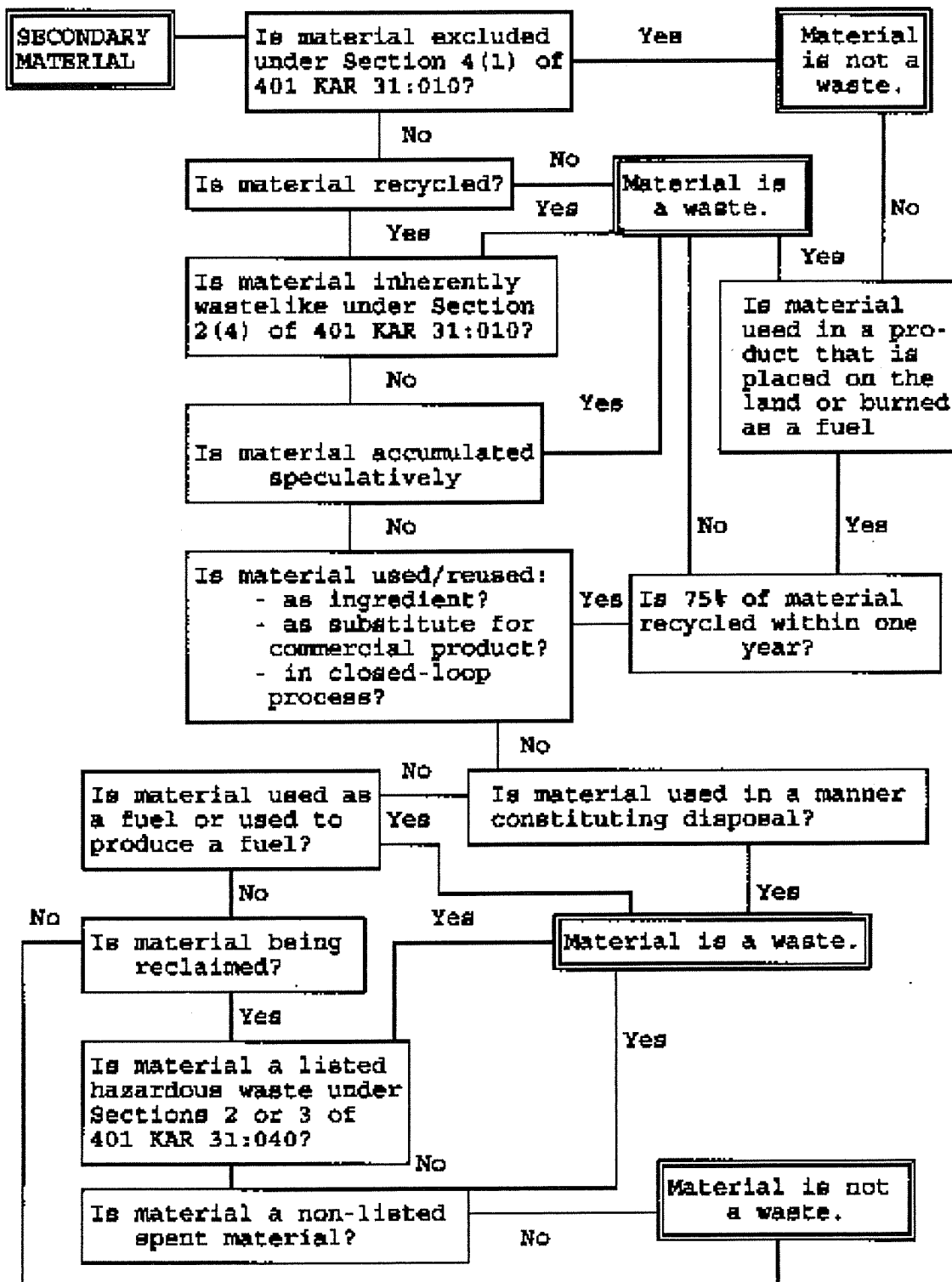
Materials noted with the word "(waste)" in Table 1 are considered to be wastes for the purposes of 401 KAR Chapters 32 to 40 and KRS Chapter 224. Materials noted with a dash "-" in Table 1 are not considered to be a waste for the purposes of 401 KAR Chapters 32 to 40 and KRS Chapter 224.

TABLE 1

	Use constituting disposal 401 KAR 31:010 Section 2(3)(a) (1)	Energy recovery/ fuel 401 KAR 31:010 Section 2(3)(b) (2)	Reclamation 401 KAR 31:010 Section 2(3)(c) (3)	Speculative accumulation 401 KAR 31:010 Section 2(3)(d) (4)
Spent materials	(waste)	(waste)	(waste)	(waste)
Sludges (listed in Sections 2 or 3 of 401 KAR 31:040)	(waste)	(waste)	(waste)	(waste)
Sludges exhibiting a characteristic of hazardous waste	(waste)	(waste)	-	(waste)
By-products (listed in Sections 2 or 3 of 401 KAR 31:040)	(waste)	(waste)	(waste)	(waste)
By-products exhibiting a characteristic of hazardous waste	(waste)	(waste)	-	(waste)
Commercial chemical products listed in Section 4 of 401 KAR 31:040	(waste)	(waste)	-	-
Scrap metal	(waste)	(waste)	(waste)	(waste)
NOTE - The terms "spent materials," "sludges," "by-products," and "scrap metal" are defined in Section 1 of <u>401 KAR 31:005</u> (this administrative regulation).				

(f) The following Table 2 is a decision tree for deciding which secondary materials are wastes when recycled.

TABLE 2. DECISION TREE FOR DECIDING WHICH SECONDARY MATERIALS
ARE WASTES WHEN RECYCLED



(4) The following materials are wastes when they are recycled in any manner:

(a) Hazardous Waste Numbers F020, F021 (unless used as an ingredient to make a product at the site of generation), F022, F023, F026, and F028 (chlorinated dioxins, chlorinated dibenzofurans and chlorinated phenols).

(b) Secondary materials fed to a halogen acid furnace that exhibit a characteristic of a hazardous waste or are listed as a hazardous waste as identified [defined] in 401 KAR 31:030 and 31:040, except for brominated material that meets the following criteria:

1. The material shall contain a bromine concentration of at least forty-five (45) percent; and

2. The material shall contain less than a total of one (1) percent of toxic organic compounds listed in 401 KAR 31:120; and

3. The material is processed continually on-site via direct conveyance (hard piping).

(c) The cabinet shall use the following criteria to add wastes to that list:

1.a. The materials are ordinarily disposed of, burned, or incinerated; or

b. The materials contain toxic constituents listed in Section 1 of 401 KAR 31:170 and these constituents are not ordinarily found in raw materials or products for which the material substitute (or are found in raw materials or products in smaller concentrations) and are not used or reused during the recycling process; and

2. The material may pose a substantial hazard to human health and the environment when recycled.

(5) Materials that are not wastes when recycled.

(a) Materials are not wastes when they can be shown to be recycled by being:

1. Used or reused as ingredients in an industrial process to make a product, provided the materials are not being reclaimed; or

2. Used or reused as effective substitutes for commercial products; or

3. Returned to the original process from which they are generated, without first being reclaimed or land disposed. The material shall be returned as a substitute for feedstock materials. In cases where the original process to which the material is returned is a secondary process, the materials must be managed such that there is no placement on the land, [raw material feedstock, and the process shall use raw materials as principal feedstocks.]

(b) The following materials are wastes, even if the recycling involves use, reuse, or return to the original process (described in paragraph (a)1 to 3 of this subsection):

1. Materials used in a manner constituting disposal, or used to produce products that are applied to the land; or

2. Materials burned for energy recovery, used to produce a fuel, or contained in fuels; or

3. Materials accumulated speculatively; or

4. Materials listed in subsection (4)(a) and (b) of this section.

(6) Documentation of claims that materials are not wastes or are conditionally exempt from administrative regulation. Respondents in enforcement actions pursuant to 401 KAR Chapter 40, who raise a claim that a certain material is not waste, or is conditionally exempt from administrative regulation, shall demonstrate that there is a known market or disposition for the material, and that they meet the terms of the exclusion or exemption. In doing so, they shall provide appropriate documentation (such as contracts showing that a second person uses the material as an ingredient in a production process) to demonstrate that the material is not a waste, or is exempt from administrative regulation. In addition, owners or operators of facilities claiming that they actually are recycling materials shall show that they have the necessary equipment to do so.

Section 3. Definition of a Hazardous Waste. (1) A waste, as identified [defined] in Section 2 of this administrative regulation is a

hazardous waste if:

(a) It is not excluded from administrative regulation as a hazardous waste under Section 4(2) of this administrative regulation; and

(b) It meets any of the following criteria:

1. It exhibits any of the characteristics of hazardous waste identified in 401 KAR 31:030 except that any mixture of a waste from the extraction, beneficiation, and processing of ores and minerals, excluded under Section 4 of this administrative regulation and any other waste exhibiting a characteristic of hazardous waste under 401 KAR Chapter 31 only if it exhibits a characteristic that would not have been exhibited by the excluded waste alone if such mixture had not occurred or if it continues to exhibit any of the characteristics exhibited by the nonexcluded wastes prior to mixture. Further, for the purposes of applying the toxicity characteristic leaching procedure to such mixtures, the mixture is also a hazardous waste if it exceeds the maximum concentration for any contaminant listed in Table I to Section 5 of 401 KAR 31:030 that would not have been exceeded by the excluded waste alone if the mixture had not occurred or if it continues to exceed the maximum concentration for any contaminant exceeded by the nonexempt waste prior to mixture.

2. It is listed in 401 KAR 31:040 and has not been excluded from the lists under 401 KAR 31:060 and 401 KAR 31:070.

3. It is a mixture of a solid waste and a hazardous waste that is listed in 401 KAR 31:040 solely because it exhibits one (1) or more of the characteristics of hazardous waste identified in 401 KAR 31:030, unless the resultant mixture no longer exhibits any characteristic of hazardous waste identified in 401 KAR 31:030 or unless the solid waste is excluded from regulation under Section 4(2)(g) of this administrative regulation and the resultant mixture no longer exhibits any characteristic of hazardous waste identified in 401 KAR 31:030 for which the hazardous waste listed in 401 KAR 31:040 was listed. (However, nonwastewater mixtures are still subject to the requirements of 401 KAR Chapter 37 even if they no longer exhibit a characteristic at the point of land disposal.)

4. It is a mixture of any waste and one (1) or more hazardous wastes listed in 401 KAR 31:040 and has not been excluded from this paragraph under Sections 1 and 2 of 401 KAR 31:060; however, the following mixtures of wastes and hazardous wastes listed in 401 KAR 31:040 are not hazardous wastes (except by application of subparagraph 1 or 2 of this paragraph) if the generator can demonstrate that the mixture consists of waste water the discharge of which is subject to administrative regulation under either Section 402 or Section 307(b) of the CWA (including wastewater at facilities which have eliminated the discharge of wastewater) and:

a. One (1) or more of the following spent solvents listed in Section 2 of 401 KAR 31:040: carbon tetrachloride, tetrachloroethylene, or trichloroethylene provided that the maximum total weekly usage of these solvents (other than the amounts that can be demonstrated not to be discharged to wastewater) divided by the average weekly flow of wastewater into the headworks of the facility's wastewater treatment or pretreatment system does not exceed one (1) part per million; or

b. One (1) or more of the following spent solvents listed in Section 2 of 401 KAR 31:040: methylene chloride, 1,1,1-trichloroethane, chlorobenzene, o-dichlorobenzene, cresols, cresylic acid, nitrobenzene, toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, or spent chlorofluorocarbon solvents provided that the maximum total weekly usage of these solvents (other than the amounts that can be demonstrated not to be discharged to wastewater) divided by the average weekly flow of wastewater into the headworks of the facility's wastewater treatment or pretreatment system does not exceed twenty-five (25) parts per million; or

c. One (1) of the following wastes listed in Section 3 of 401 KAR 31:040, heat exchanger bundle cleaning sludge from the petroleum refining industry (EPA Hazardous Waste No. K050); or

d. A discarded commercial chemical product, or chemical

intermediate listed in Section 4 of 401 KAR 31:040, arising from minimal losses of these materials from manufacturing operations in which these materials are used as raw materials or are produced in the manufacturing process. For purposes of this paragraph, minimal losses include those from normal material handling operations (for example, spills from the unloading or transfer of materials from bins or other containers, leaks from pipes, valves, or other devices used to transfer materials); minor leaks of process equipment, storage tanks or containers; leaks from well-maintained pump packings and seals; sample purgings; relief device discharges; discharges from safety showers and rinsing and cleaning of personal safety equipment; and rinsate from empty containers or from containers that are rendered empty by that rinsing; or

e. Wastewater resulting from laboratory operations containing toxic (T) wastes listed in 401 KAR 31:040, provided that the annualized average flow of laboratory wastewater does not exceed one (1) percent of total wastewater flow into the headworks of the facility's wastewater treatment or pretreatment system, or provided the wastes' combined annualized average concentration does not exceed one (1) part per million in the headworks of the facility's wastewater treatment or pretreatment facility. Toxic (T) wastes used in laboratories that are demonstrated not to be discharged to wastewater are not to be included in this calculation;

f. One (1) or more of the following wastes listed in 401 KAR 31:040: wastewaters from the productions of carbamates and carbamoyl oximes (EPA Hazardous Waste No. K157), provided that the maximum weekly usage of formaldehyde, methyl chloride, methylene chloride, and triethylamine (including all amounts that can not be demonstrated to be reacted in the process, destroyed through treatment, or is recovered, that is, what is discharged or volatilized) divided by the average weekly flow of process wastewater prior to any dilutions into the headworks of the facility's wastewater treatment system does not exceed a total of five (5) parts per million by weight; or

g. Wastewaters derived from the treatment of one or more of the following wastes listed in 401 KAR 31:040: organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste No. K156), provided that the maximum concentration of formaldehyde, methyl chloride, methylene chloride, and triethylamine prior to any dilutions into the headworks of the facility's wastewater treatment system does not exceed a total of five (5) milligrams per liter.

5. Rebuttable presumption for used oil. Used oil containing more than 1000 ppm total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in 401 KAR 31:040. Persons may rebut this presumption by demonstrating that the used oil does not contain hazardous waste (for example, by using an analytical method from SW-846, Third Edition, incorporated in 40 CFR 260.11, which is adopted in Section 3 of 401 KAR 30:010, to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in 401 KAR 31:170).

a. The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins, if they are processed, through a tolling agreement, to claim metalworking oils/fluids. The presumption does apply to metal working oil/fluids if such oils/fluids are recycled in any other manner, or disposed.

b. The rebuttable presumption does not apply to used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

(2) A waste which is not excluded from administrative regulation under subsection (1)(a) of this section becomes a hazardous waste when any one (1) of the following events occur:

(a) In the case of a waste listed in 401 KAR 31:040 of this administrative regulation when the waste first meets the listing description set forth in 401 KAR 31:040;

(b) In the case of a mixture of waste (including wastes subject to the Atomic Energy Act) and one (1) or more hazardous wastes when a hazardous waste listed in 401 KAR 31:040 is first added to the waste; or

(c) In the case of any other waste (including a waste mixture or wastes subject to the Atomic Energy Act) when the waste exhibits any of the characteristics identified in 401 KAR 31:030.

(3) Unless and until it meets the criteria of subsection (4) of this section:

(a) A hazardous waste shall remain a hazardous waste.

(b)1. Except as otherwise provided in subparagraph 2 of this paragraph, any waste generated from the treatment, storage, or disposal of a hazardous waste, including any sludge, spill residue, ash, emission control dust, or leachate (but not including precipitation run-off) is a hazardous waste. (However, materials that are reclaimed from wastes and that are used beneficially are not wastes and hence are not hazardous wastes under this provision unless the reclaimed material is burned for energy recovery or used in a manner constituting disposal.)

2. The following wastes are not hazardous even though they are generated from the treatment, storage, or disposal of hazardous waste, unless they exhibit one (1) or more of the characteristics of hazardous waste:

a. Waste pickle liquor sludge generated by lime stabilization of spent pickle liquor from the iron and steel industry (SIC Codes 331 and 332).

b. Waste from burning any of the materials exempted from administrative regulation by Section 6(1)(c)4-5[-9] of this administrative regulation.

c.(i) Nonwastewater residues, such as slag, resulting from high temperature metals recovery (HTMR) processing of K061, K062, or F006 waste, in units identified as rotary kilns, flame reactors, electric furnaces, plasma arc furnaces, slag reactors, rotary hearth and electric furnace combinations or industrial furnaces [~~as defined in 401 KAR 30:040~~] that are disposed in solid waste sites or facilities, provided that these residues meet the generic exclusion levels identified below for all constituents, and exhibit no characteristics of hazardous waste. Testing requirements shall be incorporated in a site or facility's waste analysis plan or a generator's self-implementing waste analysis plan; at a minimum, composite samples of residues shall be collected and analyzed quarterly and when the process or operation generating the waste changes. Persons claiming the exclusion in an enforcement action will have the burden of proving by clear and convincing evidence that the material meets all of the exclusion requirements. The generic exclusions levels are:

Constituent	Maximum for any single composite sample-TCLP (mg/l)
Generic exclusion levels for K061 and K062 nonwastewater HTMR residues	
Antimony	0.10
Arsenic	0.50
Barium	7.6
Beryllium	0.010
Cadmium	0.050
Chromium (total)	0.33
Lead	0.15
Mercury	0.009
Nickel	1.0
Selenium	0.16
Silver	0.30
Thallium	0.020
Zinc	70

ADMINISTRATIVE REGISTER - 500

Generic exclusion levels for F006 nonwastewater HTMR residues

Antimony	0.10
Arsenic	0.50
Barium	7.6
Beryllium	0.010
Cadmium	0.050
Chromium (total)	0.33
Cyanide (total) (mg/kg)	1.8
Lead	0.15
Mercury	0.009
Nickel	1.0
Selenium	0.16
Silver	0.30
Thallium	0.020
Zinc	70

[Constituent] Maximum for any single composite sample (mg/l)

Antimony	0.063
Arsenic	0.055
Barium	6.3
Beryllium	0.0063
Cadmium	0.032
Chromium (total)	0.33
Lead	0.095
Mercury	0.009
Nickel	0.63
Selenium	0.16
Silver	0.30
Thallium	0.013
Vanadium	1.26

(ii) A one (1) time notification and certification must be placed in the facility's files and sent to the cabinet for K061, K062 or F006 HTMR residues that meet the generic exclusion levels for all constituents and do not exhibit any characteristics that are sent to solid waste sites or facilities. The notification and certification that is placed in the generators or treaters files must be updated if the process or operation generating the waste changes or if the solid waste site or facility receiving the waste changes. However, the generator or treater need only notify the cabinet on an annual basis if such changes occur. Such notification and certification should be sent to the cabinet by the end of the calendar year, in the calendar year in which the change occurs. The notification must include the following information: [For each shipment of K061 HTMR residues sent to a solid waste site or facility that meets the generic exclusion levels for all constituents, and does not exhibit any characteristic, a notification and certification shall be sent to the cabinet. The notification shall include the following information:

(i) The name and address of the solid waste site or facility receiving the waste shipment;

(ii) The EPA hazardous waste number and treatability group at the initial point of generation; and

(iii) Treatment standards applicable to the waste at the initial point of generation. The certification shall be signed by an authorized representative and shall state as follows:

I certify under penalty of law that the generic exclusion levels for all constituents have been met without impermissible dilution and that no characteristic of hazardous waste is exhibited. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment.

d. Biological treatment sludge from the treatment of one (1) of the following wastes listed in 401 KAR 31:040: organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes

(EPA Hazardous Waste No. K156), and wastewaters from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste No. K157).

(4) Any waste described in subsection (3) of this section is not a hazardous waste if it meets the following criteria:

(a) In the case of any waste, it does not exhibit any of the characteristics of hazardous waste identified in 401 KAR 31:030. (However, wastes that exhibit a characteristic at the point of generation may still be subject to the requirements of 401 KAR Chapter 37 [38], even if they no longer exhibit a characteristic at the point of land disposal.)

(b) In the case of a waste which is a listed waste under 401 KAR 31:040, contains a waste listed under 401 KAR 31:040 or is derived from a waste listed in 401 KAR 31:040, it also has been excluded from Section 1(3) of 401 KAR 31:060 and 401 KAR 31:070.

(5) Notwithstanding subsections (1) through (4) of this section and provided the debris does not exhibit a characteristic identified 401 KAR 31:030, the following materials are not subject to regulation under 401 KAR Chapters 30 through 39:

(a) Hazardous debris that has been treated using one (1) of the required extraction or destruction technologies specified in Table 1 of Section 6 of 401 KAR 37:040; persons claiming this exclusion in an enforcement action will have the burden of proving by clear and convincing evidence that the material meets all of the exclusion requirements; or

(b) Debris that the cabinet, considering the extent of contamination, has determined is no longer contaminated with hazardous waste.

Section 4. Exclusions. (1) The following materials are not wastes for the purpose of this chapter:

(a) Domestic sewage and any mixture of domestic sewage and other wastes that pass through a sewer system to a publicly-owned treatment works for treatment; [~~"Domestic sewage" means untreated sanitary wastes that pass through a sewer system;~~]

(b) Industrial wastewater discharges that are point source discharges subject to administrative regulation under Section 402 of the CWA, as amended; however, this exclusion applies only to the actual point source discharge. It does not exclude industrial wastewaters while they are being collected, stored, or treated before discharge, nor does it exclude sludges that are generated by industrial wastewater treatment;

(c) Irrigation return flows;

(d) Source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended, 42 USC 2011 et seq., except as provided in Section 3 of this administrative regulation;

(e) Materials subjected to in situ mining techniques which are not removed from the ground as part of the extraction process;

(f) Pulping liquors (that is, black liquor) that are reclaimed in a pulping liquor recovery furnace and then reused in the pulping process, unless they are accumulated speculatively as defined in 401 KAR 31:005 [Section 4(3) of this administrative regulation].

(g) Spent sulfuric acid used to produce virgin sulfuric acid, unless it is accumulated speculatively as defined in 401 KAR 31:005 [Section 4(3) of this administrative regulation].

(h) Secondary materials that are reclaimed and returned to the original process or processes in which they were generated where they are reused in the production process, provided:

1. Only tank storage is involved, and the entire process through completion of reclamation, is closed by being entirely connected with pipes or other comparable enclosed means of conveyance;

2. Reclamation does not involve controlled flame combustion (such as occurs in boilers, industrial furnaces, or incinerators);

3. The secondary materials are never accumulated in such tanks for over twelve (12) months without being reclaimed; and

4. The reclaimed material is not used to produce a fuel, or used to produce products that are used in a manner constituting disposal, as provided in 401 KAR Chapter 36.

(j)1. Spent wood preserving solutions that have been reclaimed and are reused for their original intended purpose; and

2. Wastewaters from the wood preserving process that have been reclaimed and are reused to treat wood.

(j) EPA Hazardous Waste Nos. K060, K087, K141, K142, K143, K144, K145, K147, and K148 [~~K087~~] and any wastes from the coke byproducts processes that are hazardous only because they exhibit the toxicity characteristic specified in Section 5 of 401 KAR 31:030, when, subsequent to generation, these materials are recycled to coke ovens, to the tar recovery process as a feed stock to produce coal tar or are mixed with coal tar prior to the tar's sale or refining. This exclusion is conditioned on there being no land disposal of the wastes from the point they are generated to the point they are recycled to coke ovens or tar recovery or [the tar] refining processes, or mixed with coal tar.

(k) Nonwastewater splash condenser dross residue from the treatment of K061 in high temperature metals recovery units, provided it is shipped in drums (if shipped) and not land disposed before recovery.

(l) Recovered oil from petroleum refining, exploration and production, and from transportation incident thereto, which is to be inserted into the petroleum refining process (SIC Code 2911) along with normal process streams prior to crude distillation or catalytic cracking. This exclusion applies to recovered oil stored or transported prior to insertion, except that the oil must not be stored in a manner involving placement on the land, and must not be accumulated speculatively, before being so recycled. Recovered oil is oil that has been reclaimed from secondary materials (such as wastewater) generated from normal petroleum refining, exploration and production, and transportation practices. Recovered oil includes oil that is recovered from refinery wastewater collection and treatment systems, oil recovered from oil and gas drilling operations, and oil recovered from wastes removed from crude oil storage tanks. Recovered oil does not include (among other things) oil-bearing hazardous wastes listed in 401 KAR 31:040 (for example, K048-K052, F037, F038). However, oil recovered from such wastes may be considered recovered oil. Recovered oil does not include used oil as specified in 401 KAR Chapter 44.

(2) Any waste which meets the requirements of this subsection is not a hazardous waste.

(a) Household waste, including household waste that has been collected, transported, stored, treated, disposed, recovered (for example, refuse-derived fuel), or reused. [~~"Household waste" means any waste material (including garbage, trash, and sanitary wastes in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day use recreation areas).~~] A resource recovery facility managing municipal solid waste shall not be deemed to be treating, storing, disposing of, or otherwise managing hazardous wastes for the purposes of administrative regulation under the waste management administrative regulations, if the facility:

1. Receives and burns only:

a. Household waste (from single and multiple dwellings, hotels, motels, and other residential sources); and

b. Waste from commercial or industrial sources that does not contain hazardous waste; and

2. The facility does not accept hazardous wastes and the owner or operator of the facility has established contractual requirements or other appropriate notification or inspection procedures to assure that hazardous wastes are not received at or burned in the facility.

(b) Agricultural wastes generated by any of the following and which are returned to the soils as fertilizers:

1. The growing and harvesting of agricultural crops.

2. The raising of animals, including animal manures.

(c) Mining overburden returned to the mine site.

(d) Fly ash waste, bottom ash waste, slag waste, and flue gas

emission control waste generated primarily from the combustion of coal or other fossil fuels, except as provided by Section 13 of 401 KAR 36:020 for facilities that burn or process hazardous waste.

(e) Drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas, or geothermal energy.

(f)1. Wastes which fail the test for the toxicity characteristic because chromium is present or are listed in 401 KAR 31:040 due to the presence of chromium, which do not fail the test for the toxicity characteristic for any other constituent or are not listed due to the presence of any other constituent, and which do not fail the test for any other characteristic, if it is shown by a waste generator or by waste generators that:

a. The chromium in the waste is exclusively (or nearly exclusively) trivalent chromium; and

b. The waste is generated from an industrial process which uses trivalent chromium exclusively (or nearly exclusively) and the process does not generate hexavalent chromium; and

c. The waste is typically and frequently managed in nonoxidizing environments.

2. Specific wastes which meet the standard in subparagraph 1a, b and c of this paragraph (so long as they do not fail the test for the toxicity characteristic for any other constituent, and do not exhibit any other characteristic) are:

a. Chrome (blue) trimmings generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beam house; through-the-blue; and shearing.

b. Chrome (blue) shavings generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beam house; through-the-blue; and shearing.

c. Buffing dust generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beam house; through-the-blue.

d. Sewer screenings generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beam house; through-the-blue; and shearing.

e. Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beam house; through-the-blue; and shearing.

f. Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; and through-the-blue.

g. Waste scrap leather from the leather tanning industry, the shoe manufacturing industry, and other leather product manufacturing industries.

h. Wastewater treatment sludges from the production of TiO₂ pigment using chromium-bearing ores by the chloride process.

(g) Waste from the extraction, beneficiation, and processing of ores and minerals (including coal, phosphate rock and overburden from the mining of uranium ore), except as provided by Section 13 of 401 KAR 36:020 for facilities that burn or process hazardous waste. For the purpose of this paragraph, beneficiation of ores and minerals is restricted to the following activities: crushing; grinding; washing; dissolution; crystallization; filtration; sorting; sizing; drying; sintering; pelletizing; briquetting; calcining to remove water or carbon dioxide; roasting, autoclaving, or chlorination in preparation for leaching (except where the roasting (or autoclaving, or chlorination)/leaching sequence produces a final or intermediate product that does not undergo further beneficiation or processing); gravity concentration; magnetic separation; electrostatic separation; flotation; ion exchange;

solvent extraction; electrowinning; precipitation; amalgamation; and heap, dump, vat, tank and in situ leaching. For the purpose of this paragraph, waste from the processing of ores and minerals includes only the following wastes:

1. Slag from primary copper processing;
 2. Slag from primary lead processing;
 3. Red and brown muds from bauxite refining;
 4. Phosphogypsum from phosphoric acid production;
 5. Slag from elemental phosphorus production;
 6. Gasifier ash from coal gasification;
 7. Process wastewater from coal gasification;
 8. Calcium sulfate wastewater treatment plant sludge from primary copper processing;
 9. Slag tailings from primary copper processing;
 10. Fluorogypsum from hydrofluoric acid production;
 11. Process wastewater from hydrofluoric acid production;
 12. Air pollution control dust or sludge from iron blast furnaces;
 13. Iron blast furnace slag;
 14. Treated residue from roasting or leaching of chrome ore;
 15. Process wastewater from primary magnesium processing by the anhydrous process;
 16. Process wastewater from phosphoric acid production;
 17. Basic oxygen furnace and open hearth furnace air pollution control dust/sludge from carbon steel production;
 18. Basic oxygen furnace and open hearth furnace slag from carbon steel production;
 19. Chloride process waste solids from titanium tetrachloride production; and
 20. Slag from primary zinc processing.
- (h) Cement kiln dust waste except as provided by Section 13 of 401 KAR 36:020 for facilities that burn or process hazardous waste.
- (i) Waste which consists of discarded arsenical-treated wood or wood products which fails the test for the toxicity characteristic for Hazardous Waste Codes D004 through D017 ~~[solely for arsenic]~~ and which is not a hazardous waste for any other reason, if the waste is generated by persons who utilize the arsenical-treated wood and wood products for these materials' intended end use.
- (j) Petroleum - contaminated media and debris that fail the test for the toxicity characteristic of 401 KAR 31:030 (hazardous waste codes D018 to D043 only) and are subject to the corrective action administrative regulations under 401 KAR Chapter 42.
- (k) Injected groundwater that is hazardous only because it exhibits the toxicity characteristic (Hazardous Waste Codes D018 to D043 only) in Section 5 of 401 KAR 31:030 that is reinjected through an underground injection well pursuant to free phase hydrocarbon recovery operations undertaken at petroleum refineries, petroleum marketing terminals, petroleum bulk plants, petroleum pipelines and petroleum transportation spill sites until January 25, 1993. This extension applies to recovery operations in existence, or for which contracts have been issued, on or before March 25, 1991. For groundwater returned through infiltration galleries from such operations at petroleum refineries, marketing terminals, and bulk plants, until October 2, 1991. New operations involving injection wells (beginning after March 25, 1991) will qualify for this compliance date extension (until January 25, 1993) only if:
1. Operations are performed pursuant to a written state agreement that includes a provision to assess the groundwater and the need for further remediation once the free phase recovery is completed; and
 2. A copy of the written agreement has been submitted to: Characteristics Section (OS-333), U.S. EPA, 401 M Street SW, Washington, DC 20460.
- (l) Used chlorofluorocarbon refrigerants from totally enclosed heat transfer equipment, including mobile air conditioning systems, mobile refrigeration, and commercial and industrial air conditioning and refrigeration systems that use chlorofluorocarbons as the heat transfer fluid in a refrigeration cycle, provided the refrigerant is reclaimed for

further use.

(m) Nonterne plated used oil filters that are not mixed with wastes listed in 401 KAR 31:040 if these oil filters have been gravity hot-drained using one (1) of the following methods:

1. Puncturing the filter antidrain back valve or the filter dome end and hot-draining;
2. Hot-draining and crushing;
3. Dismantling and hot-draining; or
4. Any other equivalent hot-draining method that [which] will remove used oil.

(n) Used oil re-refining distillation bottoms that are used as feedstock to manufacture asphalt products.

(3) Hazardous wastes which are exempted from certain administrative regulations. A hazardous waste which is generated, in a product or raw material storage tank, a product or raw material transport vehicle or vessel, a product or raw material pipeline, or in a manufacturing process unit or an associated nonwaste-treatment-manufacturing unit, is not subject to administrative regulation under 401 KAR Chapters 32 to 39 or to the notification requirements of 401 KAR 32:010, 401 KAR 34:020, and 401 KAR 35:020 until it exits the unit in which it was generated, unless the unit is a surface impoundment, or unless the hazardous waste remains in the unit more than ninety (90) days after the unit ceases to be operated for manufacturing, or for storage or transportation of product or raw materials.

(4) Samples.

(a) Except as provided in paragraph (b) of this subsection, a sample of waste or a sample of water, soil, or air, which is collected for the sole purpose of testing to determine its characteristics or composition, is not subject to any requirements of this chapter; 401 KAR Chapter 32 to 35, and 37 to 39; or to the notification requirements of 401 KAR Chapter 32 and 38 when:

1. The sample is being transported to a laboratory for the purpose of testing; or
2. The sample is being transported back to the sample collector after testing; or
3. The sample is being stored by the sample collector before transport to a laboratory for testing; or
4. The sample is being stored in a laboratory before testing; or
5. The sample is being stored in a laboratory after testing but before it is returned to the sample collector; or
6. The sample is being stored temporarily in the laboratory after testing for a specific purpose (for example, until conclusion of a court case or enforcement action where further testing of the sample may be necessary).

(b) In order to qualify for the exemption in paragraphs (a)1 and 2 of this subsection, a sample collector shipping samples to a laboratory and a laboratory returning samples to a sample collector shall:

1. Comply with DOT, USPS, or any other applicable shipping requirements; or
2. Comply with the following requirements if the sample collector determines that DOT, USPS, or other shipping requirements do not apply to the shipment of the sample:
 - a. Assure that the following information accompanies the sample:
 - (i) The sample collector's name, mailing address, and telephone number;
 - (ii) The laboratory's name, mailing address, and telephone number;
 - (iii) The quantity of the sample;
 - (iv) The date of shipment; and
 - (v) A description of the sample.
 - b. Package the sample so that it does not leak, spill, or vaporize from its packaging.
 - c. This exemption does not apply if the laboratory determines that the waste is hazardous but the laboratory is no longer meeting any of the conditions stated in paragraph (a) of this subsection.

(5) Treatability study samples.

(a) Except as provided in paragraph (b) of this subsection,

persons who generate or collect samples for the purpose of conducting treatability studies shall not be subject to any requirement of 401 KAR Chapters 31 to 33 or to the notification requirements of KRS 224.46-510(3) and 401 KAR Chapters 32 and 38, nor shall the samples be included in the quantity determinations of Section 5 of this administrative regulation and 401 KAR 32:030, Section 5(4) if:

1. The sample is being collected and prepared for transportation by the generator or sample collector; or

2. The sample is being accumulated or stored by the generator or sample collector prior to transportation to a laboratory or testing facility; or

3. The sample is being transported to the laboratory or testing facility for the purpose of conducting a treatability study.

(b) The exemption in paragraph (a) of this subsection shall be applicable to samples of hazardous waste being collected and shipped for the purpose of conducting treatability studies if:

1. The generator or sample collector uses (in [?]treatability studies[?]) no more than 1000 kg of any nonacute hazardous waste; one (1) kg of acute hazardous waste; or 250 kg of soil, water, or debris contaminated with acute hazardous waste for each process being evaluated for each generated waste stream; and

2. The mass of each sample shipment does not exceed 1000 kg of nonacute hazardous waste; one (1) kg of acute hazardous waste; or 250 kg of soils, water, or debris contaminated with acute hazardous waste; and

3. The sample is packaged so that it does not leak, spill, or vaporize from its packaging during shipment; and

4. The requirements of subparagraph a or b of this paragraph are met:

a. The transportation of each sample shipment complies with DOT, USPS or any other applicable shipping requirements; or

b. If the DOT, USPS, or other shipping requirements do not apply to the shipment of the sample, the following information shall accompany the sample:

(i) The name, mailing address, and telephone number of the originator of the sample;

(ii) The name, address, and telephone number of the facility that will perform the treatability study;

(iii) The quantity of the sample;

(iv) The date of shipment; and

(v) A description of the sample, including its EPA hazardous waste number;

5. The sample is shipped to a laboratory or testing facility which is exempt under Section 4(6) of this administrative regulation or has an appropriate RCRA permit or interim status;

6. The generator or sample collector maintains the following records for a period ending three (3) years after completion of the treatability study:

a. Copies of the shipping documents;

b. A copy of the contract with the facility conducting the treatability study;

c. Documentation showing:

(i) The amount of waste shipped under this exemption;

(ii) The name, address, and EPA identification number of the laboratory or testing facility that received the waste;

(iii) The date the shipment was made; and

(iv) Whether or not unused samples and residues were returned to the generator;

7. The generator reports the information required under Section 4(5)(b)6c of this administrative regulation in its annual report required under 401 KAR 32:040.

(c)1. The cabinet may grant requests, on a case-by-case basis, for quantity limits in excess of those specified in Section 4(5)(b)1 of this administrative regulation for up to an additional 500 kg of nonacute hazardous waste; one (1) kg of acute hazardous waste and 250 kg of soil, water, or debris contaminated with acute hazardous waste, to conduct further treatability study evaluation when:

a. There has been an equipment or mechanical failure during the conduct of a treatability study;

b. There is a need to verify the results of a previously conducted treatability study;

c. There is a need to study and analyze alternative techniques within a previously evaluated treatment process; or

d. There is a need to do further evaluation of an ongoing treatability study to determine final specifications for treatment.

2. The additional quantities allowed pursuant to subparagraph 1 of this paragraph shall be subject to all provisions in paragraph (a) and (b)2 to 7 of this subsection. The generator or sample collector shall apply to the cabinet when the sample is collected and provide in writing the following information:

a. The reason why the generator or sample collector requires additional quantity of sample for the treatability study evaluation, and the additional quantity needed;

b. Documentation accounting for all samples of hazardous waste from the waste stream which have been sent for or undergone treatability studies including the date each previous sample from the waste stream was shipped, the quantity of each previous shipment, the laboratory or testing facility to which it was shipped, what treatability study processes were conducted on each sample shipped, and the available results of each treatability study;

c. A description of the technical modifications or change in specifications which will be evaluated and the expected results;

d. If further study is being required due to equipment or mechanical failure, the applicant shall include information regarding the reason for the failure or breakdown and what procedures or equipment improvements have been made to protect against further breakdowns; and

e. Any other information that the cabinet deems necessary.

(6) Samples undergoing treatability studies at laboratories and testing facilities. Samples undergoing treatability studies and laboratories and testing facilities conducting treatability studies (to the extent the facilities are not otherwise subject to the requirements of 401 KAR Chapters 31 to 38) shall not be subject to any requirements of Section 3010 of RCRA and 401 KAR Chapters 31 to 38 provided that the conditions of paragraphs (a) to (k) of this subsection are met. A mobile treatment unit (MTU) may qualify as a testing facility subject to paragraphs (a) to (k) of this subsection. Where a group of MTUs are located at the same site, the limitations specified in paragraphs (a) to (k) of this subsection shall apply to the entire group of MTUs collectively, as if the group were one (1) MTU. The conditions for exemption are:

(a) No less than forty-five (45) days before conducting treatability studies, the facility shall notify the cabinet in writing that it intends to conduct treatability studies under this subsection;

(b) The laboratory or testing facility conducting the treatability study shall have an EPA identification number;

(c) No more than 250 kg of [?]as received[?] hazardous waste shall be subjected to initiation of treatment in all treatability studies in a single day; [~~"As received" waste refers to the waste as received in the shipment from the generator or sample collector;~~]

(d) The quantity of [?]as received[?] hazardous waste stored at the facility for the purpose of evaluation in treatability studies shall not exceed 1000 kg, the total of which may include 500 kg of soils, water, or debris contaminated with acute hazardous waste or one (1) kg of acute hazardous waste. This quantity of limitation shall not include:

1. Treatability study residues; or

2. Treatment materials (including nonhazardous solid waste) added to [?]as received[?] hazardous waste;

(e) No more than ninety (90) days shall elapse since the treatability study for the sample was completed, or no more than one (1) year shall elapse since the generator or sample collector shipped the sample to the laboratory or testing facility, whichever date first occurs;

(f) The treatability study shall not involve the placement of

hazardous waste on the land or open burning of hazardous waste;

(g) The facility shall maintain records for three (3) years following completion of each study that show compliance with the treatment rate limits and the storage time and quantity limits. The following specific information shall be included for each treatability study conducted:

1. The name, address, and EPA identification number of the generator or sample collector of each waste sample;
2. The date the shipment was received;
3. The quantity of waste accepted;
4. The quantity of []as received[] waste in storage each day;
5. The date the treatment was initiated and the amount of []as received[] waste introduced to treatment study each day;
6. The date the treatability study was concluded; and
7. The date any unused sample or residue generated from the treatability study was returned to the generator or sample collector or, if sent to a designated facility, the name of the facility and the EPA identification number;

(h) The facility shall keep on site a copy of the treatability study contract and all shipping papers associated with the transport of treatability study samples to and from the facility for at least three (3) years from the completion date of each treatability study;

(i) The facility shall prepare and submit a report to the cabinet by March 15 of each year that estimates the number of studies and the amount of waste expected to be used in treatability studies during the current calendar year. The report shall also contain following information for the previous calendar year:

1. The name, address, and EPA identification number of the facility conducting the treatability studies;
2. The types (by process) of treatability studies conducted;
3. The names and addresses of persons for whom studies have been conducted (including their EPA identification numbers);
4. The total quantity of waste in storage each day;
5. The quantity and types of waste subjected to treatability studies;
6. The data on which each treatability study was conducted; and
7. The final disposition of residues and unused samples from each treatability study;

(j) The facility shall determine whether any unused samples or residues generated by the treatability study are hazardous wastes under Section 3 of this administrative regulation and, if so, are subject to 401 KAR Chapters 31 through 38, unless the residues and unused samples are returned to the sample originator under the exemption in Section 4(5) of this administrative regulation;

(k) The facility shall notify the cabinet by letter when the facility is no longer planning to conduct any treatability studies at the site.

Section 5. Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small [Limited] Quantity Generators. (1) A generator is a conditionally exempt small [limited] quantity generator in a calendar month if he generates no more [less] than 100 kilograms of hazardous waste in that month, except as specified in subsection (5) of this section.

(2) Except for those wastes identified in subsections (5), (6), (7), and (10) of this section, a conditionally exempt small [limited] quantity generator's hazardous wastes are not subject to administrative regulation under 401 KAR Chapters 32 to 39 and the notification requirements of KRS 224.46-510(3), provided the generator complies with the requirements of subsections (6), (7), and (10) of this section.

(3) When making the quantity determinations of this chapter and 401 KAR Chapter 32, the generator shall include all hazardous waste that it generates, except hazardous waste that:

(a) Is exempt from administrative regulation under Section 4(3) through (6), Section 6(1)(c), Section 7(1)(a), or Section 8 of this administrative regulation;

(b) Is managed immediately upon generation only in an on-site elementary neutralization units, wastewater treatment units, or totally

enclosed treatment facilities;

(c) Is recycled, without prior storage or accumulation, only in on-site process subject to administrative regulation under Section 6(3)(b) of this administrative regulation;

(d) Is used oil managed under the requirements of Section 6(1)(d) of this administrative regulation and 401 KAR Chapter 44;

(e) Is spent lead-acid batteries managed under the requirements of 401 KAR 36:070; or

(f) Is universal waste managed under Section 9 of this administrative regulation and 401 KAR Chapter 43. [Hazardous waste that is not subject to administrative regulation or that is subject only to Sections 2 and 3 of 401 KAR 32:040 and Sections 1(3) and 2 of 401 KAR 32:040 is not included in the quantity determinations of this chapter and 401 KAR Chapters 32 to 40 and is not subject to any requirements of those administrative regulations. Hazardous waste that is subject to the requirements of Section 6(2) and (3) of this administrative regulation and 401 KAR 36:030, 401 KAR 36:040, and 401 KAR 36:060 is included in the quantity determination of this chapter, and is subject to the requirements of 401 KAR Chapters 32 to 40.]

(4) In determining the quantity of hazardous waste generated, a generator need not include:

(a) Hazardous waste when it is removed from on-site storage; or

(b) Hazardous waste produced by on-site treatment (including reclamation) of his hazardous waste, so long as the hazardous waste that is treated was counted once; or

(c) Spent materials that are generated, reclaimed, and subsequently reused on site, so long as spent materials have been counted once.

(5) If a generator generates acute hazardous waste in a calendar month in quantities greater than set forth in this subsection, all quantities of that acute hazardous waste are subject to administrative regulations applicable to generators of greater than 1,000 kilograms of nonacute hazardous waste in a calendar month under 401 KAR Chapters 32 to 39, and the notification and permitting requirements of KRS 224.01-400, 224.40-310, 224.46-510 to 224.46-580, and 224.50-130:

(a) A total of one (1) kilogram of acute hazardous wastes listed in Section 2, 3, or 4(5) of 401 KAR 31:040.

(b) A total of 100 kilograms of any residue or contaminated soil, waste, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous wastes listed in Section 2, 3 or 4(5) of 401 KAR 31:040.

(6) In order for acute hazardous wastes generated by a generator of acute hazardous wastes in quantities equal to or less than those set forth in subsection (5) of this section to be excluded from full regulation under this section, the generator shall:

(a) Comply with the requirements of 401 KAR 32:010, Section 2;

(b) The generator may accumulate acute hazardous waste on-site. If he accumulates at any time acute hazardous wastes in quantities greater than those set forth in subsection (5)(a) or (b) of this section, all of those accumulated wastes are subject to regulation under 401 KAR Chapters 32 through 38, and the applicable notification requirements of KRS 224.01-400. The time period of Section 5(1) of 401 KAR 32:030, for accumulation of wastes on-site, begins when the accumulated wastes exceed applicable exclusion limit; and

(c) A conditionally exempt small quantity generator may either treat or dispose of this acute hazardous waste in an on-site facility or ensure direct delivery to an off-site storage, treatment, or disposal facility, either of which if located in the U.S., is: [A limited quantity generator may accumulate hazardous waste on site in tanks or containers. If he accumulates at any time more than 1000 kilograms of his hazardous waste, or his acutely hazardous wastes in quantities greater than set forth in subsection (5)(a) or (b) of this section, all of those accumulated wastes are subject to administrative regulation under 401 KAR Chapters 32 to 39 and the notification and permitting requirements of KRS 224.01, 224.40, 224.43, and 224.46. The time period set out in Section 5 of 401 KAR 32:030 for accumulation of

wastes on-site begins for a limited quantity generator when the accumulated wastes exceed the applicable exclusion level.]

(7) In order for hazardous waste generated by a conditionally exempt small [limited] quantity generator in quantities of less than 100 kilograms of hazardous waste during a calendar month to be excluded from full [administrative] regulation[s] under this section, the generator shall comply with the following requirements:

(a) [Comply with the requirements of] 401 KAR 32:010, Section 2;

(b) The conditionally exempt small quantity generator may accumulate hazardous waste on-site. If he accumulates at any time more than a total of 1000 kilograms of his hazardous wastes, all of those accumulated wastes are subject to regulation under the special provisions of 401 KAR Chapter 32 applicable to generators of between 100 kilograms and 1000 kilograms of hazardous waste in a calendar month as well as the requirements of 401 KAR Chapters 33 through 38, and the applicable notification requirements of KRS 224.01-400. The time period of Section 5 of 401 KAR 32:030 for accumulation of wastes on-site begins for a conditionally exempt small quantity generator when the accumulated wastes exceed 1000 kilograms [If he stores his hazardous waste on-site, store it in compliance with subsection (6) of this section]; and

(c) Either treat or dispose of hazardous waste in an on-site facility, or ensure direct delivery to an off-site storage, treatment, or disposal facility, either of which if located in the U.S. is:

1. Permitted under 401 KAR Chapter 38;
2. In interim status under 401 KAR Chapters 35 and 38;
3. Located outside of Kentucky and is permitted under 40 CFR Part 270 or in interim status under 40 CFR Parts 270 and 265;

4. Located outside of Kentucky and is authorized to manage hazardous waste by a state with a hazardous waste management program approved under 40 CFR Part 271;

5. Permitted to manage municipal or industrial solid waste and is specifically approved for that waste; [or]

6. A facility which:

a. Beneficially uses or reuses, or legitimately recycles or reclaims its waste; or

b. Treats its waste prior to beneficial use or reuse, or legitimate recycling or reclamation.

7. For universal waste managed under 401 KAR Chapter 43, a universal waste handler or destination facility subject to the requirements of 401 KAR Chapter 43.

8. Approved in accordance with Section 6 of 401 KAR 32:030 for on-site treatment of hazardous waste.

(8) Hazardous waste subject to the reduced requirements of this section may be mixed with nonhazardous waste and remain subject to these reduced requirements even though the resultant mixture exceeds the quantity limitations identified in this section unless the mixture meets any of the characteristics of hazardous wastes identified in 401 KAR 31:030.

(9) If a conditionally exempt small [limited] quantity generator mixes a solid waste with a hazardous waste that exceeds the quantity exclusion level of this section, the mixture shall be subject to full administrative regulation.

(10) If a conditionally exempt small [limited] quantity generator's hazardous wastes are mixed with used oil, the mixture shall be subject to [Sections 1 through 5 of] 401 KAR Chapter 44 [36:060], if it is destined to be burned for energy recovery. Any material produced from such a mixture by processing, blending, or other treatment shall also be so regulated if it is destined to be burned for energy recovery. (See Section 1(2) of 401 KAR 44:010.)

Section 6. Requirements for Recyclable Materials. (1)(a) Hazardous wastes that are recycled are subject to the requirements for generators, transporters, and storage facilities of subsections (2) and (3) of this section, except for the materials listed in paragraphs (b) and (c) of this subsection. [Hazardous wastes that are recycled shall

be known as "recyclable materials."]

(b) The following recyclable materials are not subject to the requirements of this section, but are regulated under 401 KAR Chapter 36 and all applicable provisions of 401 KAR Chapters 38 and 39:

1. Recyclable materials used in a manner constituting disposal (see 401 KAR 36:030);

2. Hazardous wastes burned for energy recovery in boilers and industrial furnaces that are not regulated under 401 KAR 34:240 or 401 KAR 35:240 (see 401 KAR 36:040);

3. [Used oil that exhibits one (1) or more of the characteristics of hazardous waste and is burned for energy recovery in boilers and industrial furnaces that are not regulated under 401 KAR 34:240 and 35:240 (see 401 KAR 36:040);]

4.] Recyclable materials from which precious metals are reclaimed (see 401 KAR 36:060); and

4. [5.] Spent lead-acid batteries that are being reclaimed (see 401 KAR 36:070).

(c) The following recyclable materials are not subject to administrative regulation under 401 KAR Chapters 32 to 38, and are not subject to the notification requirements of KRS 224.46-510(3):

1. Industrial ethyl alcohol that is reclaimed except that, unless provided otherwise in an international agreement as specified in 401 KAR 32:050:

a. A person initiating a shipment for reclamation in a foreign country, and any intermediary arranging for the shipment, shall comply with the requirements applicable to a primary exporter in Sections 4, 7(1)(a) to (d), (f), (2) and 8 of 401 KAR 32:050, export these materials only upon consent of the receiving country and in conformance with the EPA Acknowledgment of Consent as defined in 401 KAR 32:005 [050], and provide a copy of the EPA Acknowledgment of Consent to the shipper transporting the shipment for export;

b. Transporters transporting a shipment for export shall not accept a shipment if he knows the shipment does not conform to the EPA Acknowledgment of Consent, shall ensure that a copy of the EPA Acknowledgment of Consent accompanies the shipment, and shall ensure that it is delivered to the facility designated by the person initiating the shipment.

2. [Used batteries (or used battery cells) returned to a battery manufacturer for regeneration;

3. Used oil that exhibits one (1) or more of the characteristics of hazardous waste but is recycled in some other manner than being burned for energy recovery;

4.] Scrap metal;

3. [5.] Fuels produced from the refining of oil-bearing hazardous wastes along with normal process streams at a petroleum refining facility if the wastes result from normal petroleum refining, production, and transportation practices (this exemption does not apply to fuels produced from oil recovered from oil-bearing hazardous wastes, where the recovered oil is already excluded under Section 4(1)1 of this administrative regulation);

[6. Oil reclaimed from hazardous waste resulting from normal petroleum refining, production, and transportation practices, which oil is to be refined along with normal process streams at a petroleum refining facility;]

4.a. [7.a.] Hazardous waste fuel produced from oil-bearing hazardous wastes from petroleum refining, production, or transportation practices, or produced from oil reclaimed from such hazardous wastes, where such hazardous wastes are reintroduced into a process that does not use distillation or does not produce products from crude oil so long as the resulting fuel meets the used oil specification under Section 1(5) of 401 KAR 35:050 and so long as no other hazardous wastes are used to produce the hazardous waste fuel;

b. Hazardous waste fuel produced from oil-bearing hazardous waste from petroleum refining production, and transportation practices

es, where such hazardous wastes are reintroduced into a refining process after a point at which contaminants are removed, so long as the fuel meets the used oil fuel specification under ~~[Section 1(5)]~~ of 401 KAR Chapter 44 ~~[36:050]~~; and

c. Oil reclaimed from oil-bearing hazardous wastes from petroleum refining, production, and transportation practices, which reclaimed oil is burned as a fuel without reintroduction to a refining process, so long as the reclaimed oil meets the used oil fuel specification under ~~[Section 1(5)]~~ of 401 KAR Chapter 44 ~~[36:050]~~; and

5. ~~[8.]~~ Petroleum coke produced from petroleum refinery hazardous wastes containing oil by the same person who generated the waste [at the same facility at which the wastes were generated], unless the resulting coke product exceeds one (1) or more of the characteristics of hazardous waste in 401 KAR 31:030.

(d) Used oil that is recycled and is also hazardous waste solely because it exhibits a hazardous characteristic is not subject to the requirements of 401 KAR Chapters 30 through 39, but is regulated under 401 KAR Chapter 44. Used oil that is recycled includes any used oil that is reused, following its original use, for any purpose (including the purpose for which the oil was originally used). Such term includes, but is not limited to, oil which is re-refined, reclaimed, burned for energy-recovery, or reprocessed.

(2) Generators and transporters of recyclable materials are subject to the applicable requirements of 401 KAR Chapters 32 and 33 and the notification requirements under KRS 224.46-510(3) and 224.46-560, except as provided in subsection (1) of this section.

(3)(a) Owners or operators of facilities that store recyclable materials before they are recycled are regulated under all applicable provisions of 401 KAR 34:010 to 401 KAR 34:280, 401 KAR 35:010 to 401 KAR 35:280, 401 KAR Chapters 36 to 38, and the notification requirements under KRS 224.46-510(3) and 224.46-520, except as provided in subsection (1) of this section. (The recycling process itself is exempt from administrative regulation except as provided in subsection (4) of this section.)

(b) Owners or operators of facilities that recycle recyclable materials without storing them before they are recycled are subject to the following requirements, except as provided in subsection (1) of this section:

1. The owner or operator shall submit an annual notification to the cabinet. After the date of promulgation of this administrative regulation, the owner or operator shall submit an initial notification on a schedule determined by the cabinet. Subsequent annual notifications shall be submitted to the cabinet at least thirty (30) days before the expiration date shown on the notification; and

2. Sections 2 and 3 of 401 KAR 35:050 (dealing with the use of the manifest and manifest discrepancies); and

3. Subsection (4) of this section.

(4) Owners or operators of facilities subject to permitting requirements in 401 KAR Chapters 34, 35, and 38 with hazardous waste management units that recycle hazardous wastes are subject to the requirements of 401 KAR 34:275 and 401 KAR 34:280, or 401 KAR 35:275 and 401 KAR 35:280.

Section 7. Residues of Hazardous Waste in Empty Containers.

(1)(a) Any hazardous waste remaining in either an empty container or an inner liner removed from an empty container, as described [defined] in subsection (2) of this section, is not subject to 401 KAR Chapters 32 to 35, and 37 to 39, but is subject to 401 KAR Chapter 47.

(b) Any hazardous waste in either a container that is not empty or an inner liner removed from a container that is not empty, as described [defined] in subsection (2) of this section is subject to 401 KAR Chapters 32 to 35, and 37 to and 39; 401 KAR 30:020; and 401 KAR 30:030.

(2)(a) A container or an inner liner removed from a container that has held any hazardous waste, except a waste that is a compressed gas or that is identified as an acute hazardous waste listed in Section

2, 3, or 4(5) of 401 KAR 31:040, is empty if:

1. All wastes have been removed that can be removed using the practices commonly employed to remove materials from that type of container, (for example, pouring, pumping, and aspirating); and

2. No more than two and five-tenths (2.5) centimeters (one (1) inch) of residue remain on the bottom of the container or inner liner; or

3.a. No more than three (3) percent by weight of the total capacity of the container remains in the container or inner liner if the container is less than or equal to 110 gallons in size; or

b. No more than three-tenths (0.3) percent by weight of the total capacity of the container remains in the container or inner liner if the container is greater than 110 gallons in size.

(b) A container that has held a hazardous waste that is a compressed gas is empty when the pressure in the container approaches atmospheric.

(c) A container or an inner liner removed from a container that has held an acute hazardous waste listed in Section 2, 3, or 4(5) of 401 KAR 31:040 is empty if:

1. The container or inner liner has been triple rinsed using a solvent capable of removing the commercial chemical product or manufacturing chemical intermediate;

2. The container or inner liner has been cleaned by another method that has been shown in the scientific literature, or by test conducted by the generator, to achieve equivalent removal; or

3. In the case of a container, the inner liner that prevented contact of the commercial chemical product or manufacturing chemical intermediate with the container has been removed.

Section 8. PCB Wastes Regulated Under the Toxic Substance Control Act. The disposal of PCB - containing dielectric fluid and electric equipment containing such fluid authorized for use and regulated under 40 CFR Part 761 ~~[(4990)]~~ and that are hazardous only because they fail the test for the toxicity characteristic (hazardous waste codes D018 to D043 only) are exempt from 401 KAR Chapters 31 to 35, 37, and 38, including the notification requirements of these chapters.

Section 9. Requirements for Universal Waste. The wastes listed in this section are exempt from regulation under 401 KAR Chapters 32-40 except as specified in 401 KAR Chapter 43 and therefore are not fully regulated as hazardous waste. The wastes listed in this section are subject to regulation under 401 KAR Chapter 43:

(1) Batteries as described in Section 2 of 401 KAR 43:010;

(2) Pesticides as described in Section 3 of 401 KAR 43:010;

(3) Thermostats as described in Section 4 of 401 KAR 43:010;
and

(4) Spent mercury containing lamps as described in Section 5 of 401 KAR 43:010.

Section 10. Additional Administrative regulation of Certain Hazardous Waste Recycling Activities on a Case-by-case Basis. (1) The cabinet may decide on a case-by-case basis that persons accumulating or storing the recyclable materials described in Section 6(1)(b)3 of this administrative regulation shall be regulated under Section 6(2) and (3) of this administrative regulation. The basis for this decision is that the materials are being accumulated or stored in a manner that does not protect human health and the environment because the materials or their toxic constituents have not been adequately contained or because the materials being accumulated or stored together are incompatible. In making this decision, the cabinet shall consider the following factors:

(a) The types of materials accumulated or stored and the amounts accumulated or stored;

(b) The method of accumulation or storage;

(c) The length of time the materials have been accumulated or stored before being reclaimed;

(d) Whether any contaminants are being released into the environment, or are likely to be so released; and

(e) Other relevant factors.

(2) The procedures for this decision are set forth in Section 11 [9] of this administrative regulation.

Section 11. [40-] Procedures for Case-by-case Administrative Regulation of Hazardous Waste Recycling Activities. The cabinet shall use the following procedures when determining whether to regulate hazardous waste recycling activities described in Section 6(1)(b)4 of this administrative regulation under the provisions of Section 6(2) and (3) of this administrative regulation rather than under the provisions of 401 KAR 36:060 (precious metals being reclaimed).

(1) If a generator is accumulating the waste, the cabinet shall issue a notice setting forth the factual basis for the decision and stating that the person shall comply with the applicable requirements of 401 KAR 32:010, 32:030, 32:040, and 32:050. The notice shall become final within thirty (30) days, unless the person served requests a public hearing to challenge the decision. Upon receiving such a request, the cabinet shall hold a public hearing. The cabinet shall provide notice of the hearing to the public and allow public participation at the hearing. The cabinet shall issue a determination after the hearing stating whether or not compliance with 401 KAR Chapter 32 is required. The order shall become effective thirty (30) days after service of the determination, unless the cabinet specifies a later date.

(2) If the person is accumulating the recyclable material as a storage facility, the notice shall state that the person shall obtain a permit in accordance with all applicable provisions of 401 KAR Chapter 38. The owner or operator of the facility shall apply for a permit within no more than six (6) months of notice. If the owner or operator of the facility wishes to challenge the cabinet's decision, he may do so in his permit application, in a public hearing held on the draft permit, or in comments filed on the draft permit or on the notice of intent to deny the permit. The fact sheet accompanying the permit shall specify the reasons for the cabinet's determination. The question of whether the cabinet's decision was proper shall remain open for consideration during the public comment period discussed under Section 8 of 401 KAR 38:050 and in any subsequent hearing.

Section 12. [44-] Administrative Regulation of Mixed Radioactive Hazardous Wastes. Radioactive mixed wastes are wastes that contain both hazardous wastes subject to KRS Chapter 224 and radioactive wastes subject to the Atomic Energy Act. Radioactive mixed wastes are subject to all the requirements of 401 KAR Chapters 30 to 40 and the Atomic Energy Act.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: July 11, 1996

FILED WITH LRC: July 12, 1996 at 9 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Thursday, August 29, 1996, at 7 p.m. Eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing, at the address noted below, by August 24, 1996. If by that date Mr. Hale has not received any notification of intent to attend the hearing, the hearing will be canceled. This hearing is open to the public. Any person wishing to comment on the proposed administrative regulation will be given an opportunity to do so. Persons testifying at the hearing are requested to provide a written copy of their testimony, if available. A transcript of the hearing will not be made unless a request for such is filed with Mr. Hale by August 24, 1996 and arrangements for payment of the transcript are made by that date. Written comments may also be submitted on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than the date of the close of the public hearing on August 29, 1996. Persons

submitting written comments are also requested to provide an electronic copy of their comments, if available. The preferred format for the electronic format is any version of Word Perfect on 3.5 inch diskettes; however, any other format would be greatly appreciated, should Word Perfect or 3.5 inch diskettes not be available. The Natural Resources and Environmental Cabinet does not discriminate on the basis of color, national origin, sex, religion, age, or disability in employment or the provision of services. Upon request, the Cabinet will provide reasonable accommodation, including auxiliary aids and services, necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as an interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by August 24, 1996.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221.

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: This proposed amendment affects small hazardous waste generators, transporters, recyclers, and management facilities. There are over 3000 entities currently regulated in Kentucky for their hazardous waste activities. All generators producing carbamate related wastes, high temperature metals recovery wastes, hazardous debris, and petroleum related hazardous waste will be directly affected by the amendments to this regulation. In addition, this proposed amendment contains regulatory cross references affecting generators who produce universal wastes (to be regulated under proposed 401 KAR Chapter 43) and waste oil (to be regulated under 401 KAR Chapter 44). The proposed amendment also amends the standards for how all generators make their quantity determinations and updates standards for conditionally exempt small quantity (limited quantity) generators. Currently, there are 2831 hazardous waste generators operating in Kentucky. They are: 442 generators, 699 small quantity generators, and 1690 conditionally exempt small quantity generators registered in Kentucky. In addition, facilities engaged in wastewater treatment, petroleum refining, and universal waste facilities will be affected by the revisions. There are an unknown number of hazardous wastewater treatment facilities, and an unknown number of universal waste facilities in Kentucky. Because the universal waste rule addresses agriculture pesticides, mercury switches, batteries, and mercury containing lamps (fluorescent lights), it is assumed that these proposed rules will ease requirements on almost every business in Kentucky.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the 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. Effect on the 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. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No public comments were received.

2. Second and subsequent years: No public comments were received.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First year: The cabinet will experience no additional costs or savings by promulgating the amendments to this regulation. However,

the combined effect of adopting the federal amendments will result in an increased workload on existing staff. Partial funding via EPA grants is anticipated to cover the increased costs associated especially with the proposed amendments.

2. Continuing costs or savings: The agency will continue to experience an increased workload as a result of the amendments. In addition, due to the need to monitor newly regulated facilities on a regular basis, there will be continuing costs to the agency.

3. Additional factors increasing or decreasing costs: Because the majority of the amendments made to this regulation are equivalent to existing federal standards, there are no additional costs to Kentucky industries. However, there are substantial savings to industry from the adoption of these requirements by Kentucky since operation of an authorized hazardous waste management program within the state minimizes dual enforcement and clarifies the responsible authority to which industry must respond.

b. Reporting and paperwork requirements: The amendments made to this regulation will result in no new paperwork or reporting burden.

4. Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenue from promulgation of this regulation.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: Partial funding from EPA grants are anticipated to pay increased costs due to increased work in the implementation and enforcement of these standards.

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

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: The proposed amendments primarily adopt regulatory changes to federal regulations which will keep the Kentucky hazardous waste program consistent with the federal program. The majority of these amendments are the result of substantial changes made to the technical standards applicable to hazardous waste facilities. For the most part, the amendments made to this regulation simply provide consistency. Exclusions have been adopted and cross references have been amended. In addition, clarification language has been inserted (or in some case clarification has been accomplished by deletion of phrases).

8. Assessment of expected benefits of the administrative regulation: Kentucky industry will receive indirect savings with the adoption of these amendments, as explained above.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: The effects on the protection of the environment and public health across the commonwealth will improve with the adoption and implementation of these amendments.

b. State whether a detrimental effect on the environment and public health would result if not implemented: Kentucky must continue to upgrade its hazardous waste program to be consistent with the federal program.

c. If detrimental effect would result, explain detrimental effect: Failure to adopt these changes jeopardizes Kentucky's authorization and continued funds to implement the program.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no statutes, administrative regulations, or policies that conflict with, overlap, or duplicate the proposed amendment.

a. Necessity of proposed regulation if in conflict: Not applicable. There is no conflict.

b. If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable. There was no conflict.

11. Any additional information or comments: There are no additional comments.

12. TIERING: Is tiering applied? (Explain why tiering was or was not used): Yes, this regulation applies to Hazardous waste generators, transporters, recyclers, and owners and operators of hazardous waste facilities. Standards have been tiered based on the amount of hazardous waste generated, consistent with the federal standards, to reflect the need to protect human health and the environment.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the Cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution.

2. State compliance standards: The proposed amendments adopt a variety of changes that include standards for hazardous waste generators, transporters, recyclers, and management facilities. These changes are necessary to maintain consistency between the state and federal programs. Several exclusions have been added which clarify the applicability of technical standards to the types of facilities listed above. Clarifying language has been added regarding the applicability of standards regarding waste mixtures. In addition, the regulation has been modified to reflect the requirements of regulation construction specified in KRS Chapter 13A.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part, or division of local government this administrative regulation will affect. This administrative regulation will affect any state, county, or local office of government that manages hazardous waste.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224 Subchapter 46 requires that the cabinet to establish a comprehensive program for the proper management of hazardous waste. The agencies that manage hazardous waste will be subject to these requirements.

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 impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): The only expenditures to a state, county, or local office of government will be those expenditures related to compliance with this administrative regulation. If this administrative regulation does not apply to a state, county, or local office of government, there will be no expenditures.

Other Explanation: None

**NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Amendment)**

401 KAR 31:030. Characteristics of hazardous waste.

RELATES TO: KRS 224.01, 224.40, 224.43, 224.46, 40 CFR 261 Subpart C

STATUTORY AUTHORITY: KRS 224.46-510

NECESSITY AND FUNCTION: KRS 224.46-510(3) requires the cabinet to identify the characteristics of and to list hazardous wastes. This chapter identifies and lists hazardous waste. This administrative regulation establishes the characteristics of a hazardous waste.

Section 1. General. (1) A waste, as defined in Section 2 of 401 KAR 31:010 which is not excluded from administrative regulation as a hazardous waste under Section 4(2) of 401 KAR 31:010, is a hazardous waste if it exhibits any of the characteristics identified in this administrative regulation.

(2) A hazardous waste which is identified by a characteristic in this administrative regulation is assigned every EPA Hazardous Waste Number that is applicable as set forth in the respective characteristics in this administrative regulation. These numbers shall be used in complying with the notification requirements of 401 KAR Chapters 32, 34, 35, and 38 and all applicable recordkeeping and reporting requirements under 401 KAR Chapters 32 to 35, 37, and 38.

(3) For purposes of this administrative regulation, the cabinet shall consider a sample obtained using any of the applicable sampling methods specified in 401 KAR 31:100 to be a representative sample within the meaning of 401 KAR 30:010.

Section 2. Characteristic of Ignitability. (1) A waste exhibits the characteristic of ignitability if a representative sample of the waste has any of the following properties:

(a) It is a liquid, other than an aqueous solution containing less than twenty-four (24) percent alcohol by volume and has a flash point less than sixty (60) degrees C (140 degrees Fahrenheit), as determined by a Pensky-Martens Closed Cup Tester, using the test method specified in ASTM Standard D-93-79 or D-93-80 (incorporated in 40 CFR 260.11, which is adopted in [see] Section 3 of 401 KAR 30:010), or a Setflash Closed Cup Tester, using the test method specified in ASTM Standard D-3278-78 (incorporated in 40 CFR 260.11, which is adopted in [see] Section 3 of 401 KAR 30:010), or as determined by an equivalent test method approved by the cabinet and the administrator under procedures set forth in Section 2 of 401 KAR 30:020.

(b) It is not a liquid and is capable, under standard temperature and pressure, of causing fire through friction, absorption of moisture or spontaneous chemical changes and, when ignited, burns so vigorously and persistently that it creates a hazard.

(c) It is an ignitable compressed gas as defined in 49 CFR Subpart C [473.300 (1990)] and as determined by the test methods described in that administrative regulation or equivalent test methods approved by the cabinet and the administrator under Section 2 of 401 KAR 30:020.

(d) It is an oxidizer as defined in 49 CFR Subpart C [473.454 (1990)].

(2) A waste that exhibits the characteristic of ignitability has the EPA hazardous waste number of D001.

Section 3. Characteristic of Corrosivity. (1) A waste exhibits the characteristic of corrosivity if a representative sample of the waste has either of the following properties:

(a) It is aqueous and has a pH less than or equal to two (2) or greater than or equal to twelve and five-tenths (12.5), as determined

by a pH meter using Method 9040 in [either an EPA test method or an equivalent test method approved by the cabinet and the administrator under the procedures set forth in Section 2 of 401 KAR 30:020. The EPA test method for pH is specified as Method 5.2 in] "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods" (incorporated in 40 CFR 260.11, which is adopted in [see] Section 3 of 401 KAR 30:010).

(b) It is a liquid and corrodes steel (SAE 1020) at a rate greater than 6.35 mm (approximately 0.250 inch) per year at a test temperature of fifty-five (55) degrees Centigrade (approximately 130 degrees Fahrenheit) as determined by the test method specified in NACE (National Association of Corrosion Engineers) Standard TM-01-69 as standardized in "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods" (incorporated in 40 CFR 260.11, which is adopted in [see] Section 3 of 401 KAR 30:010) ~~[or an equivalent test method approved by the cabinet and the administrator under the procedures set forth in Section 2 of 401 KAR 30:020].~~

(2) A waste that exhibits the characteristic of corrosivity has the EPA Hazardous Waste Number of D002.

Section 4. Characteristic of Reactivity. (1) A waste exhibits the characteristic of reactivity if a representative sample of the waste has any of the following properties:

(a) It is normally unstable and readily undergoes violent change without detonating.

(b) It reacts violently with water.

(c) It forms potentially explosive mixtures with water.

(d) When mixed with water, it generates toxic gases, vapors or fumes in a quantity sufficient to present a danger to human health or the environment.

(e) It is a cyanide or sulfide bearing waste which, when exposed to pH conditions between two (2) or twelve and five-tenths (12.5), can generate toxic gases, vapors or fumes in a quantity sufficient to present a danger to human health or the environment.

(f) It is capable of detonation or explosive reaction if it is subjected to a strong initiating source or if heated under confinement.

(g) It is readily capable of detonation or explosive decomposition or reaction at standard temperature and pressure.

(h) It is a forbidden explosive as defined in 49 CFR Subpart C [473.51 (1990)], or a Class A explosive as defined in 49 CFR Subpart C [473.53 (1990)], or a Class B explosive as defined in 49 CFR Subpart C [473.58 (1990)].

(2) A waste that exhibits the characteristic of reactivity has the EPA Hazardous Waste Number of D003.

Section 5. Toxicity Characteristic. (1) A waste exhibits the characteristic of toxicity if, using the Toxicity Characteristic Leaching Procedure, test Method 1311 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, incorporated in 40 CFR 260.11, which is adopted in Section 3 of 401 KAR 30:010 [test methods described in 401 KAR 31:110 or equivalent methods approved by the Cabinet and the administrator under the procedures set forth in Section 2 of 401 KAR 30:020 and 31:060], the extract from a representative sample of the waste contains any of the contaminants listed in Table 1 (see subsection (3) of this section) at a concentration equal to or greater than the respective value given in that table. Where the waste contains less than five-tenths (0.5) percent filterable solids, the waste itself, after filtering using methodology outlined in Method 1311 [401 KAR 31:110], is considered to be the extract for the purposes of this section.

(2) A waste that exhibits the characteristic of toxicity has the EPA Hazardous Waste Number specified in Table 1 which corresponds to the toxic contaminant causing it to be hazardous.

(3) Table 1. Maximum Concentration of Contaminants for the Toxicity Characteristic

ADMINISTRATIVE REGISTER - 510

EPA Hazardous Waste Number	Contaminant	Chemical Abstract Service Number	Regulatory Level (mg/L)
D004	Arsenic	7440-38-2	5.0
D005	Barium	7440-39-3	100.0
D018	Benzene	71-43-2	0.5
D006	Cadmium	7440-43-9	1.0
D019	Carbon tetra- chloride	56-23-5	0.5
D020	Chlordane	57-74-9	0.03
D021	Chlorobenzene	108-90-7	100.0
D022	Chloroform	67-66-3	6.0
D007	Chromium	7440-47-3	5.0
D023	o-Cresol	95-48-7	200.0 ²
D024	m-Cresol	108-39-4	200.0 ²
D025	p-Cresol	106-44-5	200.0 ²
D026	Cresol	-----	200.0 ²
D016	2,4-D	94-75-7	10.0
D027	1,4-Dichloro- benzene	106-46-7	7.5
D028	1,2-Dichloro- ethane	107-06-2	0.5
D029	1,1-Dichloro- ethylene	75-35-4	0.7
D030	2,4-Dinitro- toluene	121-14-2	0.13 ¹
D012	Endrin	72-20-8	0.02
D031	Heptachlor (and its epoxide)	76-44-8	0.008
D032	Hexachloro- benzene	118-74-1	0.13 ¹
D033	Hexachloro- butadiene	87-68-3	0.5
D034	Hexachloro- ethane	67-72-1	3.0
D008	Lead	7439-92-1	5.0
D013	Lindane	58-89-9	0.4
D009	Mercury	7439-97-6	0.2
D014	Methoxychlor	72-43-5	10.0
D035	Methyl ethyl ketone	78-93-3	200.0
D036	Nitrobenzene	98-95-3	2.0
D037	Pentachloro- phenol	87-86-5	100.0
D038	Pyridiene	110-86-1	5.0 ¹
D010	Selenium	7782-49-2	1.0
D011	Silver	7440-22-4	5.0
D039	Tetrachloro- ethylene	127-18-4	0.7
D015	Toxaphene	8001-35-2	0.5
D040	Trichloro- ethylene	79-01-6	0.5
D041	2,4,5-tri- chlorophenol	95-95-4	400.0
D042	2,4,6-tri- chlorophenol	88-06-2	2.0
D017	2,4,5-TP (Silvex)	93-72-1	1.0
D043	Vinyl chlor- ide	75-01-4	0.2

1 - Quantitation limit is greater than the calculated regulatory level. The quantitation limit therefore becomes the regulatory level.

2 - If o-, m- and p-Cresol concentrations cannot be differentiated, the total cresol (D026) concentration is used. The regulatory level of total cresol is 200 mg/l.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: July 11, 1996

FILED WITH LRC: July 12, 1996 at 9 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Thursday, August 29, 1996, at 7 p.m. Eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing, at the address noted below, by August 24, 1996. If by that date Mr. Hale has not received any notification of intent to attend the hearing, the hearing will be canceled. This hearing is open to the public. Any person wishing to comment on the proposed administrative regulation will be given an opportunity to do so. Persons testifying at the hearing are requested to provide a written copy of their testimony, if available. A transcript of the hearing will not be made unless a request for such is filed with Mr. Hale by August 24, 1996 and arrangements for payment of the transcript are made by that date. Written comments may also be submitted on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than the date of the close of the public hearing on August 29, 1996. Persons submitting written comments are also requested to provide an electronic copy of their comments, if available. The preferred format for the electronic format is any version of Word Perfect on 3.5 inch diskettes; however, any other format would be greatly appreciated, should Word Perfect or 3.5 inch diskettes not be available. The Natural Resources and Environmental Cabinet does not discriminate on the basis of color, national origin, sex, religion, age, or disability in employment or the provision of services. Upon request, the Cabinet will provide reasonable accommodation, including auxiliary aids and services, necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as a interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by August 24, 1996.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221.

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: This proposed amendment will affect any regulated entity who uses or must comply with SW-846, Thrid Edition. The only changes are in regard to the clarification of the material incorporated in SW-846 and the adoption of SW-846 in Section 3 of 401 KAR 30:010.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the 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. Effect on the 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. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No public comments were received.

2. Second and subsequent years: No public comments were received.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First year: No additional costs or savings will occur due to this amendment.

2. Continuing costs or savings: There will be no continuing costs or savings.

3. Additional factors increasing or decreasing costs: There are no additional factors effecting costs.

b. Reporting and paperwork requirements: No additional paperwork will be required.

4. Assessment of anticipated effect on state and local revenues: There are no anticipated effects on state and local revenues.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: The only funding received will be partial grants from the EPA because these amendments will meet their standards.

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

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: Not applicable.

8. Assessment of expected benefits of the administrative regulation: Not applicable.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: Not applicable.

b. State whether a detrimental effect on the environment and public health would result if not implemented: Not applicable.

c. If detrimental effect would result, explain detrimental effect: Not applicable.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or government policy in conflict, overlapping, or duplicating this amendment.

a. Necessity of proposed regulation if in conflict: Not applicable.

b. If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

11. Any additional information or comments: No additional comments.

12. TIERING: Is tiering applied? (Explain why tiering was or was not used): Tiering was used since this will only affect a regulated entity. Standards were tiered in being consistent with federal standards, and protecting public health and the environment.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the Cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution.

2. State compliance standards: The proposed amendments adopt changes in the clarification of material incorporated by reference. These changes are necessary to maintain consistency between the state and federal programs. Additions and exclusions have been made to clarify the understanding and use of these documents. In addition, the regulation has been modified to reflect the requirements of regulation construction specified in KRS Chapter 13A.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part, or division of local government this administrative regulation will affect. This administrative regulation will affect any state, county, or local office of government that must comply with regulation documents.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224 Subchapter 46 requires that the cabinet to establish a comprehensive program for the proper management of hazardous waste. The agencies that manage hazardous waste will be subject to these requirements.

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 impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): The only expenditures to a state, county, or local office of government will be those expenditures related to compliance with this administrative regulation. If this administrative regulation does not apply to a state, county, or local office of government, there will be no expenditures.

Other Explanation: None

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

401 KAR 31:040. Lists of hazardous wastes.

RELATES TO: KRS 224.01, 224.40, 224.43, 224.46, 224.99, 40 CFR 261 Subpart D

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-510(3), 224.46-530

NECESSITY AND FUNCTION: KRS 224.46-510(3) requires the cabinet to identify the characteristics of and to list hazardous wastes. This chapter identifies and lists hazardous waste. This administrative regulation establishes the lists of hazardous wastes.

Section 1. General Applicability and Delisting Procedures. (1) A waste is a hazardous waste if it is listed in any section of this administrative regulation unless it has been excluded from that list under 401 KAR 31:060 and 31:070.

(2) The cabinet shall indicate the basis for listing the classes or types of wastes listed in this administrative regulation by employing one (1) or more of the following Hazard Codes:

Hazard Code	Class or Type of Waste
(I)	Ignitable waste
(C)	Corrosive waste
(R)	Reactive waste
(E)	Toxicity characteristic waste
(H)	Acute hazardous waste
(T)	Toxic waste

401 KAR 31:160 identifies the constituent which caused the

cabinet to list the waste as a toxicity characteristic waste (E) or toxic waste (T) in Sections 2 and 3 of this administrative regulation.

(3) Each hazardous waste listed in this administrative regulation is assigned an EPA Hazardous Waste Number, which precedes the name of the waste. This number shall be used in complying with the notification requirements of KRS 224.46-510 and the recordkeeping and reporting requirements under 401 KAR Chapters 32 to 40.

(4) The following hazardous wastes listed in Section 2 or 3 of this administrative regulation are subject to the exclusion limits for acutely hazardous wastes established in Section 5 of 401 KAR 31:010: EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027.

Section 2. Hazardous Wastes from Nonspecific Sources. (1)
Hazardous wastes from nonspecific sources are:

Industry and EPA Hazardous Waste No.	Hazardous Waste	Hazard Code			
Generic:					
F001	The following spent halogenated solvents used in degreasing: tetrachloroethylene, trichloroethylene, methylene chloride, 1,1,1-trichloroethane, carbon tetrachloride, and chlorinated fluorocarbons; all spent solvent mixtures/blends used in degreasing containing, before use, a total of ten (10) percent or more (by volume) of one (1) or more of the above halogenated solvents or those solvents listed in F002, F004, and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures.	(T)	F005	before use, one (1) or more of the above nonhalogenated solvents, and, a total of ten (10) percent or more (by volume) of one (1) or more of those solvents listed in F001, F002, F004, and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures. The following spent nonhalogenated solvents: cresols and cresylic acid, and nitrobenzene; all spent solvent mixtures/blends containing, before use, a total of ten (10) percent or more (by volume) of one (1) or more of the above nonhalogenated solvents or those solvents listed in F001, F002, and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures.	(T)
F002	The following spent halogenated solvents: tetrachloroethylene, methylene chloride, trichloroethylene, 1,1,1-trichloroethane chlorobenzene, 1,1,2-trichloro-1,2,2-trifluoroethane, orthodichlorobenzene, trichlorofluoromethane, and 1,1,2-trichloroethane; all spent solvent mixtures/blends containing, before use, a total of ten (10) percent or more (by volume) of one (1) or more of the above halogenated solvents or those solvents listed in F001, F004, or F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures.	(T)	F006	The following spent nonhalogenated solvents: toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, benzene, 2-ethoxyethanol, and 2-nitropropane; all spent solvent mixtures/blends containing, before use, a total of ten (10) percent or more (by volume) of one (1) or more of the above nonhalogenated solvents, or those solvents listed in F001, F002, or F004; and still bottoms from the recovery of these spent solvents and spent solvent mixtures. Wastewater treatment sludges from electroplating operations except from the following processes: (1) sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum.	(I,T)
			F007	Spent cyanide plating bath solutions from electroplating operations.	(R,T)
			F008	Plating bath residues from the bottom of plating baths from electroplating operations where cyanides are used in the process.	(R,T)
F003	The following spent nonhalogenated solvents: xylene, acetone, ethyl acetate, ethyl benzene, ethyl ether, methyl isobutyl ketone, n-butyl alcohol, cyclohexanone, and methanol; all spent solvent mixtures/blends containing, before use, only the above spent nonhalogenated solvents; and all spent solvent mixtures/blends containing,	(I)[-]	F009	Spent stripping and cleaning bath solutions from electroplating operations where cyanides are used in the process.	(R,T)
			F010	Quenching bath residues from oil baths from metal heat treating operations where cyanides are used in the process.	(R,T)
			F011	Spent cyanide solutions from salt	(R,T)

ADMINISTRATIVE REGISTER - 513

	bath pot cleaning from metal heat treating operations.				ing from one (1) to and including five (5), with varying amounts and positions of chlorine substitution. (This listing does not include wastewaters, wastewater treatment sludges, spent catalysts, and wastes listed in Sections 2 and 3 of this administrative regulation.)	
F012	Quenching wastewater treatment sludges from metal heat treating operations where cyanides are used in the process.	(T)				
F019	Wastewater treatment sludges from the chemical conversion coating of aluminum except from zirconium phosphating in aluminum can washing when such phosphating is an exclusive conversion coating process.	(T)		F025	Condensed light ends, spent filters and filter aids, and spent desiccant wastes from the production of certain chlorinated aliphatic hydrocarbons, by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one (1) to and including five (5), with varying amounts and positions of chlorine substitution.	(T)
F020	Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tri- or tetrachlorophenol, or of intermediates used to produce their pesticide derivatives. (This listing does not include wastes from the production of Hexachlorophene from highly purified 2,4,5-trichlorophenol.)	(H)				
F021	Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of pentachlorophenol or of intermediates used to produce its derivatives.	(H)		F026	Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production of materials on equipment previously used for the manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tetra-, penta-, or hexachlorobenzene under alkaline conditions.	(H)
F022	Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tetra-, penta-, or hexachlorobenzenes under alkaline conditions.	(H)		F027	Discarded unused formulations containing tri-, tetra-, or pentachlorophenol or discarded unused formulations containing compounds derived from these chlorophenols. (This listing does not include formulations containing Hexachlorophene synthesized from prepurified 2,4,5-trichlorophenol as the sole component.)	(H)
F023	Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production of materials on equipment previously used for the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tri- or tetrachlorophenols. (This listing does not include wastes from equipment used only for the production or use of Hexachlorophene from highly purified 2,4,5-trichlorophenol.)	(H)		F028	Residues resulting from the incineration or thermal treatment of soil contaminated with EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027.	(T)
				F032	Wastewaters (except those that have not come into contact with process contaminants), process residuals, preservative trippage, and spent formulations from wood preserving processes generated at plants that currently use or have previously used chlorophenolic formulations (except potentially cross-contaminated wastes that have had the F032 waste code deleted in accordance with Section 6 of this administrative regulation or potentially cross-contaminated wastes that are otherwise currently regulated as hazardous wastes (For example, F034 or F035), and where the generator does not resume or initiate use of chlorophenolic formulations). This listing does not include K001 bottom sediment sludge from	(T)
F024	Process wastes, including but not limited to, distillation residues, heavy ends, tars, and reactor clean-out wastes, from the production of certain chlorinated aliphatic hydrocarbons by free radical catalyzed processes. These chlorinated <u>aliphatic</u> hydrocarbons are those having carbon chain lengths rang-	(T)				

F034	<p>the treatment of wastewater from wood preserving processes that use creosote or pentachlorophenol.</p> <p>Wastewaters (except those that have not come into contact with process contaminants), process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that use creosote formulations. This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote or pentachlorophenol.</p>	(T)	<p>Sludges generated in stormwater units that do not receive dry weather flow, sludges generated from noncontact once-through cooling waters segregated for treatment from other process or oily cooling waters, sludges and floats generated in aggressive biological treatment units as defined in subsection (2) of this section (including sludges and floats generated in one (1) or more additional units after wastewaters have been treated in aggressive biological treatment units) and F037, K048, and K051 wastes are not included in this listing.</p>
F035	<p>Wastewaters (except those that have not come into contact with process contaminants), process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that use inorganic preservatives containing arsenic or chromium. This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote or pentachlorophenol.</p>	(T)	<p>F039 Leachate (liquids that have percolated through land disposal wastes) resulting from the disposal of more than one (1) restricted waste classified as hazardous under this administrative regulation. (Leachate resulting from the disposal of one (1) or more of the following EPA Hazardous Wastes and no other hazardous wastes retains its EPA Hazardous Waste Number: F020, F021, F022, F026, F027, and F028.).</p>
F037	<p>Petroleum refinery primary oil/water/solids separation sludge - Any sludge generated from the gravitational separation of oil/water/solids during the storage or treatment of process wastewaters and oily cooling wastewaters from petroleum refineries. Such sludges include, but are not limited to, those generated in: oil/water/solids separators; tanks and impoundments; ditches and other conveyances; sumps; and stormwater units receiving dry weather flow. Sludge generated in stormwater units that do not receive dry weather flow, sludges generated from noncontact once-through cooling waters segregated for treatment from other process or oily cooling waters, sludges generated in aggressive biological treatment units as defined in subsection (2)(b) of this section (including sludges generated in one (1) or more additional units after wastewaters have been treated in aggressive biological treatment units) and K051 wastes are not included in this listing.</p>	(T)	<p>[(1)(T) shall be used to specify mixtures containing ignitable and toxic constituents.]</p>
F038	<p>Petroleum refinery secondary (emulsified) oil/water/solids separation sludge - Any sludge and float generated from the physical and chemical separation of oil/water/solids in process wastewaters and oily cooling wastewaters from petroleum refineries. Such wastes include, but are not limited to, all sludges and floats generated in: induced air flotation (IAF) units, tanks and impoundments, and all sludges generated in <u>dissolved air filtration (DAF)</u> units.</p>	(T)	<p>(2) Listing specific definitions.</p> <p>(a) For the purposes of the F037 and F038 listings, oil/water/solids is defined as oil and water and solids.</p> <p>(b)1. For the purposes of the F037 and F038 listings, aggressive biological treatment units are defined as units which employ one (1) of the following four treatment methods: activated sludge; trickling filter; rotating biological contactor for the continuous accelerated biological oxidation of wastewaters; or high-rate aeration. High-rate aeration is a system of surface impoundments or tanks, in which intense mechanical aeration is used to completely mix the wastes, enhance biological activity; and</p> <p>a. The unit employs a minimum of six (6) <u>horse power</u> [hp] per million gallons of treatment volume, and either:</p> <p>b. The hydraulic retention time of the unit is no longer than five (5) days; or</p> <p>c. The hydraulic retention time is no longer than thirty (30) days and the unit does not generate a sludge that is a hazardous waste by the toxicity characteristic.</p> <p>2. Generators and treatment, storage and disposal facilities have the burden of proving that their sludges are exempt from listing as F037 and F038 wastes under this definition. Generators and treatment, storage and disposal facilities shall maintain, in their operating or other on-site records, documents and data sufficient to prove that:</p> <p>a. The unit is an aggressive biological treatment unit as defined in this subsection; and</p> <p>b. The sludges sought to be exempted from the definitions of F037 or F038 were actually generated in the aggressive biological treatment unit.</p> <p>(c)1. For the purposes of the F037 listing, sludges are considered to be generated at the moment of deposition in the unit, where deposition is defined as at least a temporary cessation of lateral particle movement.</p> <p>2. For the purposes of the F038 listing:</p> <p>a. Sludges are considered to be generated at the moment of deposition in the unit, where deposition is defined as at least a temporary cessation of lateral particle movement; and</p> <p>b. Floats are considered to be generated at the moment they are</p>

ADMINISTRATIVE REGISTER - 515

formed in the top of the unit.

Section 3. Hazardous Wastes from Specific Sources. Hazardous wastes from specific sources are:

formed in the top of the unit.						of ethylene dichloride in ethylene dichloride production.	
Section 3. Hazardous Wastes from Specific Sources. Hazardous wastes from specific sources are:				K020		Heavy ends from the distillation of vinyl chloride in vinyl chloride monomer production.	(T)
Industry and EPA				K021		Aqueous spent antimony catalyst waste from fluoromethanes production.	(T)
Hazardous Waste No.	Hazardous Waste	Hazard Code		K022		Distillation bottom tars from the production of phenol/acetone from cumene.	(T)
Wood Preservation:				K023		Distillation light ends from the production of phthalic anhydride from naphthalene.	(T)
K001	Bottom sediment sludge from the treatment of wastewaters from wood preserving processes that use creosote or pentachlorophenol.	(T)		K024		Distillation bottoms from the production of phthalic anhydride from naphthalene.	(T)
Inorganic Pigments:				K025		Distillation bottoms from the production of nitrobenzene by the nitration of benzene.	(T)
K002	Wastewater treatment sludge from the production of chrome yellow and orange pigments.	(T)		K026		Stripping still tails from the production of methyl ethyl pyridines.	(T)
K003	Wastewater treatment sludge from the production of molybdate orange pigments.	(T)		K027		Centrifuge and distillation residues from toluene diisocyanate production.	(R, T)
K004	Wastewater treatment sludge from the production of zinc yellow pigments.	(T)		K028		Spent catalyst from the hydrochlorinator reactor in the production of 1,1,1-trichloroethane.	(T)
K005	Wastewater treatment sludge from the production of chrome green pigments.	(T)		K029		Waste from the product steam stripper in the production of 1,1,1-trichloroethane.	(T)
K006	Wastewater treatment sludge from the production of chrome oxide green pigments (anhydrous and hydrated).	(T)		K030		Column bottoms or heavy ends from the combined production of trichloroethylene and perchloroethylene.	(T)
K007	Wastewater treatment sludge from the production of iron blue pigments.	(T)		K083		Distillation bottoms from aniline production.	(T)
K008	Oven residue from the production of chrome oxide green pigments.	(T)		K085		Distillation or fractionation column bottoms from the production of chlorobenzenes.	(T)
Organic Chemicals:				K093		Distillation light ends from the production of phthalic anhydride from orthoxylene.	(T)
K009	Distillation bottoms from the production of acetaldehyde from ethylene.	(T)		K094		Distillation bottoms from the production of phthalic anhydride from ortho-xylene.	(T)
K010	Distillation side cuts from the production of acetaldehyde from ethylene.	(T)		K095		Distillation bottoms from the production of 1,1,1-trichloroethane.	(T)
K011	Bottom stream from the wastewater stripper in the production of acrylonitrile.	(R,T)		K096		Heavy ends from the heavy ends column from the production of 1,1,1-trichloroethane.	(T)
K013	Bottom stream from the acetonitrile column in the production of acrylonitrile.	(R,T)		K103		Process residues from aniline extraction from the production of aniline.	(T)
K014	Bottoms from the acetonitrile purification column in the production of acrylonitrile.	(T)		K104		Combined wastewater streams generated from nitrobenzene/aniline production.	(T)
K015	Still bottoms from the distillation of benzyl chloride.	(T)		K105		Separated aqueous stream from the reactor product washing step in the production of chlorobenzenes.	(T)
K016	Heavy ends or distillation residues from the production of carbon tetrachloride.	(T)		K107		Column bottoms from product separation from the production of 1,1-dimethyl-hydrazine (UDMH) from carboxylic acid hydrazines.	(C, T)
K017	Heavy ends (still bottoms) from the purification column in the production of epichlorohydrin.	(T)		K108		Condensed column overheads from product separation and condensed reactor vent gases from the production of 1,1-dimethylhydrazine	(I, T)
K018	Heavy ends from the fractionation column in ethyl chloride production.	(T)					
K019	Heavy ends from the distillation	(T)					

ADMINISTRATIVE REGISTER - 516

	(UDMH) from carboxylic acid hydrazides.				<u>treatment of thiocarbamate wastes.</u>	
K109	Spent filter cartridges from product purification from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides.	(T)	K161		<u>Purification solids (including filtration, evaporation, and centrifugation solids), bag house dust and floor sweepings from the production of dithiocarbamate acids and their salts.</u>	(R,T)
K110	Condensed column overheads from intermediate separation from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides.	(T)	Inorganic Chemicals:			
			K071		Brine purification muds from the mercury cell process in chlorine production, where separately prepurified brine is not used.	(T)
K111	Product wash waters from the production of dinitrotoluene via nitration of toluene.	(C,T)	K073		Chlorinated hydrocarbon waste from the purification step of the diaphragm cell process using graphite anodes in chlorine production.	(T)
K112	Reaction by-product water from the drying column in the production of toluenediamine via hydrogenation of dinitrotoluene.	(T)	K106		Wastewater treatment sludge from the mercury cell process in chlorine production.	(T)
K113	Condensed liquid light ends from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene.	(T)	Pesticides:			
			K031		By-product salts generated in the production of MSMA and cacodylic acid.	(T)
K114	Vicinals from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene.	(T)	K032		Wastewater treatment sludge from the production of chlordane.	(T)
K115	Heavy ends from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene.	(T)	K033		Wastewater and scrub water from the chlorination of cyclopentadiene in the production of chlordane.	(T)
K116	Organic condensate from the solvent recovery column in the production of toluene diisocyanate via phosgenation of toluenediamine.	(T)	K034		Filter solids from the filtration of hexachlorocyclopentadiene in the production of chlordane.	(T)
			K035		Wastewater treatment sludges generated in the production of creosote.	(T)
K117	Wastewater from the reactor vent gas scrubber in the production of ethylene dibromide via bromination of ethene.	(T)	K036		Still bottoms from toluene reclamation distillation in the production of disulfoton.	(T)
K118	Spent adsorbent solids from purification of ethylene dibromide in the production of ethylene dibromide via bromination of ethene.	(T)	K037		Wastewater treatment sludges from the production of disulfoton.	(T)
			K038		Wastewater from the washing and stripping of phorate production.	(T)
K136	Still bottoms from the purification of ethylene dibromide in the production of ethylene dibromide via bromination of ethene.	(T)	K039		Filter cake from the filtration of diethylphosphorodithioic acid in the production of phorate.	(T)
K156	<u>Organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes.</u>	(T)	K040		Wastewater treatment sludge from the production of phorate.	(T)
			K041		Wastewater treatment sludge from the production of toxaphene.	(T)
K157	<u>Wastewaters (including scrubber waters, condenser waters, washwater, and separation waters) from the production of carbamates and carbamoyl oximes.</u>	(T)	K042		Heavy ends or distillation residues from the distillation of tetrachlorobenzene in the production of 2,4,5-T.	(T)
			K043		2,6-Dichlorophenol waste from production of 2,4-Dichlorophenol.	(T)
K158	<u>Bag house dusts and filter/separation solids from the production of carbamates and carbamoyl oximes.</u>	(T)	K097		Vacuum stripper discharge from the chlordane chlorinator in the production of chlordane.	(T)
K159	<u>Organics from the treatment of thiocarbamate wastes</u>	(T)	K098		Untreated process wastewater from the production of toxaphene.	(T)
K160	<u>Solids (including filter wastes, separation solids, and spent catalysts) from the production of thiocarbamates and solids from the</u>	(T)	K099		Untreated wastewater from the production of 2,4-D.	(T)
			K123		Process wastewater (including supernates, filtrates, and washwaters) from the production of ethylenebisdithiocarbamic acid and its salts.	(T)

ADMINISTRATIVE REGISTER - 517

K124	Reactor vent scrubber water from the production of ethylenedisithiocarbamic acid and its salts.	(C,T)		lead smelting facilities.	
K125	Filtration, evaporation, and centrifugation solids from the production of ethylenedisithiocarbamic acid and its salts.	(T)	Primary Zinc: K066	Sludge from treatment of process wastewater and acid plant blowdown from primary zinc production.	(T)
K126	Baghouse dust and floor sweepings in milling and packaging operations from the production or formulation of ethylenedisithiocarbamic acid and its salts.	(T)	Primary Aluminum: K088	Spent potliners from primary aluminum reduction.	(T)
K131	Wastewater from the reactor and spent sulfuric acid from the acid dryer from the production of methyl bromide.	(C,T)	Ferroalloys: K090	Emission control dust or sludge from ferrochromiumsilicon production.	(T)
K132	Spent absorbent and wastewater separator solids from the production of methyl bromide.	(T)	K091	Emission control dust or sludge from ferrochromium production.	(T)
The listing of wastes K064, K065, K066, K088, K090 and K091 as hazardous wastes shall become applicable to persons who generate or manage such wastes six (6) months after the effective date of this administrative regulation.					
Explosives: K044	Wastewater treatment sludges from the manufacturing and processing of explosives.	(R)	Secondary Lead: K069	Emission control dust/sludge from secondary lead smelting.	(T)
K045	Spent carbon from the treatment of wastewater containing explosives.	(R)	K100	Waste leaching solution from acid leaching of emission control dust/sludge from secondary lead smelting.	(T)
K046	Wastewater treatment sludges from the manufacturing, formulation and loading of lead-based initiating compounds.	(T)			
K047	Pink/red water from TNT operations.	(T)	Veterinary Pharmaceuticals: K084	Wastewater treatment sludges generated during the production of veterinary pharmaceuticals from arsenic or organoarsenic compounds.	(T)
Petroleum Refining: K048	Dissolved air flotation (DAF) float from the petroleum refining industry.	(T)	K101	Distillation tar residues from the distillation of aniline-based compounds in the production of veterinary pharmaceuticals from arsenic or organoarsenic compounds.	(T)
K049	Slop oil emulsion solids from the petroleum refining industry.	(T)			
K050	Heat exchanger bundle cleaning sludge from the petroleum refining industry.	(T)	K102	Residue from the use of activated carbon for decolorization in the production of veterinary pharmaceuticals from arsenic or organoarsenic compounds.	(T)
K051	API separator sludge from the petroleum refining industry.	(T)			
K052	Tank bottoms (leaded) from the petroleum refining industry.	(T)			
Iron and Steel: K061	Emission control dust/sludge from the primary production of steel in electric furnaces.	(T)	Ink Formulation: K086	Solvent washes and sludges, caustic washes and sludges, or water washes and sludges from cleaning tubs and equipment used in the formulation of ink from pigments, driers, soaps, and stabilizers containing chromium and lead.	(T)
K062	Spent pickle liquor generated by steel finishing operations of facilities within the iron and steel industry (SIC Codes 331 and 332).	(C,T)			
Primary Copper: K064	Acid plant blowdown slurry/sludge resulting from the thickening of blowdown slurry from primary copper production.	(T)	Coking: K060	Ammonia still lime sludge from coking operations.	(T)
			K087	Decanter tank tar sludge from coking operations.	(T)
Primary Lead: K065	Surface impoundment solids contained in and dredged from surface impoundments at primary	(T)	K141	<u>Process residues from the recovery of coal tar, including, but not limited to, collecting sump residues from the production of coke from coal or the</u>	<u>(T)</u>

	<u>recovery of coke byproducts produced from coal. The listing does not include K087 (decanter tank tar sludges from coking operations).</u>	
K142	<u>Tar storage tank residues from the production of coke from coal or from the recovery of coke byproducts produced from coal.</u>	(T)
K143	<u>Process residues from the recovery of light oil, including, but not limited to, those generated in stills, decanters, and wash oil recovery units from the recovery of coke byproducts produced from coal.</u>	(T)
K144	<u>Wastewater sump residues from light oil refining, including, but not limited to, intercepting or contamination sump sludges from the recovery of coke byproducts produced from coal.</u>	(T)
K145	<u>Residues from naphthalene collection and recovery operations from the recovery of coke byproducts produced from coal.</u>	(T)
K147	<u>Tar storage tank residues from coal tar refining.</u>	(T)
K148	<u>Residues from coal tar distillation, including but not limited to, still bottoms.</u>	(T)
K149	<u>Distillation bottoms from the production of alpha-(or methyl-) chlorinated toluenes, ring-chlorinated toluenes, benzoyl chlorides, and compounds with mixtures of these functional groups. (This waste does not include still bottoms from the distillation of benzyl chloride).</u>	(T)
K150	<u>Organic residuals, excluding spent carbon adsorbent, from the spent chlorine gas and hydrochloric acid recovery processes associated with the production of alpha- (or methyl-) chlorinated toluenes, ring-chlorinated toluenes, benzoyl chlorides, and compounds with mixture of these functional groups.</u>	(T)
K151	<u>Wastewater treatment sludges, excluding neutralization and biological sludges, generated during the treatment of wastewaters from the production of alpha- (or methyl-) chlorinated toluenes, ring-chlorinated toluenes, benzoyl chlorides, and compounds with mixture of these functional groups.</u>	(T)

Section 4. Discarded Commercial Chemical Products, Off-specification Species, Container Residues, and Spill Residues Thereof. The following materials or items are hazardous wastes if and when they are discarded or intended to be discarded as described in Section 2(1)(b)1 of 401 KAR 31:010; when they are mixed with waste oil or used oil or other material and applied to the land for dust suppression or road treatment; when they are otherwise applied to the land in lieu of their original intended use or when they are contained in products that are applied to the land in lieu of their original intended use; when in lieu of their original intended use; they are produced for use as (or as a component of) a fuel, distributed for use as a fuel, or burned as a fuel:

(1) Any commercial chemical product or manufacturing chemical intermediate having the generic name listed in subsection (5) or (6)

of this section.

(2) Any off-specification commercial chemical product or manufacturing chemical intermediate which, if it met specifications, would have the generic name listed in subsection (5) or (6) of this section.

(3) Any residue remaining in a container or in an inner liner removed from a container that has held any commercial chemical product or manufacturing chemical intermediate having the generic name listed in subsection (5) or (6) of this section, unless the container is empty as defined in Section 7(2) of 401 KAR 31:010.

(4) Any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill into or on any land or water of any commercial chemical product or manufacturing chemical intermediate having the generic name listed in subsection (5) or (6) of this section, or any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill into or on any land or water of any off-specification chemical intermediate which, if it met specification, would have the generic name listed in subsection (5) or (6) of this section.

(5) The commercial chemical products, manufacturing chemical intermediate or off-specification commercial chemical products referred to in subsections (1) to (4) of this section, are identified as acute hazardous wastes (H) and are subject to the conditionally exempt small [limited] quantity generator exclusion in Section 5 of 401 KAR 31:010.

(NOTE: The primary hazardous properties of these materials have been indicated by the letters T (Toxicity), and R (Reactivity). Absence of a letter indicates that the compound is only listed for acute toxicity.) These wastes and their corresponding EPA Hazardous Waste Numbers are:

Hazardous Waste No.	Substance	Chemical Abstracts No.
P023	Acetaldehyde, chloro-	107-20-0
P002	Acetamide, N-(aminothioxomethyl)-	591-08-2
P057	Acetamide, 2-fluoro-	640-19-7
P058	Acetic acid, fluoro-, sodium salt	62-74-8
P002	1-Acetyl-2-thiourea	591-08-2
P003	Acrolein	107-02-8
P070	Aldicarb	116-06-3
P203	Aldicarb sulfone	1646-88-4
P004	Aldrin	309-00-2
P005	Allyl alcohol	107-18-6
P006	Aluminum phosphide (R,T)	20859-73-8
P007	5-(Aminomethyl)-3-isoxazolol	2763-96-4
P008	4-Aminopyridine	504-24-5
P009	Ammonium picrate (R)	131-74-8
P119	Ammonium vanadate	7803-55-6
P099	Argentate (1-), bis(cyano-C)-, potassium	506-61-6
P010	Arsenic acid H ₃ AsO ₄	7778-39-4
P012	Arsenic oxide As ₂ O ₃	1327-53-3
P011	Arsenic oxide As ₂ O ₅	1303-28-2
P011	Arsenic pentoxide	1303-28-2
P012	Arsenic trioxide	1327-53-3
P038	Arsine, diethyl-	692-42-2
P036	Arsonous dichloride, phenyl-	696-28-6
P054	Aziridine	151-56-4
P067	Aziridine, 2-methyl-	75-55-8
P013	Barium cyanide	542-62-1
P024	Benzenamine, 4-chloro-	106-47-8
P077	Benzenamine, 4-nitro-	100-01-6
P028	Benzene, (chloromethyl)-	100-44-7
P042	1,2-Benzenediol, 4-(1-hydroxy-2-(methylamino)ethyl)-, (R)-	51-43-4
P046	Benzenethanamine, alpha, alpha-dimethyl-	122-09-8

ADMINISTRATIVE REGISTER - 519

P014	Benzenethiol	108-98-5		2alpha, 3beta, 6beta,	
P127	7-Benzofuranol, 2,3-dihydro-	1563-66-2		6alpha, 7beta, 7alpha)-	
	2,2-dimethyl-, methylcarbamate		P051	2,7:3,6-Dimethanonaphth(2,3-	*72-20-8
P188	Benzoic acid, 2-hydroxy-, compd. with (3aS-cis)-1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethylpyrrolo[2,3-b]indol-5-yl methylcarbamate ester (1:1)	57-64-7		b),oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-,(1alpha, 2beta, 2abeta,3alpha, 6alpha, 6abeta,7beta, 7alpha)-, and metabolites	
P028	Benzyl chloride	100-44-7			
P015	Beryllium powder	7440-41-7	P044	Dimethoate	60-51-5
P017	Bromoacetone	598-31-2	P046	alpha, alpha-Dimethylphenethylamine	122-09-8
P018	Brucine	357-57-3			
P045	2-Butanone, 3,3-dimethyl-1-(methylthio)-, O-(methylamino) carbonyl) oxime	39196-18-4	P191	Dimetilan	644-64-4
			P047	4,6-Dinitro-o-cresol, and salts	*534-52-1
P021	Calcium cyanide	592-01-8	P048	2,4-Dinitrophenol	51-28-5
P021	Calcium cyanide Ca(CN) ₂	592-01-8	P020	Dinoseb	88-85-7
P022	Carbon disulfide	75-15-0	P085	Diphosphoramidate, octamethyl-	152-16-9
P095	Carbonic dichloride	75-44-5	P111	Diphosphoric acid, tetraethyl ester	107-49-3
P189	Carbamic acid, [(dibutylamino)-thio]methyl-, 2,3-dihydro-2,2-dimethyl- 7-benzofuranyl ester	55285-14-8	P039	Disulfoton	298-04-4
			P049	Dithiobiuret	541-53-7
P191	Carbamic acid, dimethyl-, 1-[(dimethyl-amino)carbonyl]-5-methyl-1H- pyrazol-3-yl ester	644-64-4	P185	1,3-Dithiolane-2-carboxaldehyde, 2,4-dimethyl-, O-[(methylamino)-carbonyl]oxime	26419-73-8
P192	Carbamic acid, dimethyl-, 3-methyl-1- (1-methylethyl)-1H-pyrazol-5-yl ester	119-38-0			
P190	Carbamic acid, methyl-, 3-methylphenyl ester	1129-41-5	P050	Endosulfan	115-29-7
P127	Carbofuran	1563-66-2	P088	Endothal	145-73-3
P189	Carbosulfan	55285-14-8	P051	Endrin	72-20-8
P023	Chloroacetaldehyde	107-20-0	P051	Endrin, and metabolites	72-20-8
P024	p-Chloroaniline	106-47-8	P042	Epinephrine	51-43-4
P026	1-(o-Chlorophenyl)thiourea	5344-82-1	P031	Ethanedinitrile	460-19-5
P027	3-Chloropropionitrile	542-76-7	P194	Ethanimidothioic acid, 2-dimethyl-amino)-N-[(methylamino) carbonyl]oxy]-2-oxo, methyl ester	23135-22-0
P029	Copper cyanide	544-92-3			
P029	Copper cyanide Cu(CN)	544-92-3	P066	Ethanimidothioic acid, N-(((methylamino)carbonyl)oxy)-,methyl ester	16752-77-5
P202	m-Cumenyl methylcarbamate	64-00-6			
P030	Cyanides (soluble cyanide salts), not otherwise specified	-----	P101	Ethyl cyanide	107-12-0
P031	Cyanogen	460-19-5	P054	Ethyleneimine	151-56-4
P033	Cyanogen chloride	506-77-4	P097	Famphur	52-85-7
P033	Cyanogen chloride (CN)Cl	506-77-4	P056	Fluorine	7782-41-4
P034	2-Cyclohexyl-4,6-dinitrophenol	131-89-5	P057	Fluoroacetamide	640-19-7
P016	Dichloromethyl ether	542-88-1	P058	Fluoroacetic acid, sodium salt	62-74-8
P036	Dichlorophenylarsine	696-28-6	P198	Formetanate hydrochloride	23422-53-9
P037	Dieldrin	60-57-1	P197	Formparanate	17702-57-7
P038	Diethylarsine	692-42-2	P065	Fulminic acid, mercury (2+) salt (R,T)	628-86-4
P041	Diethyl-p-nitrophenyl phosphate	311-45-5			
P040	O,O-Diethyl O-pyrazinyl phosphorothioate	297-97-2	P059	Heptachlor	76-44-8
P043	Diisopropylfluorophosphate (DFP)	55-91-4	P062	Hexaethyl tetraphosphate	757-58-4
P004	1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a-, hexahydro-, (1alpha, 4alpha, 4abeta, 5alpha, 8alpha, 8abeta)-	309-00-2	P116	Hydrazinecarbothioamide	79-19-6
			P068	Hydrazine, methyl-	60-34-4
P060	1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a-, hexahydro-, (1alpha, 4alpha, 4abeta, 5beta, 8beta, 8abeta)-	465-73-6	P063	Hydrocyanic acid	74-90-8
			P063	Hydrogen cyanide	74-90-8
P037	2,7:3,6-Dimethanonaphth(2,3-b)oxirene,3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-,(1alpha, 2beta,	60-57-1	P096	Hydrogen phosphide	7803-51-2
			P060	Isodrin	465-73-6
			P192	Isolan	119-38-0
			P202	3-Isopropylphenyl N-methylcarbamate	64-00-6
			P007	3(2H)-Isoxazolone,5-(aminomethyl)-	2763-96-4
			P196	Manganese, bis(dimethylcarbamodithioato-S,S')-,	15339-36-3
			P196	Manganese dimethyldithiocarbamate	15339-36-3
			P092	Mercury, (acetato-O) phenyl-	62-38-4
			P065	Mercury fulminate (R,T)	628-86-4
			P082	Methanamine,N-methyl-N-nitroso-	62-75-9
			P064	Methane, isocyanato-	624-83-9
			P016	Methane, oxybis (chloro-	542-88-1
			P112	Methane, tetranitro-(R)	509-14-8

ADMINISTRATIVE REGISTER - 520

P118	Methanethiol, trichloro-	75-70-7	P039	Phosphorodithioic acid, 0,0-diethyl S-(2-(ethylthio)ethyl) ester	298-04-4
P198	<u>Methanimidamide, N,N-dimethyl-N'-[3-(((methylamino)carbonyl)oxy)phenyl]-, monohydrochloride</u>	<u>23422-53-9</u>	P094	Phosphorodithioic acid, 0,0-diethyl S-((ethylthio)methyl) ester	298-02-2
P197	<u>Methanimidamide, N,N-dimethyl-N'[2-methyl-4-(((methylamino)carbonyl)oxy)phenyl]-</u>	<u>17702-57-7</u>	P044	Phosphorodithioic acid, O, O-dimethyl S-(2-(methylamino)-2-oxoethyl) ester	60-51-5
P050	6,9-Methano-2,4,3-benzodioxathiepen, 6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-,3-oxide	115-29-7	P043	Phosphorofluoridic acid, bis (1-methylethyl) ester	55-91-4
P059	4,7-Methano-1H-indene,1,4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro-	76-44-8	P089	Phosphorothioic acid, O, O-diethyl O-(4-nitrophenyl) ester	56-38-2
P199	<u>Methiocarb</u>	<u>2032-65-7</u>	P040	Phosphorothioic acid, O, O-diethyl O-pyrazinyl ester	297-97-2
P066	Methomyl	16752-77-5	P097	Phosphorothioic acid, O-(4-((dimethylamino) sulfonyl) phenyl) 0,0-dimethyl ester	52-85-7
P068	Methyl hydrazine	60-34-4	P071	Phosphorothioic acid, 0,0-dimethyl 0-(4-nitrophenyl) ester	298-00-0
P064	Methyl isocyanate	624-83-9	P204	<u>Physostigmine</u>	<u>57-47-6</u>
P069	2-Methylacetonitrile	75-86-5	P188	<u>Physostigmine salicylate</u>	<u>57-64-7</u>
P071	Methyl parathion	298-00-0	P110	Plumbane, tetraethyl-	78-00-2
P190	<u>Metolcarb</u>	<u>1129-41-5</u>	P098	Potassium cyanide	151-50-8
P128	<u>Mexacarbate</u>	<u>2032-65-7</u>	P098	Potassium cyanide K(CN)	151-50-8
P072	alpha-Naphthylthiourea	86-88-4	P099	Potassium silver cyanide	506-61-6
P073	Nickel carbonyl	13463-39-3	P201	<u>Promecarb</u>	<u>2631-37-0</u>
P073	Nickel carbonyl Ni(CO) ₄ , (T-4)-	13463-39-3	P203	<u>Propanal, 2-methyl-2(methylsulfonyl)-,O-((methylamino)carbonyl) oxime</u>	<u>1646-88-4</u>
P074	Nickel cyanide	557-19-7			
P074	Nickel cyanide Ni(CN) ₂	557-19-7	P070	Propanal, 2-methyl-2(methylthio)-,O-((methylamino)carbonyl)oxime	116-06-3
P075	Nicotine, and salts	*54-11-5	P101	Propanenitrile	107-12-0
P076	Nitric oxide	10102-43-9	P027	Propanenitrile, 3-chloro-	542-76-7
P077	p-Nitroaniline	100-01-6	P069	Propanenitrile, 2-hydroxy-2-methyl-	75-86-5
P078	Nitrogen dioxide	10102-44-0	P081	1,2,3-Propanetriol, trinitrate (R)	55-63-0
P076	Nitrogen oxide NO	10102-43-9	P017	2-Propanone, 1-bromo-	598-31-2
P078	Nitrogen oxide NO ₂	10102-44-0	P102	Propargyl alcohol	107-19-7
P081	Nitroglycerine (R)	55-63-0	P003	2-Propenal	107-02-8
P082	N-Nitrosodimethylamine	62-75-9	P005	2-Propen-1-ol	107-18-6
P084	N-Nitrosomethylvinylamine	4549-40-0	P067	1,2-Propylenimine	75-55-8
P085	Octamethylpyrophosphoramidate	152-16-9	P102	2-Propyn-1-ol	107-19-7
P087	Osmium oxide OsO ₄ , (T-4)-	20816-12-0	P008	4-Pyridinamine	504-24-5
P087	Osmium tetroxide	20816-12-0	P075	Pyridine,3-(1-methyl-2-pyrrolidinyl)-,(S)-, and salts	*54-11-5
P088	7-Oxabicyclo (2.2.1)heptane-2,3-dicarboxylic acid	145-73-3	P204	<u>Pyrrolo[2,3-b]indol-5-ol, 1,2,3,3a,8,8a-hexahydro- 1,3a,8-trimethyl-, methylcarbamate (ester), (3aS-cis)-</u>	<u>57-47-6</u>
P194	<u>Oxamyl</u>	<u>23135-22-0</u>			
P089	Parathion	56-38-2	P114	Selenious acid, dithallium(1+)salt	12039-52-0
P034	Phenol, 2-cyclohexyl-4, 6-dinitro-	131-89-5	P103	Selenourea	630-10-4
P048	Phenol, 2, 4-dinitro	51-28-5	P104	Silver cyanide	506-64-9
P047	Phenol, 2-methyl-4,6-dinitro-, and salts	*534-52-1	P104	Silver cyanide Ag(CN)	506-64-9
P020	Phenol, 2-(1-methylpropyl)-4, 6-dinitro-	88-85-7	P105	Sodium azide	26628-22-8
P009	Phenol, 2,4,6-trinitro-, ammonium salt (R)	131-74-8	P106	Sodium cyanide	143-33-9
P128	<u>Phenol, 4-(dimethylamino)-3,5-dimethyl-, methylcarbamate (ester)</u>	<u>315-18-4</u>	P106	Sodium cyanide Na(CN)	143-33-9
P199	<u>Phenol, (3,5-dimethyl-4-(methylthio)-, methylcarbamate</u>	<u>2032-65-7</u>	P108	Strychnidin-10-one, and salts	*57-24-9
P202	<u>Phenol, 3-(1-methylethyl)-, methylcarbamate</u>	<u>64-00-6</u>	P018	Strychnidin-10-one, 2, 3-dimethoxy-	357-57-3
P201	<u>Phenol, 3-methyl-5-(1-methylethyl)-, methylcarbamate</u>	<u>2631-37-0</u>	P108	Strychnine, and salts	*57-24-9
P092	Phenylmercury acetate	62-38-4	P115	Sulfuric acid, dithallium (1+)salt	7446-18-6
P093	Phenylthiourea	103-85-5	P109	Tetraethyldithiopyrophosphate	3689-24-5
P094	Phorate	298-02-2	P110	Tetraethyl lead	78-00-2
P095	Phosgene	75-44-5	P111	Tetraethyl pyrophosphate	107-49-3
P096	Phosphine	7803-51-2	P112	Tetranitromethane (R)	509-14-8
P041	Phosphoric acid, diethyl 4-nitrophenyl ester	311-45-5	P062	Tetraphosphoric acid, hexaethyl ester	757-58-4
			P113	Thallic oxide	1314-32-5
			P113	Thallium oxide Tl ₂ O ₃	1314-32-5

ADMINISTRATIVE REGISTER - 521

P114	Thallium (I) selenite	12039-52-0	U011	Amitrole	61-82-5
P115	Thallium (I) sulfate	7446-18-6	U012	Aniline (I,T)	62-53-3
P109	Thiodiphosphoric acid, tetra-ethyl ester	3689-24-5	U136	Arsinic acid, dimethyl-	75-60-5
P045	Thiofanox	39196-18-4	U014	Auramine	492-80-8
P049	Thioimidodicarbonic diamide ((H ₂ N)C(S)) ₂ NH	541-53-7	U015	Azaserine	115-02-6
P014	Thiophenol	108-98-5	U365	H-Azepine-1-carbothioic acid, hexahydro-, S-ethyl ester	2212-67-1
P116	Thiosemicarbazide	79-19-6	U010	Azirino (2',3':3,4) pyrrolo (1,2-a) indole-4, 7-dione, 6-amino-8-(((aminocarbonyl)oxy) methyl)-1,1a,2,8,8a,8b-hexahydro-8a-methoxy-5-methyl-, (1aS- (1aalpha, 8beta, 8aalpha, 8balphal))-Barban	50-07-7
P026	Thiourea, (2-chlorophenyl)-	5344-82-1	U280	Bendiocarb	101-27-9
P072	Thiourea, 1-naphthalenyl-	86-88-4	U278	Bendiocarb phenol	22781-23-3
P093	Thiourea, phenyl-	103-85-5	U364	Benomyl	22961-82-6
P185	Tirpate	26419-73-8	U271	Benz(j)aceanthrylene, 1,2-dihydro-3-methyl-	17804-35-2
P123	Toxaphene	8001-35-2	U157	Benz(c)acridine	56-49-5
P118	Trichloromethanethiol	75-70-7	U016	Benzal chloride	225-51-4
P119	Vanadic acid, ammonium salt	7803-55-6	U017	Benzamide, 3,5-dichloro-N-(1,1-dimethyl-2-propynyl)-	98-87-3
P120	Vanadium oxide V ₂ O ₅	1314-62-1	U192	Benz(a)anthracene	23950-58-5
P120	Vanadium pentoxide	1314-62-1	U018	Benz(a)anthracene, 7,12-dimethyl-	56-55-3
P084	Vinylamine, N-methyl-N-nitroso-	4549-40-0	U094	Benzenamine (I,T)	57-97-6
P001	Warfarin, and salts, when present at concentrations greater than 0.3%	*81-81-2	U012	Benzenamine (I,T)	62-53-3
P205	Zinc, bis(dimethylcarbamo-dithioato-S,S')-	137-30-4	U014	Benzenamine, 4,4'-carbon-imidoylbis (N,N-dimethyl-Benzenamine, 4-chloro-2-methyl-,hydrochloride	492-80-8
P121	Zinc cyanide	557-21-1	U049	Benzenamine, N, N-dimethyl-4-(phenylazo)-	3165-93-3
P121	Zinc cyanide Zn(CN) ₂	557-21-1	U093	Benzenamine, 2-methyl-	60-11-7
P122	Zinc phosphide Zn ₃ P ₂ , when present at concentrations greater than 10% (R,T)	1314-84-7	U328	Benzenamine, 4-methyl-	95-53-4
P205	Ziram	137-30-4	U353	Benzenamine, 4,4'-methylenebis (2-chloro-Benzenamine, 2-methyl-,hydrochloride	106-49-0
*CAS number given for parent compound only			U158	Benzenamine, 4,4'-methylenebis (2-chloro-Benzenamine, 2-methyl-,hydrochloride	101-14-4
(6) The commercial chemical products, manufacturing chemical intermediates, or off-specification commercial chemical products referred to in subsections (1) to (4) of this section, are identified as toxic wastes (T), unless otherwise designated, and are subject to the conditionally exempt small [limited] quantity generator exclusion in Section 5[(1), (6), and (7)] of 401 KAR 31:010.			U222	Benzenamine, 2-methyl-,hydrochloride	636-21-5
(NOTE: The primary hazardous properties of these materials have been indicated by the letters T (Toxicity), R (Reactivity), I (Ignitability) and C (Corrosivity). Absence of a letter indicates that the compound is only listed for toxicity.) These wastes and their corresponding EPA Hazardous Waste Numbers are:			U181	Benzenamine, 2-methyl-5-nitro	99-55-8
			U019	Benzene (I,T)	71-43-2
			U038	Benzeneacetic acid, 4-chloro-alpha-(4-chlorophenyl)-alpha-hydroxy-, ethyl ester	510-15-6
			U030	Benzene, 1-bromo-4-phenoxy-	101-55-3
			U035	Benzenedicarboxylic acid, 4-(bis (2-chloroethyl)amino)-	305-03-3
			U037	Benzene, chloro-	108-90-7
			U221	Benzenediamine, ar-methyl-	25376-45-8
			U028	1,2-Benzenedicarboxylic acid, bis(2-ethylhexyl) ester	117-81-7
			U069	1,2-Benzenedicarboxylic acid, dibutyl ester	84-74-2
			U088	1,2-Benzenedicarboxylic acid, diethyl ester	84-66-2
			U102	1,2-Benzenedicarboxylic acid, dimethyl ester	131-11-3
			U107	1,2-Benzenedicarboxylic acid, dioctyl ester	117-84-0
			U070	Benzene, 1,2-dichloro-	95-50-1
			U071	Benzene, 1,3-dichloro-	541-73-1
			U072	Benzene, 1,4-dichloro-	106-46-7
			U060	Benzene, 1,1'-(2,2-dichloro-ethylidene)bis(4-chloro-Benzene, (dichloromethyl)-	72-54-8
			U017	Benzene, (dichloromethyl)-	98-87-3
			U223	Benzene, 1,3-diisocyanato-methyl- (R,T)	26471-62-5
Hazardous Waste No.	Substance	Chemical Abstracts No.			
U394	A2213	30558-43-1			
U001	Acetaldehyde (I)	75-07-0			
U034	Acetaldehyde, trichloro-	75-87-6			
U187	Acetamide, N-(4-ethoxyphenyl)-	62-44-2			
U005	Acetamide, N-9H-fluoren-2-yl-	53-96-3			
U240	Acetic acid, (2,4-dichloro-phenoxy)-, salts and esters	*94-75-7			
U112	Acetic acid ethyl ester (I)	141-78-6			
U144	Acetic acid, lead (2+) salt	301-04-2			
U214	Acetic acid, thallium (1+) salt	563-68-8			
See F027	Acetic acid, (2,4,5-trichlorophenoxy)-	93-76-5			
U002	Acetone (I)	67-64-1			
U003	Acetonitrile (I,T)	75-05-8			
U004	Acetophenone	98-86-2			
U005	2-Acetylaminofluorene	53-96-3			
U006	Acetyl chloride (C,R,T)	75-36-5			
U007	Acrylamide	79-06-1			
U008	Acrylic acid (I)	79-10-7			
U009	Acrylonitrile	107-13-1			

ADMINISTRATIVE REGISTER - 522

U239	Benzene, dimethyl- (I,T)	1330-20-7	U392	Butylate	2008-41-5
U201	1,3-Benzenediol	108-46-3	U031	n-Butyl alcohol (I)	71-36-3
U127	Benzene, hexachloro-	118-74-1	U136	Cacodylic acid	75-60-5
U056	Benzene, hexahydro-(I)	110-82-7	U032	Calcium chromate	13765-19-0
U220	Benzene, methyl-	108-88-3	U372	Carbamic acid, 1H-benzimidazol-2-yl, methyl ester	10605-21-7
U105	Benzene, 1-methyl-2, 4-dinitro-	121-14-2			
U106	Benzene, 2-methyl-1,3-dinitro-	606-20-2	U271	Carbamic acid, [1-[(butylamino) carbonyl]-1H-benzimidazol-2-yl]-, methyl ester	17804-35-2
U055	Benzene, (1-methylethyl)-(I)	98-82-8			
U169	Benzene, nitro-	98-95-3			
U183	Benzene, pentachloro-	608-93-5	U375	Carbamic acid, butyl-, 3-iodo-2-propynyl ester	55406-53-6
U185	Benzene, pentachloronitro-	82-68-8			
U020	Benzenesulfonic acid chloride (C,R)	98-09-9	U280	Carbamic acid, (3-chlorophenyl)-, 4-chloro-2-butenyl ester	101-27-9
U020	Benzenesulfonyl chloride (C,R)	98-09-9			
U207	Benzene, 1,2,4,5-tetrachloro-	95-94-3	U238	Carbamic acid, ethyl ester	51-79-6
U061	Benzene, 1,1'-(2,2,2-tri-chloroethylidene)bis(4-chloro-	50-29-3	U178	Carbamic acid, methylnitroso-, ethyl ester	615-53-2
U247	Benzene, 1,1'-(2,2,2-tri-chloroethylidene)bis(4-methoxy-	72-43-5	U373	Carbamic acid, phenyl-, 1-methylethyl ester	122-42-9
U023	Benzene, (trichloromethyl)-	98-07-7	U409	Carbamic acid, [1,2-phenylenebis (iminocarbonothioyl)]bis-, dimethyl ester	23564-05-8
U234	Benzene, 1,3,5-trinitro-	99-35-4			
U021	Benzidine	92-87-5			
U202	1,2-Benzisothiazol-3(2H)-one, 1,1-dioxide, and salts	*81-07-02	U097	Carbamic chloride, dimethyl-	79-44-7
			U379	Carbamodithioic acid, dibutyl, sodium salt	136-30-1
U278	1,3-Benzodioxol-4-ol, 2,2-dimethyl-, methyl carbamate	22781-23-3			
			U277	Carbamodithioic acid, diethyl-, 2-chloro-2-propenyl ester	95-06-7
U364	1,3-Benzodioxol-4-ol, 2,2-dimethyl-	22961-82-6			
			U381	Carbamodithioic acid, diethyl-, sodium salt	148-18-5
U203	1,3-Benzodioxole, 5-(2-propenyl)-	94-59-7			
U141	1,3-Benzodioxole, 5-(1-propenyl)-	120-58-1	U383	Carbamodithioic acid, dimethyl, potassium salt	128-03-0
U367	7-Benzofuranol, 2,3-dihydro-2,2-dimethyl-	1563-38-8			
			U382	Carbamodithioic acid, dimethyl-, sodium salt	128-04-1
U090	1,3-Benzodioxole, 5-propyl-	94-58-6			
U064	Benzo(rst)pentaphene	189-55-9	U376	Carbamodithioic acid, dimethyl-, tetraanhydrosulfide with orthothio-selenious acid	144-34-3
U248	2H-1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenylbutyl)-, and salts, when present at concentrations of 0.3% or less	*81-81-2			
			U378	Carbamodithioic acid, (hydroxy-methyl)methyl-, monopotassium salt	51026-28-9
U022	Benzo(a)pyrene	50-32-8	U384	Carbamodithioic acid, methyl-, monosodium salt	137-42-8
U197	p-Benzoquinone	106-51-4			
U023	Benzotrithloride (C,R,T)	98-07-7	U377	Carbamodithioic acid, methyl-, monopotassium salt	137-41-7
U085	2,2'-Bioxirane	1464-53-5			
U021	(1,1'-Biphenyl)-4,4'-diamine	92-87-5	U389	Carbamodithioic acid, bis (1-methylethyl)-, S-(2,3,3-trichloro-2-propenyl)ester	2303-17-5
U073	(1,1'-Biphenyl)-4,4'-diamine, 3,3'-dichloro-	91-94-1			
U091	(1,1'-Biphenyl)-4,4'-diamine, 3,3'-dimethoxy-	119-90-4	U392	Carbamodithioic acid, bis (2-methylpropyl)-, S-ethyl ester	2008-41-5
U095	(1,1'-Biphenyl)-4,4'-diamine, 3,3'-dimethyl-	119-93-7	U391	Carbamodithioic acid, butylethyl-, S-propyl ester	1114-71-2
U401	Bis(dimethylthiocarbamoyl) sulfide	97-74-5	U386	Carbamothioic acid, cyclohexyl-ethyl-, S-ethyl ester	759-94-4
U400	Bis(pentamethylene)thiuram tetrasulfide	120-54-7	U387	Carbamothioic acid, dipropyl-, S-(phenylmethyl) ester	52888-80-9
U225	Bromoform	75-25-2	U114	Carbamodithioic acid, 1,2-ethanedylbis-, salts and esters	*111-54-6
U030	4-Bromophenyl phenyl ether	101-55-3			
U128	1,3-Butadiene, 1,1,2,3,4,4-hexachloro-	87-68-3	U062	Carbamothioic acid, bis(1-methylethyl)-, S-(2,3-dichloro-2-propenyl) ester	2302-16-4
U172	1-Butanamine, N-butyl-N-nitroso-	924-16-3			
U031	1-Butanol (I)	71-36-3	U279	Carbaryl	63-25-2
U159	2-Butanone (I,T)	78-93-3	U372	Carbendazim	10605-21-7
U160	2-Butanone, peroxide (R,T)	1338-23-4	U367	Carbofuran phenol	1563-38-8
U053	2-Butenal	4170-30-3	U215	Carbonic acid, dithallium (1+) salt	6533-73-9
U074	2-Butene, 1,4-dichloro- (I,T)	764-41-0	U033	Carbonic difluoride	353-50-4
U143	2-Butenoic acid, 2-methyl-7-((2,3-dihydroxy-2-(1-methoxyethyl)-3-methyl-1-oxobutoxy)methyl)-2,3,5,7a-tetrahydro-1H-pyrrolizin-1-yl ester, (1S-(1alpha(Z), 7(2S*,3R*),7aalpha))-	303-34-4	U156	Carbonochloridic acid, methyl ester (I,T)	79-22-1
			U033	Carbon oxyfluoride (R,T)	353-50-4
			U211	Carbon tetrachloride	56-23-5
			U034	Chloral	75-87-6

ADMINISTRATIVE REGISTER - 523

U035	Chlorambucil	305-03-3	U091	3,3'-Dimethoxybenzidine	119-90-4
U036	Chlordane, alpha and gamma isomers	57-74-9	U092	Dimethylamine (I)	124-40-3
U026	Chlornaphazin	494-03-1	U093	p-Dimethylaminoazobenzene	60-11-7
U037	Chlorobenzene	108-90-7	U094	7,12-Dimethylbenz(a)anthracene	57-97-6
U038	Chlorobenzilate	510-15-6	U095	3,3'-Dimethylbenzidine	119-93-7
U039	p-Chloro-m-cresol	59-50-7	U096	alpha, alpha-Dimethylbenzyl-hydroperoxide (R)	80-15-9
U042	2-Chloroethyl vinyl ether	110-75-8	U097	Dimethylcarbamoil chloride	79-44-7
U044	Chloroform	67-66-3	U098	1,1-Dimethylhydrazine	57-14-7
U046	Chloromethyl methyl ether	107-30-2	U099	1,2-Dimethylhydrazine	540-73-8
U047	beta-Chloronaphthalene	91-58-7	U101	2,4-Dimethylphenol	105-67-9
U048	o-Chlorophenol	95-57-8	U102	Dimethyl phthalate	131-11-3
U049	4-Chloro-o-toluidine, hydrochloride	3165-93-3	U103	Dimethyl sulfate	77-78-1
U032	Chromic acid H ₂ CrO ₄ , calcium salt	13765-19-0	U105	2,4-Dinitrotoluene	121-14-2
U050	Chrysene	218-01-9	U106	2,6-Dinitrotoluene	606-20-2
U393	<u>Copper, bis(dimehtylcarbamo-</u>	<u>137-29-1</u>	U107	Di-n-octyl phthalate	117-84-0
U393	<u>dithioato-S,S')-</u>		U108	1,4-Dioxane	123-91-1
U393	<u>Copper dimethyldithiocarbamate</u>	<u>137-29-1</u>	U109	1,2-Diphenylhydrazine	122-66-7
U051	Creosote	-----	U110	Dipropylamine (I)	142-84-7
U052	Cresol (Cresylic acid)	1319-77-3	U111	Di-n-propylnitrosamine	621-64-7
U053	Crotonaldehyde	4170-30-3	U403	<u>Disulfiram</u>	<u>97-77-8</u>
U055	Cumene (I)	98-82-8	U390	<u>EPTC</u>	<u>759-94-4</u>
U246	Cyanogen bromide (CN) Br	506-68-3	U041	Epichlorohydrin	106-89-8
U386	<u>Cycloate</u>	<u>1134-23-2</u>	U001	Ethanal (I)	75-07-0
U197	2,5-Cyclohexadiene-1,4-dione	106-51-4	U404	<u>Ethanamine, N,N-diethyl-</u>	<u>121-44-8</u>
U056	Cyclohexane (I)	110-82-7	U174	Ethanamine, N-ethyl-N-nitroso-	55-18-5
U129	Cyclohexane, 1,2,3,4,5,6-hexachloro-(1alpha, 2alpha, 3beta, 4alpha, 5alpha, 6beta)-	58-89-9	U155	1,2-Ethanediamine, N,N-dimethyl-N'-2-pyridinyl-N'-(2-thienylmethyl)-	91-80-5
U057	Cyclohexanone (I)	108-94-1	U067	Ethane, 1,2-dibromo-	106-93-4
U130	1,3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro-	77-47-4	U076	Ethane, 1,1-dichloro-	75-34-3
U058	Cyclophosphamide	50-18-0	U077	Ethane, 1,2-dichloro-	107-06-2
U240	2,4-D, salts and esters	*94-75-7	U131	Ethane, hexachloro-	67-72-1
U059	Daunomycin	20830-81-3	U024	Ethane, 1,1'-(methylenebis(oxy))bis(2-chloro-)	111-91-1
U366	<u>Dazomet</u>	<u>533-74-4</u>	U117	Ethane, 1,1'-oxybis- (I)	60-29-7
U060	DDD	72-54-8	U025	Ethane, 1,1'-oxybis(2-chloro-)	111-44-4
U061	DDT	50-29-3	U184	Ethane, pentachloro-	76-01-7
U062	Diallate	2303-16-4	U208	Ethane, 1,1,1,2-tetrachloro-	630-20-6
U063	Dibenz(a,h) anthracene	53-70-3	U209	Ethane, 1,1,2,2-tetrachloro-	79-34-5
U064	Dibenzo(a,i) pyrene	189-55-9	U218	Ethanethioamide	62-55-5
U066	1,2-Dibromo-3-chloropropane	96-12-8	U226	Ethane, 1,1,1-trichloro	71-55-6
U069	Dibutyl phthalate	84-74-2	U227	Ethane, 1,1,2-trichloro-	79-00-5
U070	o-Dichlorobenzene	95-50-1	U410	<u>Ethanimidothioic acid, N,N'-(thiobis((methylimino) carbonyl-oxy))bis-, dimethyl ester</u>	<u>59669-26-0</u>
U071	m-Dichlorobenzene	541-73-1	U394	<u>Ethanimidothioic acid, 2-(dimethylamino)-N-hydroxy-2-oxo-, methyl ester</u>	<u>30558-43-1</u>
U072	p-Dichlorobenzene	106-46-7	U359	Ethanol, 2-ethoxy-	110-80-5
U073	3,3'-Dichlorobenzidine	91-94-1	U173	Ethanol, 2,2'-(nitrosoimino)bis-	1116-54-7
U074	1,4-Dichloro-2-butene (I,T)	764-41-0	U395	<u>Ethanol, 2,2'-oxybis-, dicarbamate</u>	<u>5952-26-1</u>
U075	Dichlorodifluoromethane	75-71-8	U004	Ethanone, 1-phenyl	98-86-2
U078	1,1-Dichloroethylene	75-35-4	U043	Ethene, chloro-	75-01-4
U079	1,2-Dichloroethylene	156-60-5	U042	Ethene, (2-chloroethoxy)-	110-75-8
U025	Dichloroethyl ether	111-44-4	U078	Ethene, 1,1-dichloro-	75-35-4
U027	Dichloroisopropyl ether	108-60-1	U079	Ethene, 1,2-dichloro-, (E)	156-60-5
U024	Dichloromethoxy ethane	111-91-1	U210	Ethene, tetrachloro-	127-18-4
U081	2,4-Dichlorophenol	120-83-2	U228	Ethene, trichloro-	79-01-6
U082	2,6-Dichlorophenol	87-65-0	U112	Ethyl acetate (I)	141-78-6
U084	1,3-Dichloropropene	542-75-6	U113	Ethyl acrylate (I)	140-88-5
U085	1,2:3,4-Diepoxybutane (I,T)	1464-53-5	U238	Ethyl carbamate (urethane)	51-79-6
U108	1,4-Diethyleneoxide	123-91-1	U117	Ethyl ether (I)	60-29-7
U028	Diethylhexyl phthalate	117-81-7	U114	Ethylenebisdithiocarbamic acid, salts and esters	*111-54-6
U395	<u>Diethylene glycol, dicarbamate</u>	<u>5952-26-1</u>	U067	Ethylene dibromide	106-93-4
U086	N, N'-Diethylhydrazine	1615-80-1	U077	Ethylene dichloride	107-06-2
U087	O, O-Diethyl S-methyl dithio-phosphate	3288-58-2			
U088	Diethyl phthalate	84-66-2			
U089	Diethylstilbestrol	56-53-1			
U090	Dihydrosafrole	94-58-6			

ADMINISTRATIVE REGISTER - 524

U359	Ethylene glycol monoethyl ether	110-80-5	U029	Methane, bromo-	74-83-9
U115	Ethylene oxide (1,T)	75-21-8	U045	Methane, chloro- (I,T)	74-87-3
U116	Ethylenethiourea	96-45-7	U046	Methane, chloromethoxy-	107-30-2
U117	Ethyl ether (I)	60-29-7	U068	Methane, dibromo-	74-95-3
U076	Ethylidene dichloride	75-34-3	U080	Methane, dichloro-	75-09-2
U118	Ethyl methacrylate	97-63-2	U075	Methane, dichlorodifluoro-	75-71-8
U119	Ethyl methanesulfonate	62-50-0	U138	Methane, iodo-	74-88-4
U407	<u>Ehtyl Ziram</u>	<u>14324-55-1</u>	U119	Methanesulfonic acid, ethyl ester	62-50-0
U396	<u>Ferbam</u>	<u>14484-64-1</u>	U211	Methane, tetrachloro-	56-23-5
U120	Fluoranthene	206-44-0	U153	Methanethiol (I,T)	74-93-1
U122	Formaldehyde	50-00-0	U225	Methane, tribromo-	75-25-2
U123	Formic acid (C,T)	64-18-6	U044	Methane, trichloro-	67-66-3
U124	Furan (I)	110-00-9	U121	Methane, trichlorofluoro-	75-69-4
U125	2-Furancarboxaldehyde (I)	98-01-1	U036	4,7-Methano-1H-indene, 1,2,4,5,6,7,8,8-octachloro-2,3,3a,4,7,7a-hexahydro-	57-74-9
U147	2,5-Furandione	108-31-6			
U213	Furan, tetrahydro- (I)	109-99-9			
U125	Furfural (I)	98-01-1	U154	Methanol (I)	67-56-1
U124	Furfuran (I)	110-00-9	U155	Methapyrilene	91-80-5
U206	Glucopyranose, 2-deoxy-2-(3-methyl-3-nitroso-ureido)-,D-	18883-66-4	U142	1,3,4-Metheno-2H-cyclobuta(cd)pentalen-2-one, 1,1a,3,3a,4,5,5a,5b,6-decachloro-octahydro-	143-50-0
U206	D-Glucose, 2-deoxy-2-(((methylnitrosoamino)-carbonyl(amino)-glycidyl)aldehyde	18883-66-4	U247	Methoxychlor	72-43-5
U126	Glycidylaldehyde	765-34-4	U154	Methyl alcohol (I)	67-56-1
U163	Guanidine, N-methyl-N'-nitro-N-nitroso-	70-25-7	U029	Methyl bromide	74-83-9
U127	Hexachlorobenzene	118-74-1	U186	1-Methylbutadiene (I)	504-60-9
U128	Hexachlorobutadiene	87-68-3	U045	Methyl chloride (I,T)	74-87-3
U130	Hexachlorocyclopentadiene	77-47-4	U156	Methyl chlorocarbonate (I,T)	79-22-1
U131	Hexachloroethane	67-72-1	U226	Methyl chloroform	71-55-6
U132	Hexachlorophene	70-30-4	U157	3-Methylcholanthrene	56-49-5
U243	Hexachloropropene	1888-71-7	U158	4,4'-Methylenebis (2-chloro-aniline)	101-14-4
U133	Hydrazine (R,T)	302-01-2	U068	Methylene bromide	74-95-3
U086	Hydrazine,1,2-diethyl-	1615-80-1	U080	Methylene chloride	75-09-2
U098	Hydrazine,1,1-dimethyl-	57-14-7	U159	Methyl ethyl ketone (MEK) (I,T)	78-93-3
U099	Hydrazine,1,2-dimethyl-	540-73-8	U160	Methyl ethyl ketone peroxide (R,T)	1338-23-4
U109	Hydrazine,1,2-diphenyl-	122-66-7	U138	Methyl iodide	74-88-4
U134	Hydrofluoric acid (C,T)	7664-39-3	U161	Methyl isobutyl ketone (I)	108-10-1
U134	Hydrogen fluoride (C,T)	7664-39-3	U162	Methyl methacrylate (I,T)	80-62-6
U135	Hydrogen sulfide	7783-06-4	U161	4-Methyl-2-pentanone (I)	108-10-1
U135	Hydrogen sulfide H ₂ S	7783-06-4	U164	Methylthiouracil	56-04-2
U096	Hydroperoxide, 1-methyl-1-phenylethyl-(R)	80-15-9	U010	Mitomycin C	50-07-7
U116	2-Imidazolidinethione	96-45-7	U365	<u>Molinate</u>	<u>2212-67-1</u>
U137	Indeno(1,2,3-cd) pyrene	193-39-5	U059	5,12-Naphthacenedione, 8-acetyl-10-((3-amino-2,3,6-trideoxy)-alpha-L-lyxo-hexopyranosyl)oxyl)-7,8,9,10,tetrahydro-6,8,11-tri-hydroxy-1-methoxy-, (8S-cis)-	20830-81-3
U375	<u>3-Iodo-2-propynyl n-butylcarbamate</u>	<u>55406-53-6</u>			
U396	<u>Iron, tris(dimethylcarbamodithioato-S,S')</u>	<u>14484-64-1</u>	U167	1-Naphthalenamine	134-32-7
U190	1,3-Isobenzofurandione	85-44-9	U168	2-Naphthalenamine	91-59-8
U140	Isobutyl alcohol (I,T)	78-83-1	U026	Naphthalenamine,N,N'-bis (2-chloroethyl)-	494-03-1
U141	Isosafrole	120-58-1			
U142	Kepone	143-50-0	U165	Naphthalene	91-20-3
U143	Lasiocarpine	303-34-4	U047	Naphthalene, 2-chloro-	91-58-7
U144	Lead acetate	301-04-2	U166	1,4-Naphthalenedione	130-15-4
U146	Lead, bis(acetato-0)tetrahydroxytri-	1335-32-6	U236	2,7-Naphthalenedisulfonic acid, 3,3'-((3,3'-dimethyl (1,1'-biphenyl)-4,4'-diyl)bis(azo)bis(5-amino-4-hydroxy)-,tetrasodium salt	72-57-1
U145	Lead phosphate	7446-27-7			
U146	Lead subacetate	1335-32-6			
U129	Lindane	58-89-9	U279	<u>1-Naphthalenol, methylcarbamate</u>	<u>63-25-2</u>
U163	MNNG	70-25-7	U166	1,4-Naphthoquinone	130-15-4
U147	Maleic anhydride	108-31-6	U167	alpha-Naphthylamine	134-32-7
U148	Maleic hydrazide	123-33-1	U168	beta-Naphthylamine	91-59-8
U149	Malononitrile	109-77-3	U217	Nitric acid, thallium(1+) salt	10102-45-1
U150	Melphalan	148-82-3	U169	Nitrobenzene (I,T)	98-95-3
U151	Mercury	7439-97-6	U170	p-Nitrophenol	100-02-7
U384	<u>Metam Sodium</u>	<u>137-42-8</u>			
U152	Methacrylonitrile (I,T)	126-98-7			
U092	Methanamine, N-methyl- (I)	124-40-3			

ADMINISTRATIVE REGISTER - 525

U171	2-Nitropropane (I,T)	79-46-9	U171	Propane, 2-nitro- (I,T)	79-46-9
U172	N-Nitrosodi-n-butylamine	924-16-3	U027	Propane,2,2'-oxybis (2-chloro-	108-60-1
U173	N-Nitrosodiethanolamine	1116-54-7	U193	1,3-Propane sultone	1120-71-4
U174	N-Nitrosodiethylamine	55-18-5	See F027	Propanoic acid, 2-(2,4,5-	93-72-1
U176	N-Nitroso-N-ethylurea	759-73-9		trichlorophenoxy)-	
U177	N-Nitroso-N-methylurea	684-93-5	U235	1-Propanol,2,3-dibromo-,	126-72-7
U178	N-Nitroso-N-methylurethane	615-53-2		phosphate (3:1)	
U179	N-Nitrosopiperidine	100-75-4	U140	1-Propanol, 2-methyl- (I,T)	78-83-1
U180	N-Nitrosopyrrolidine	930-55-2	U002	2-Propanone (I)	67-64-1
U181	5-Nitro-o-toluidine	99-55-8	U007	2-Propenamide	79-06-1
U193	1,2-Oxathiolane,2,2-dioxide	1120-71-4	U084	1-Propene, 1,3-dichloro-	542-75-6
U058	2H-1,3,2-Oxazaphosphorin-2-	50-18-0	U243	1-Propene, 1,1,2,3,3,3-hexachloro-	1888-71-7
	amine,N,N-bis(2-chloroethyl)		U009	2-Propenenitrile	107-13-1
	tetrahydro-, 2-oxide		U152	2-Propenenitrile, 2-methyl- (I,T)	126-98-7
U115	Oxirane (I,T)	75-21-8			
U126	Oxiranecarboxyaldehyde	765-34-4	U008	2-Propenoic acid (I)	79-10-7
U041	Oxirane,(chloromethyl)-	106-89-8	U113	2-Propenoic acid, ethyl ester (I)	140-88-5
U182	Paraldehyde	123-63-7	U118	2-Propenoic acid, 2-methyl-,	97-63-2
U391	<u>Pebulate</u>	<u>1114-71-2</u>		ethyl ester	
U183	Pentachlorobenzene	608-93-5	U162	2-Propenoic acid, 2-methyl-,	80-62-6
U184	Pentachloroethane	76-01-7		methyl ester (I,T)	
U185	Pentachloronitrobenzene (PCNB)	82-68-8	U373	<u>Propham</u>	<u>122-42-9</u>
See F027	Pentachlorophenol	87-86-5	U411	<u>Propoxur</u>	<u>114-26-1</u>
U161	Pentanol, 4-methyl-	108-10-1	U387	<u>Prosulfocarb</u>	<u>52888-08-9</u>
U186	1,3-Pentadiene (I)	504-60-9	U194	n-Propylamine (I,T)	107-10-8
U187	Phenacetin	62-44-2	U083	Propylene dichloride	78-87-5
U188	Phenol	108-95-2	U148	3,6-Pyridazinedione,1,2-dihydro-	123-33-1
U048	Phenol,2-chloro-	95-57-8	U196	Pyridine	110-86-1
U039	Phenol,4-chloro-3-methyl-	59-50-7	U191	Pyridine, 2-methyl-	109-06-8
U081	Phenol,2,4-dichloro-	120-83-2	U237	2,4(1H,3H)-Pyrimidinedione, 5-	66-75-1
U082	Phenol,2,6-dichloro-	87-65-0		(bis(2-chloroethyl)amino)-	
U089	Phenol,4,4'-(1,2-diethyl-	56-53-1	U164	4(1H)-Pyrimidinone,2,3-	56-04-2
	1,2-ethenediyl)bis-,(E)-			dihydro-6-methyl-2-thioxo-	
U101	Phenol,2,4-dimethyl-	105-67-9	U180	Pyrrolidine, 1-nitroso-	930-55-2
U052	Phenol, methyl-	1319-77-3	U200	Reserpine	50-55-5
U132	Phenol,2,2'-methylenebis	70-30-4	U201	Resorcinol	108-46-3
	(3,4,6-trichloro-		U202	Saccharin, and salts	*81-07-2
U411	<u>Phenol, 2-(1-methylethoxy)-,</u>	<u>114-26-1</u>	U203	Safrrole	94-59-7
	<u>methylcarbamate</u>		U204	Selenious acid	7783-00-8
U170	Phenol,4-nitro-	100-02-7	U204	Selenium dioxide	7783-00-8
See F027	Phenol, pentachloro-	87-86-5	U205	Selenium sulfide	7488-56-4
See F027	Phenol,2,3,4,6-tetrachloro-	58-90-2	U205	Selenium sulfide SeS ₂ (R,T)	7488-56-4
See F027	Phenol,2,4,5-trichloro-	95-95-4	U376	<u>Selenium, tetrakis(dimethyl-</u>	<u>144-34-3</u>
See F027	Phenol,2,4,6-trichloro-	88-06-2		<u>dithiocarbamate)</u>	
U150	L-Phenylalanine, 4-(bis(2-	148-82-3	U015	L-Serine, diazoacetate (ester)	115-02-6
	chloroethyl)amino)-		See F027	Silvex (2,4,5,-TP)	93-72-1
U145	Phosphoric acid, lead (2+) salt	7446-27-7	U379	<u>Sodium dibutyldithiocarbamate</u>	<u>136-30-1</u>
	(2:3)		U381	<u>Sodium diethyldithiocarbamate</u>	<u>148-18-5</u>
U087	Phosphorodithioic acid,0,0-	3288-58-2	U382	<u>Sodium dimethyldithiocarbamate</u>	<u>128-04-1</u>
	diethyl S-methyl ester		U206	Streptozotocin	18883-66-4
U189	Phosphorus sulfide (R)	1314-80-3	U103	Sulfuric acid, dimethyl ester	77-78-1
U190	Phthalic anhydride	85-44-9	U277	<u>Sulfallate</u>	<u>95-06-7</u>
U191	2-Picoline	109-06-8	U189	Sulfur phosphide (R)	1314-80-3
U179	Piperidine, 1-nitroso-	100-75-4	See F027	2,4,5-T	93-76-5
U400	<u>Piperidine, 1,1'-(tetrathiodicar-</u>	<u>120-54-7</u>	U402	<u>Tetrabutylthiuram disulfide</u>	<u>1634-02-2</u>
	<u>bonothioyl)-bis-</u>		U207	1,2,4,5,-Tetrachlorobenzene	95-94-3
U383	<u>Potassium dimethyldithiocarbamate</u>	<u>128-03-0</u>	U208	1,1,1,2-Tetrachloroethane	630-20-6
U378	<u>Potassium n-hydroxymethyl-</u>	<u>51026-28-9</u>	U209	1,1,2,2-Tetrachloroethane	79-34-5
	<u>n-methyldi-thiocarbamate</u>		U210	Tetrachloroethylene	127-18-4
U377	<u>Potassium n-methyldithiocarbamate</u>	<u>137-41-7</u>	See F027	2,3,4,6-Tetrachlorophenol	58-90-2
U192	Pronamide	23950-58-5	U213	Tetrahydrofuran (I)	109-99-9
U194	1-Propanamine (I,T)	107-10-8	U401	<u>Tetramethylthiuram monosulfide</u>	<u>97-74-5</u>
U111	1-Propanamine, N-nitroso-N-propyl-	621-64-7	U214	Thallium (I) acetate	563-68-8
U110	1-Propanamine, N-propyl- (I)	142-84-7	U215	Thallium (I) carbonate	6533-73-9
U066	Propane, 1,2-dibromo-3-chloro-	96-12-8	U216	Thallium (I) chloride	7791-12-0
U083	Propane, 1,2-dichloro-	78-87-5	U216	Thallium chloride TlCl	7791-12-0
U149	Propanedinitrile	109-77-3	U217	Thallium (I) nitrate	10102-45-1

ADMINISTRATIVE REGISTER - 526

U366	<u>2H-1,2,5-Thiadiazine-2-thione, tetrahydro-3,5-dimethyl-</u>	<u>533-74-4</u>
U218	Thioacetamide	62-55-5
U410	<u>Thiodicarb</u>	<u>59669-29-0</u>
U153	Thiomethanol (I,T)	74-93-1
U244	Thioperoxydicarbonic diamide ((H ₂ N)C(S)) ₂ S ₂ , tetramethyl-	137-26-8
U219	Thiourea	62-56-6
U244	Thiram	137-26-8
U402	<u>Thioperoxydicarbonic diamide, tetrabutyl</u>	<u>1634-02-2</u>
U403	<u>Thioperoxydicarbonic diamide, tetraethyl</u>	<u>97-77-8</u>
U409	<u>Thiophanate-methyl</u>	<u>23564-05-8</u>
U220	Toluene	108-88-3
U221	Toluenediamine	25376-45-8
U223	Toluene diisocyanate (R,T)	26471-62-5
U328	o-Toluidine	95-53-4
U353	p-Toluidine	106-49-0
U222	o-Toluidine hydrochloride	636-21-5
U389	<u>Triallate</u>	<u>2303-17-5</u>
U011	1H-1,2,4-Triazol-3-amine	61-82-5
U227	1,1,2-Trichloroethane	79-00-5
U228	Trichloroethylene	79-01-6
U121	Trichloromonofluoromethane	75-69-4
See F027	2,4,5-Trichlorophenol	95-95-4
See F027	2,4,6-Trichlorophenol	88-06-2
U404	<u>Triethylamine</u>	<u>121-44-8</u>
U234	1,3,5-Trinitrobenzene (R,T)	99-35-4
U182	1,3,5-Trioxane,2,4,6-trimethyl-	123-63-7
U235	Tris(2,3-dibromopropyl) phosphate	126-72-7
U236	Trypan blue	72-57-1
U237	Uracil mustard	66-75-1
U176	Urea, N-ethyl-N-nitroso-	759-73-9
U177	Urea, N-methyl-N-nitroso-	684-93-5
U385	<u>Vernolate</u>	<u>1929-77-7</u>
U043	Vinyl chloride	75-01-4
U248	Warfarin, and salts, when present at concentrations of 0.3% or less	*81-81-2
U239	Xylene (I)	1330-20-7
U200	Yohimban-16-carboxylic acid, 11, 17-dimethoxy-18((3,4,5-trimethoxybenzoyl)oxy)-, methyl ester, (3beta,16beta, 17alpha,18beta,20alpha)-	50-55-5
U407	<u>Zinc, bis(diethylcarbamodithioato-S,S')</u>	<u>14324-55-1</u>
U249	Zinc phosphide Zn ₃ P ₂ , when present at concentrations of 10% or less	1314-84-7

*CAS number given for parent compound only.

Section 5. Nerve and Blister Agents. The following substances are listed as hazardous wastes:

Kentucky Waste Number	Substance	Chemical Abstracts Number
N001	GB (isopropyl methyl phosphonofluoridate) (H)	107-44-8
N002	VX (O-ethyl-S-(2-diisopropyl-aminoethyl)-methyl phosphonothiolate) (H)	50782-69-9
N003	H (bis(2-chloroethyl) sulfide) and related	505-60-2

compounds (H)

Section 6. Deletion of Certain Hazardous Waste Codes Following Equipment Cleaning and Replacement. (1) Wastes from wood preserving processes at plants that do not resume or initiate use of chlorophenolic preservatives shall not meet the listing definition of F032 once the generator has met all of the requirements of subsections (2) and (3) of this section. These wastes may, however, continue to meet another hazardous waste listing description or may exhibit one (1) or more of the hazardous waste characteristics.

(2) Generators shall either clean or replace all process equipment that may have come into contact with chlorophenolic formulations or constituents thereof, including, but not limited to, treatment cylinders, sumps, tanks, piping systems, drip pads, fork lifts, and trams, in a manner that minimizes or eliminates the escape of hazardous waste or constituents, leachate, contaminated drippage, or hazardous waste decomposition products to the ground water, surface water, or atmosphere.

(a) Generators shall do one (1) of the following:

1. Prepare and follow an equipment cleaning plan and clean equipment in accordance with this section;

2. Prepare and follow an equipment replacement plan and replace equipment in accordance with this section; or

3. Document cleaning and replacement in accordance with this section, carried out after termination of use of chlorophenolic preservations.

(b) Cleaning requirements.

1. Generators shall prepare and sign a written equipment cleaning plan that describes:

- The equipment to be cleaned;
- How the equipment will be cleaned;
- The solvent to be used in cleaning;
- How solvent rinses will be tested; and
- How cleaning residues will be disposed.

2. Equipment shall be cleaned as follows:

- Remove all visible residues from process equipment;
- Rinse process equipment with an appropriate solvent until dioxins and dibenzofurans are not detected in the final solvent rinse.

3. Analytical requirements.

[a-] Rinses shall be tested in accordance with SW-846, Method 8290, incorporated in 40 CFR 260.11, which is adopted in Section 3 of 401 KAR 30:010.

[b- "Not detected" means at or below the lower method calibration limit (MCL) in Method 8290, Table 1.]

4. The generator shall manage all residues from the cleaning process as F032 waste.

(c) Replacement requirements.

1. Generators shall prepare and sign a written equipment replacement plan that describes:

- The equipment to be replaced;
- How the equipment will be replaced; and
- How the equipment will be disposed.

2. The generator shall manage the discarded equipment as F032 waste.

(d) Documentation requirements. Generators shall document that previous equipment cleaning or replacement was performed in accordance with this section and occurred after cessation of use of chlorophenolic preservatives.

(3) The generator shall maintain the following records documenting the cleaning and replacement as part of the facility's operating record:

- The name and address of the facility;
- Formulations previously used and the date on which their use ceased in each process at the plant;
- Formulations currently used in each process at the plant;
- The equipment cleaning or replacement plan;
- The name and address of any persons who conducted the

cleaning and replacement;

(f) The dates on which cleaning and replacement were accomplished;

(g) The dates of sampling and testing;

(h) A description of the sample handling and preparation techniques, including techniques used for extraction, containerization, preservation, and chain-of-custody of the samples;

(i) A description of the tests performed, the date the tests were performed, and the results of the tests;

(j) The name and model numbers of the instrument(s) used in performing the tests;

(k) QA/QC documentation; and

(l) The following statement signed by the generator or his authorized representative:

I certify under penalty of law that all process equipment required to be cleaned or replaced under Section 6 of 401 KAR 31:040 was cleaned or replaced as represented in the equipment cleaning and replacement plan and accompanying documentation. I am aware that there are significant penalties for providing false information, including the possibility of fine or imprisonment.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: July 11, 1996

FILED WITH LRC: July 12, 1996 at 9 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Thursday, August 29, 1996, at 7 p.m. Eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing, at the address noted below, by August 24, 1996. If by that date Mr. Hale has not received any notification of intent to attend the hearing, the hearing will be canceled. This hearing is open to the public. Any person wishing to comment on the proposed administrative regulation will be given an opportunity to do so. Persons testifying at the hearing are requested to provide a written copy of their testimony, if available. A transcript of the hearing will not be made unless a request for such is filed with Mr. Hale by August 24, 1996 and arrangements for payment of the transcript are made by that date. Written comments may also be submitted on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than the date of the close of the public hearing on August 29, 1996. Persons submitting written comments are also requested to provide an electronic copy of their comments, if available. The preferred format for the electronic format is any version of Word Perfect on 3.5 inch diskettes; however, any other format would be greatly appreciated, should Word Perfect or 3.5 inch diskettes not be available. The Natural Resources and Environmental Cabinet does not discriminate on the basis of color, national origin, sex, religion, age, or disability in employment or the provision of services. Upon request, the Cabinet will provide reasonable accommodation, including auxiliary aids and services, necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as an interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by August 24, 1996.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221.

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: This proposed amendments affect owners and operators of hazardous waste facilities dealing with organic chemicals, and coking.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the 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. Effect on the 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. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No public comments were received.

2. Second and subsequent years: No public comments were received.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First year: There will be no additional costs in adopting these amendments. However, the cabinet will have increased workloads in order to process all new entities that will be regulated by the amendments of this regulation. The only savings will be from any EPA grants received by having this amendment meeting their standards.

2. Continuing costs or savings: No additional costs or savings will occur after all new entities are processed.

3. Additional factors increasing or decreasing costs: None

b. Reporting and paperwork requirements: The amendments made will require no new paperwork or reporting burden.

4. Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenue from the promulgation of this regulation.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: Partial funding from EPA grants are anticipated to pay increased costs due to increased work in the implementation of and enforcement of these standards.

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

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: No alternative changes were considered. These amendments were changed to meet federal standards.

8. Assessment of expected benefits of the administrative regulation: Kentucky industries will receive indirect savings from the adoption of these amendments.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: The effects on public health and environmental welfare will improve with the adoption and implementation of these amendments.

b. State whether a detrimental effect on the environment and public health would result if not implemented: There are no detrimental effects.

c. If detrimental effect would result, explain detrimental effect: There are no detrimental effects.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no statutes, administrative regulations, or policies that conflict with, overlap, or duplicate the proposed amendment.

a. Necessity of proposed regulation if in conflict: Not applicable.

b. If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

11. Any additional information or comments: There are no additional comments.

12. TIERING: Is tiering applied? (Explain why tiering was or was not used): Yes, tiering was used based on the amount of chemicals

generated, consistent with federal standards, to reflect the need to protect human health and the environment.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution.

2. State compliance standards: The proposed amendments adopt changes that include the identification of hazardous wastes. These changes are necessary to maintain consistency between the state and federal programs. A variety of additions and a few exclusions have been made to clarify the hazardous waste list. In addition, the regulation has been modified to reflect the requirements of regulation construction specified in KRS Chapter 13A.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part, or division of local government this administrative regulation will affect. This administrative regulation will affect any state, county, or local office of government that is the owner or operator of any hazardous waste facility that deals with organic chemicals or coking.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224 Subchapter 46 requires that the cabinet to establish a comprehensive program for the proper management of hazardous waste. The agencies that own or operate hazardous waste facilities that deal with organic chemicals or coking will be subject to these requirements.

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 impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): The only expenditures to a state, county, or local office of government will be those expenditures related to compliance with this administrative regulation. If this administrative regulation does not apply to a state, county, or local office of government, there will be no expenditures.

Other Explanation: None

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

401 KAR 31:050. General provisions for special wastes.

RELATES TO: KRS 224.46, 244.50

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-510

NECESSITY AND FUNCTION: KRS 224.46-510(3) requires the Cabinet to identify the characteristics of and to list hazardous wastes. This chapter identifies and lists hazardous waste. This administrative regulation identifies certain special waste as being hazardous wastes subject to the requirements of KRS 224.46-520.

Section 1. Special Waste Identified as a Hazardous Waste. A special waste, as defined in KRS 224.50-760 or in 401 KAR 31:005 [30:040], is a hazardous waste:

(1) If it meets the definition of a hazardous waste in Section 3 of this 401 KAR 31:010; and

(2) It exhibits any of the characteristics of a hazardous waste in 401 KAR 31:030; or

(3) It is listed as a hazardous waste in 401 KAR 31:040.

Section 2. Applicability. Any special waste which is identified as a hazardous waste as specified in Section 1 of this administrative regulation shall be regulated under the waste management administrative regulations pertaining to hazardous wastes. However, special wastes which are classified as hazardous waste are exempt from the assessment of the Kentucky hazardous waste management fund as provided by KRS 224.46-580(6).

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: July 11, 1996

FILED WITH LRC: July 12, 1996 at 9 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Thursday, August 29, 1996, at 7 p.m. Eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing, at the address noted below, by August 24, 1996. If by that date Mr. Hale has not received any notification of intent to attend the hearing, the hearing will be canceled. This hearing is open to the public. Any person wishing to comment on the proposed administrative regulation will be given an opportunity to do so. Persons testifying at the hearing are requested to provide a written copy of their testimony, if available. A transcript of the hearing will not be made unless a request for such is filed with Mr. Hale by August 24, 1996 and arrangements for payment of the transcript are made by that date. Written comments may also be submitted on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than the date of the close of the public hearing on August 29, 1996. Persons submitting written comments are also requested to provide an electronic copy of their comments, if available. The preferred format for the electronic format is any version of Word Perfect on 3.5 inch diskettes; however, any other format would be greatly appreciated, should Word Perfect or 3.5 inch diskettes not be available. The Natural Resources and Environmental Cabinet does not discriminate on the basis of color, national origin, sex, religion, age, or disability in employment or the provision of services. Upon request, the Cabinet will provide reasonable accommodation, including auxiliary aids and services, necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as a interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by August 24, 1996.

ADMINISTRATIVE REGISTER - 529

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221.

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: None. The only amendment being made is a change to the cross reference to the definition regulation for this chapter. Definitions have been moved from 401 KAR 31:050 to 401 KAR 31:005 to conform to KRS Chapter 13A requirements.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the 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. Effect on the 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. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No public comments were received.

2. Second and subsequent years: No public comments were received.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First year: The cabinet will experience no additional costs or savings by promulgating this amendment to this regulation.

2. Continuing costs or savings: There will be no continuing costs or savings after the first year.

3. Additional factors increasing or decreasing costs: There will be no additional factors affecting costs.

b. Reporting and paperwork requirements: There will be no extra paperwork requirements.

4. Assessment of anticipated effect on state and local revenues: There are no anticipated effects on the state and local revenue.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: The source of revenue for implementation and enforcement of this administrative regulation will be EPA grants.

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

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 were no other alternatives. This change is consistent with KRS Chapter 13A requirements.

8. Assessment of expected benefits of the administrative regulation: This amendment will ensure compliance with KRS Chapter 13A.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: The adoption and implementation of this amendment will have no effect on the protection of the environment and public health across the commonwealth.

b. State whether a detrimental effect on the environment and public health would result if not implemented: Kentucky must continue to upgrade its hazardous waste program to be consistent with the federal program, and conform to KRS Chapter 13A requirements.

c. If detrimental effect would result, explain detrimental effect: Not

applicable.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no statutes, regulations, or policies that conflict, overlap, or duplicate this regulation.

a. Necessity of proposed regulation if in conflict: Not applicable.

b. If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

11. Any additional information or comments: No additional comments.

12. TIERING: Is tiering applied? (Explain why tiering was or was not used): Yes, tiering was applied in this regulation. This administrative regulation only applies to waste generators and to owners and operators of facilities regulated by 401 KAR Chapters 30 through 49. Tiering is applied to all of Kentucky's waste regulations, based on type and quantity of waste generated and managed and type of management activities performed by the owner or operator.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the Cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution.

2. State compliance standards: The proposed amendment establishes the cross reference on definitions from 31:050 to 31:005 of hazardous waste terms and the clarification of certain definitions. This regulation is necessary to maintain consistency between state and federal programs. In addition, the regulation has been modified to reflect regulation construction specified in KRS Chapter 13A.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part, or division of local government this administrative regulation will affect. This administrative regulation will affect any state, county, or local office of government that manages hazardous waste.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. This administrative regulation establishes cross reference for definitions for all terms within 401 KAR Chapter 31. These terms are assimilated from existing federal regulatory definitions and existing statutory definitions where applicable.

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 impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): Because this administrative regulation only establishes the cross reference for definitions for 401 KAR Chapter 31, this administrative regulation will not affect state, county, or local expenditures.

Other Explanation: None

**NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Amendment)**

401 KAR 31:060. Rulemaking petitions for hazardous waste.

RELATES TO: KRS 224.10, 224.40, 224.43, 224.46, 224.50, 224.99, 40 CFR 260 Subpart C

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-510(3)

NECESSITY AND FUNCTION: To implement provisions of KRS 224.46-510(3) and to establish the procedures to add a testing or analytical method to 401 KAR Chapters 31, 34, or 35 or to exclude a waste at a particular site or facility from Section 3 of 401 KAR 31:010 or the lists of hazardous wastes in 401 KAR 31:040.

Section 1. General Procedures. (1) This administrative regulation sets forth requirements for petitions to add a testing or analytical method to 401 KAR Chapters 30 through 37 [31, 34, or 35] or to exclude a waste or waste-derived material at a particular facility from Section 3 of 401 KAR 31:010 or the lists of hazardous wastes in 401 KAR 31:040. Section 7 of this administrative regulation sets forth additional requirements for petitions to amend 401 KAR Chapter 43 to include additional hazardous wastes or categories of hazardous wastes as a universal waste.

(2) Each petition shall be submitted to the cabinet by certified mail and shall include:

- (a) The petitioner's name and address;
- (b) A statement of the petitioner's interest in the proposed action;
- (c) A description of the proposed action, including (where appropriate) suggested regulatory language;
- (d) A statement of the need and justification for the proposed action, including any supporting tests, studies, or other information; and
- (e) A check payable to the Kentucky State Treasurer in the amount required by 401 KAR Chapter 39.

(3) The cabinet shall make a tentative decision to grant or deny a petition. If the tentative decision is to deny, the cabinet shall notify the petitioner. If the tentative decision is to grant the petition, the cabinet shall propose an amendment to 401 KAR 31:070, and file the proposed amendment with the Legislative Research Commission pursuant to KRS Chapter 13A.

Section 2. Petitions to Amend 401 KAR Chapter 31 to Exclude a Waste Produced at a Particular Facility. (1) Any person seeking to exclude a waste at a particular generating facility from the lists in 401 KAR 31:040 may petition for an amendment to the administrative regulation under this section and Section 1 of this administrative regulation. To be successful:

(a) The petitioner shall demonstrate to the satisfaction of the cabinet that the waste produced by a particular generating facility does not meet any of the criteria under which the waste was listed as a hazardous waste or an acutely hazardous waste; and

(b) Based on a complete application the cabinet shall determine, where it has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed will cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste. A waste which is so excluded, however, still may be a hazardous waste by

operation of 401 KAR 31:030.

(2) The procedures in this section and Section 1 of this administrative regulation may also be used to petition the cabinet for a regulatory amendment to exclude from Section 3(1)(b)2 or (3) of 401 KAR 31:010, a waste which is described in these subsections and is either a waste listed in 401 KAR 31:040, or is derived from a waste listed in 401 KAR 31:040. This exclusion may only be issued for a particular generating, storage, treatment, or disposal facility. The petitioner shall make the same demonstration as required by subsection (1) of this section. Where the waste is a mixture of solid waste and one (1) or more listed hazardous wastes or is derived from one (1) or more hazardous wastes, his demonstration shall be made with respect to the waste mixture as a whole; analysis shall be conducted for not only those constituents of the listed waste(s) contained within the mixture but also for factors (including additional constituents) that could cause the waste mixture to be a hazardous waste. A waste which is so excluded may still be a hazardous waste in accordance with 401 KAR 31:030.

(3) If the waste is listed with codes "I," "C," "R," or "E" in 401 KAR 31:040:

(a) The petitioner shall show that the waste does not exhibit the relevant characteristic for which the waste was listed as defined in Sections 2, 3, 4, or 5 of 401 KAR 31:030 using any applicable methods prescribed therein. The petitioner also shall show that the waste does not exhibit any of the other characteristics defined in Sections 2, 3, 4, or 5 of 401 KAR 31:030 using any applicable methods prescribed therein; and

(b) Based on a complete application, the cabinet shall determine, where it has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed shall cause the waste to be hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste. A waste which is so excluded, however, still may be a hazardous waste by operation of 401 KAR 31:030.

(4) If the waste is listed with code "T" in 401 KAR 31:040:

(a) The petitioner shall demonstrate that the waste:

1. Does not contain the constituent or constituents (as defined in 401 KAR 31:160) that caused the cabinet to list the waste, using the appropriate test methods prescribed in 401 KAR 31:120; or

2. Although containing one (1) or more of the hazardous constituents (as defined in 401 KAR 31:160) that caused the cabinet to list the waste, does not meet the criterion of 40 CFR 261.11(a)(3), ~~[(1990)]~~ when considering the factors used by the cabinet in 40 CFR 261.11(a)(3)(i) to (xi), ~~[(1990)]~~ under which the waste was listed as hazardous; and

(b) Based on a complete application, the cabinet shall determine, where it has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste; and

(c) The petitioner shall demonstrate that the waste does not exhibit any of the characteristics defined in Sections 2, 3, 4 and 5 of 401 KAR 31:030 using any applicable methods prescribed therein;

(d) A waste which is so excluded, however, still may be a hazardous waste by operation of 401 KAR 31:030.

(5) If the waste is listed with the code "H" in 401 KAR 31:040:

(a) The petitioner shall demonstrate that the waste does not meet criterion of subsection (1)(b) of 401 KAR 31:020; and

(b) Based on a complete application, the cabinet shall determine, where it has a reasonable basis to believe that additional factors (including additional constituents) other than those for which the waste was listed will cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste; and

(c) The petitioner shall demonstrate that the waste does not exhibit any of the characteristics defined in Sections 2, 3, 4, and 5 of 401 KAR 31:030 using any applicable methods prescribed therein;

(d) A waste which is so excluded, however, still may be a hazardous waste by operation of 401 KAR 31:030.

(6) Demonstration samples shall consist of enough representative samples, but in no case less than four (4) samples, taken over a period of time sufficient to represent the variability or the uniformity of the waste.

(7) Each petition shall include, in addition to the information required by Section 1(2) of this administrative regulation:

(a) The name and address of the laboratory facility performing the sampling or tests of the waste;

(b) The names and qualifications of the persons sampling and testing the waste;

(c) The dates of sampling and testing;

(d) The location of the generating facility;

(e) A description of the manufacturing processes or other operations and feed materials producing the waste and an assessment of whether such processes, operations, or feed materials can or might produce a waste that is not covered by the demonstration;

(f) A description of the waste and an estimate of the average and maximum monthly and annual quantities of waste covered by the demonstration;

(g) Pertinent data on and discussion of the factors delineated in the respective criterion for listing a hazardous waste, where the demonstration is based on the factors in Section 2(1)(c) of 401 KAR 31:020;

(h) A description of the methodologies and equipment used to obtain the representative samples;

(i) A description of the sample handling and preparation techniques, including techniques used for extraction, containerization and preservation of the samples;

(j) A description of the tests performed (including results);

(k) The names and model numbers of the instruments used in performing the tests; and

(l) The following statement signed by the generator of the waste or his authorized representative:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this demonstration and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

(8) After receiving a petition for an exclusion, the cabinet may request any additional information which the cabinet may reasonably require to evaluate the petition.

(9) An exclusion shall only apply to the waste generated at the individual facility covered by the demonstration and shall not apply to waste from any other facility.

(10) The cabinet may exclude only the part of the waste for which the demonstration is submitted where the cabinet has reason to believe that variability of the waste justifies a partial exclusion.

Section 3. Requirements for Excluded Wastes. Upon approval by the cabinet of a petition to exclude waste from a particular facility, the excluded waste shall thereby be listed as a solid waste and be subject to the requirements for solid waste disposal in 401 KAR Chapter 47 and the conditions as specified in the approved exclusion.

Section 4. Repeal or Modification of an Exclusion. The cabinet shall repeal or modify an exclusion granted to any generator or petitioner for a waste or to any generator or petitioner for an equivalent testing or analytical method whenever:

(1) The cabinet has obtained information, which was not available at the time the petition for exclusion was granted, which leads the cabinet to believe that reasonable probability exists that the waste:

(a) Was erroneously excluded from administrative regulation in accordance with Section 2 of this administrative regulation;

(b) Shall be regulated as a hazardous waste because it contains a hazardous constituent which was listed as a hazardous waste subsequent to approval of a petition to delist the waste at a particular facility; or

(c) Shall be regulated as a hazardous waste because new studies or analysis have been performed which indicate the waste meets the definition of a hazardous waste in KRS 224.01-010.

(2) The cabinet has obtained information, which was not available at the time the petition for an equivalent testing or analytical method was granted, which leaves the cabinet to believe that reasonable probability exists that the equivalent testing or analytical method was erroneously approved in accordance with Section 6 of this administrative regulation.

(3) The cabinet has obtained information that a petition for an exclusion or an equivalent testing or analytical method was incomplete, inaccurate, or based on erroneous data or calculations.

(4) The cabinet has obtained information from any other agency of state or federal government, including the EPA, that the waste shall be regulated as a hazardous waste consistent with the Resource Conservation and Recovery Act (PL 94-580), as amended (including PL 98-616, the 1984 Hazardous and Solid Waste Amendments), and pursuant to KRS Chapter 224.

(5) The cabinet has obtained information from any other agency of a state or the federal government, including the EPA, that the testing or analytical method is not equal to or superior to the corresponding method prescribed in 401 KAR Chapter 31, 34, 35, or 37 in terms of its sensitivity, accuracy, and precision.

Section 5. Requirements for Approval. In accordance with Section 3 of 401 KAR 30:020, the cabinet shall not approve a petition to exclude a waste at a particular facility unless:

(1) Exclusion of the waste is consistent with the requirements in KRS 224.46-510(3);

(2) Petitioning fees have been paid in accordance with 401 KAR 39:020; and

(3) All the requirements of this administrative regulation are satisfied.

Section 6. Petitions for Equivalent Testing or Analytical Methods.

(1) Any person seeking to add a testing or analytical method to 401 KAR Chapter 31, 34, 35, or 37 may petition for a regulatory amendment under this section and Section 1 of this administrative regulation. To be successful, the person shall demonstrate to the satisfaction of the cabinet that the proposed method is equal to or superior to the corresponding method prescribed in 401 KAR Chapter 31, 34, 35, or 37 in terms of its sensitivity, accuracy, and precision (reproducibility).

(2) Each petition shall include, in addition to the information required by Section 1(2) of this administrative regulation:

(a) A full description of the proposed method, including all procedural steps and equipment used in the method;

(b) A description of the types of wastes or waste matrices for which the proposed method may be used;

(c) Comparative results obtained from using the proposed method with those obtained from using the relevant or corresponding methods prescribed in 401 KAR Chapter 31, 34, 35, or 37;

(d) An assessment of any factors which may interfere with, or limit the use of, the proposed method; and

(e) A description of the quality control procedures necessary to ensure the sensitivity, accuracy, and precision of the proposed method.

(3) After receiving a petition for an equivalent method, the cabinet may request any additional information on the proposed method which is reasonably required to evaluate the method.

(4) If the cabinet amends the hazardous waste administrative regulations to permit use of a new testing method, the method shall be referenced in Section 3 of 401 KAR 30:010.

Section 7. Petitions to Amend 401 KAR Chapter 43 to Include Additional Hazardous Wastes. (1) Any person seeking to add a hazardous waste or a category of hazardous waste to the universal waste regulations of 401 KAR Chapter 43 shall petition for a regulatory amendment under Section 1 of this administrative regulation and 401 KAR 43:070.

(2)(a) The petitioner shall demonstrate to the satisfaction of the cabinet that regulation under the universal waste regulations of 401 KAR Chapter 43:

1. Is appropriate for the waste or category of waste;
2. Will improve management practices for the waste or category of waste; and

3. Will improve implementation of the hazardous waste program.

(b) The petition shall include the information required by Section 1(2) of this administrative regulation.

(c) The petition shall also address as many of the factors listed in Section 2 of 401 KAR 43:070 as are appropriate for the waste or category of waste addressed in the petition.

(3) The cabinet shall grant or deny the petition using the factors listed in Section 2 of 401 KAR 43:070. The decision shall be based on the weight of evidence showing that regulation under 401 KAR Chapter 43 is appropriate for the waste or category of waste, will improve management practices for the waste or category of waste, and will improve implementation of the hazardous waste program.

(4) The cabinet may request additional information needed to evaluate the merits of the petition.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: July 11, 1996

FILED WITH LRC: July 12, 1996 at 9 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Thursday, August 29, 1996, at 7 p.m. Eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing, at the address noted below, by August 24, 1996. If by that date Mr. Hale has not received any notification of intent to attend the hearing, the hearing will be canceled. This hearing is open to the public. Any person wishing to comment on the proposed administrative regulation will be given an opportunity to do so. Persons testifying at the hearing are requested to provide a written copy of their testimony, if available. A transcript of the hearing will not be made unless a request for such is filed with Mr. Hale by August 24, 1996 and arrangements for payment of the transcript are made by that date. Written comments may also be submitted on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than the date of the close of the public hearing on August 29, 1996. Persons submitting written comments are also requested to provide an electronic copy of their comments, if available. The preferred format for the electronic format is any version of Word Perfect on 3.5 inch diskettes; however, any other format would be greatly appreciated, should Word Perfect or 3.5 inch diskettes not be available. The Natural Resources and Environmental Cabinet does not discriminate on the basis of color, national origin, sex, religion, age, or disability in employment or the provision of services. Upon request, the Cabinet will provide reasonable accommodation, including auxiliary aids and services, necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as a interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by August 24, 1996.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221.

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale.

1. Type and number of entities affected: This proposed amendment affects generators of hazardous waste that wish to include additional waste as universal waste.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the 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. Effect on the 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. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No public comments were received.

2. Second and subsequent years: No public comments were received.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First year: The combined effect of adopting the federal standards will result in an increased workload on existing staff. Partial funding via EPA is anticipated to cover extra costs associated with the extra workload.

2. Continuing costs or savings: Until the processing is complete for all entities, there will be an increased workload for those in the agency.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs, because the changes are consistent with federal standards.

b. Reporting and paperwork requirements: There will be more paperwork, since additional petitions may be submitted requesting the cabinet to include additional hazardous waste as a universal waste.

4. Assessment of anticipated effect on state and local revenues: There are no anticipated effects on state and local revenues.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: Partial funding from EPA grants are anticipated to help in the enforcement and implementation of these standards.

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

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: No alternatives were considered. These changes are consistent with federal standards.

8. Assessment of expected benefits of the administrative regulation: There will be some benefits for Kentucky industries because they will receive indirect savings with the adoption of these amendments.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: The effects on public health and the environment will improve with the adoption and implementation of these amendments.

b. State whether a detrimental effect on the environment and public health would result if not implemented: If not implemented, the environment and public health would not be threatened. c. If detrimental effect would result, explain detrimental effect: Not applicable.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no statutes, regulations, or policies that conflict with, overlap, or duplicate the proposed amendment.

- a. Necessity of proposed regulation if in conflict: Not applicable.
- b. If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

11. Any additional information or comments: No additional comments.

12. TIERING: Is tiering applied? (Explain why tiering was or was not used): Yes, tiering was used. This administrative regulation allows an entity to request that a hazardous waste be considered as a universal waste, which is subject to fewer requirements.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution.

2. State compliance standards: The proposed amendments adopt changes that include standards for hazardous waste facilities that are to be included as universal waste. These changes are necessary to maintain consistency between the state and federal programs. Additions have been made which clarify the applicability of technical standards to hazardous waste facilities. In addition, the regulation has been modified to reflect the requirements of regulation construction specified in KRS Chapter 13A.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part, or division of local government this administrative regulation will affect. This administrative regulation will affect any state, county, or local office of government that generates hazardous waste that wishes to include additional waste as universal waste.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224 Subchapter 46 requires that the cabinet to establish a comprehensive program for the proper management of hazardous waste. The agencies affected by this administrative regulation will be subject to these requirements.

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 impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): The only expenditures to a state, county, or local office of government will be those expenditures related to compliance with this administrative regulation. If this administrative regulation does not apply to a state, county, or local office of government, there will be no expenditures.

Other Explanation: None

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

401 KAR 31:070. Delisted hazardous waste streams.

RELATES TO: KRS 224.01, 224.40, 224.43, 224.46, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-510

NECESSITY AND FUNCTION: KRS 224.510(3) requires the cabinet to identify the characteristics of and to list hazardous wastes. This chapter identifies and lists hazardous wastes. This administrative regulation contains the list of industries whose waste stream exclusion petitions have been granted based on the criteria in 401 KAR 31:060.

Section 1. Purpose of Exclusions. (1) The cabinet may (but shall not be required to) grant an exclusion under 401 KAR 31:060. The cabinet will publish notice of any such exclusion in accordance with Section 2 of this administrative regulation.

(2) The cabinet may (but shall not be required to) grant a temporary exclusion before making a final decision under 401 KAR 31:060 whenever it finds that there is a substantial likelihood that an exclusion will finally be granted. The cabinet will publish notice of any such temporary exclusion in accordance with Section 3 of this administrative regulation.

Section 2. List of Granted Exclusions. The following wastes shall not be considered hazardous waste under this chapter:

(1) Brine purification muds and saturator insolubles (K071) generated after August 18, 1989 by BFGoodrich Intermediates Company, Inc., Calvert City, Kentucky. This section contains the complete final rule that was published in the Federal Register on August 18, 1989. The initial testing and subsequent testing were completed, and the U.S. EPA notification under subsection (2)(b)2 of this section was made to BF Goodrich on April 19, 1990.

(2) This exclusion is conditional upon the collection and submission of data obtained from BFGoodrich's full-scale treatment system because BFGoodrich's original data was based on data presented by another petitioner using an identical treatment process. To ensure that hazardous constituents are not present in the waste at levels of regulatory concern once the full-scale treatment facility is in operation, BFGoodrich shall implement a testing program. All sampling and analyses (including quality control procedures) shall be performed according to SW-846 procedures. This testing program shall meet the following conditions for the exclusion to be valid:

(a)1. Daily sampling. Collect representative grab samples from every batch of the treated mercury brine purification muds and treated saturator insolubles on a daily basis and composite the grab samples to produce two (2) separate daily composite samples (one (1) of the treated mercury brine purification muds and one (1) of the treated saturator insolubles). Prior to disposal of the treated batches, two (2) daily composite sample shall be analyzed for EP leachate concentration of mercury. BFGoodrich shall report the analytical test data, including all quality control data, within ninety (90) days after the treatment of the first full-scale batch.

2. BFGoodrich shall compile and store on-site for a minimum of three (3) years all analytical data and quality control data. These data shall be furnished upon request and made available for inspection by the cabinet.

(b)1. Collect representative grab samples from every batch of the treated mercury brine purification muds and treated saturator insolubles on a daily basis and composite the grab samples to produce two (2) separate weekly composite sample (one (1) of the treated mercury brine muds and one (1) of the treated saturator insolubles). Prior to disposal of the treated batches, two (2) weekly

composite samples shall be analyzed for the EP leachate concentrations of all the EP toxic metals (except mercury), nickel, and cyanide (using distilled water in the cyanide extractions), and the total constituent concentrations of reactive sulfide and reactive cyanide. BFGoodrich shall report the analytical test data, including all quality control data, obtained during this initial period no later than ninety (90) days after the treatment of the first full-scale batch.

2. BFGoodrich shall compile and store on-site for a minimum of three (3) years all analytical data and quality control data. These data shall be furnished upon request and made available for inspection by the cabinet. These testing requirements shall be terminated when the results of four (4) consecutive weekly composite samples of both the treated mercury brine muds and treated saturator insolubles, obtained from either the initial testing for subsequent testing, show the maximum allowable levels in paragraph (c) of this subsection are not exceeded and the U.S. EPA notifies BFGoodrich that the requirements of this condition have been lifted.

(c) If under paragraph (a) or (b) of this subsection, the EP leachate concentrations for chromium, lead, arsenic, or silver exceed 0.316 mg/l; for barium exceed 6.31 mg/l; for cadmium or selenium exceed 0.063 mg/l; for mercury exceeds 0.0126 mg/l; for nickel exceeds 3.16 mg/l; for cyanide exceeds 4.42 mg/l; or for total reactive cyanide or total reactive sulfide levels exceed 250 mg/kg and 500 mg/kg, respectively, the waste shall either be retreated until it meets these levels or managed and disposed of in accordance with 401 KAR Chapters 31 through 39.

(d) Within one (1) week of system start-up, BFGoodrich shall notify the U.S. EPA when the full-scale system is on-line and waste treatment has begun. At the cabinet's request, BFGoodrich shall submit any other analytical data obtained through paragraph (a) or (b) of this subsection, within the time period specified by the cabinet. Failure to submit the required data will be considered sufficient basis to revoke BFGoodrich's exclusion to the extent directed by the U.S. EPA. All data shall be accompanied by the following certification statement: "Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code which include, but may not be limited to, 18 USC 6928), I certify that the information contained in or accompanying this document is true, accurate and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. In the event that any of this information is determined to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of wastes shall be void as if it never had effect or to the extent directed by the U.S. EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion." [Each petition has claimed that the samples are representative of any variation of the constituent level in the waste stream. Samples have been analyzed for those constituents which caused the cabinet to list the waste under 401 KAR Chapter 31 and all other factors (including additional constituents) other than those for which the waste was listed which the cabinet has determined could cause the waste to be a hazardous waste. Copies of the petitions listed in this section have been filed with the Legislative Research Commission, Regulation Compiler's Office, The Capitol, Frankfort, Kentucky 40601. Each petition is also on file with the Natural Resources and Environmental Protection Cabinet, Department for Environmental Protection, Division of Waste Management, 18 Reilly Road, Frankfort, Kentucky 40601. As of the effective date of this administrative regulation, no waste stream exclusion petition has been approved in accordance with 401 KAR 31:060.]

Section 3. List of Granted Temporary Exclusions. (1) Temporary exclusions shall remain in effect from the date the exclusion is published in this administrative regulation until November 8, 1986 or until a final determination is issued under Section 2 of this administrative regulation, whichever occurs first.

(2) List of Granted Temporary Exclusions. Each petitioner has claimed that the samples are representative of any variation of the constituent level in the waste stream(s). Copies of the petitions listed in this section have been filed with the Legislative Research Commission, Regulation Compiler's Office, The Capitol, Frankfort, Kentucky 40601. Each petition is also on file at the Natural Resources and Environmental Protection Cabinet, Department for Environmental Protection, Division of Waste Management, 14 [48] Reilly Road, Frankfort, Kentucky 40601. The following waste streams have been granted temporary exclusions from the lists of hazardous waste in 401 KAR 31:040:

(a) National Standard Company of Corbin.

1. The National Standard Company of Corbin, involved in the production of industrial wire cloth and low carbon steel wire, has petitioned the secretary to exclude its sludge resulting from lime treatment of metal finishing wastewaters, considered EPA Hazardous Waste No. K062, (spent pickle liquor from steel finishing operations), from the list of hazardous wastes contained in 401 KAR 31:040.

2. In the petition submitted to the secretary, the test results found in this paragraph were contained. EP toxicity tests of the sludge revealed maximum chromium and lead concentrations of 0.09 and 0.15 mg/l, respectively.

(b) General Electric Company.

1. The General Electric Company-Appliance Park located in Louisville, involved in the manufacturing of various kitchen and home appliances, has petitioned the secretary to exclude its sludge from the lists of hazardous wastes:

a. EPA Hazardous Waste No. F006 - Wastewater treatment sludges from electroplating operations except for the following processes:

(i) Sulfuric acid anodizing of aluminum;

(ii) Tin plating on carbon steel;

(iii) Zinc plating (segregated basis) on carbon steel;

(iv) Aluminum or zinc - aluminum plating on carbon steel;

(v) Cleaning or stripping associated with tin, zinc and aluminum plating on carbon steel; and

(vi) Chemical etching and milling of aluminum;

b. EPA Hazardous Waste No. F019 - Wastewater treatment sludges from the chemical conversion coating of aluminum; and

c. EPA Hazardous Waste No. K062 - Spent pickle liquor from steel finishing operations.

2. In the petition submitted to the secretary, the test results found in this paragraph were contained. EP toxicity tests of the final treatment sludge revealed maximum cadmium, chromium, nickel, and lead concentrations of 0.001, 0.03, 4.53 and 0.15 ppm. Total constituent analysis for cyanide indicated a maximum concentration of 1.05 ppm. The pH ranged from 8.2 to 8.4. The maximum allowable limits for cadmium, hexavalent chromium, nickel, lead, cyanide, and pH (as described in this paragraph) are 1.0, 5.0, 20.0, 5.0, 10.0, and 2.0

(c) The Ladish Company of Cynthiana.

1. The Ladish Company of Cynthiana, involved in the production of stainless steel valves, fittings, and forged steel fittings, has petitioned the secretary to exclude its lime-treated sulfuric acid sludge and its lime-treated and chemically-fixed nitric/hydrofluoric acid sludge, both considered EPA Hazardous Waste No. K062 (spent pickle liquor from steel finishing operations), from the list of hazardous wastes contained in 401 KAR 31:040.

2. In the petition submitted to the cabinet, the test results found in this paragraph were contained. EP toxicity tests of the final treatment sulfuric acid sludge revealed maximum chromium and lead concentration of 0.038 and 0.012 mg/l, respectively. EP toxicity tests

of the final treatment nitric/hydrofluoric acid sludge revealed maximum chromium, hexavalent chromium, and lead concentrations of 4.24, 1.52, and 0.006 mg/l respectively.

(d) Production Plating, Inc. of Lexington.

1. Production Plating, Inc. of Lexington, involved in electroplating, vibratory finishing of, and etching on metals, has petitioned the secretary to exclude its zinc-cyanide contaminated soil listed as EPA Hazardous Waste No. F007, spent cyanide plating bath solutions from electroplating operations (except for precious metals electroplating spent cyanide plating bath solutions) from the lists of hazardous wastes contained in 401 KAR 31:040.

2. The test results found in this paragraph were contained in the petition submitted to the cabinet. Distilled water leachate tests revealed a maximum concentration of free cyanide of 0.02 mg/l. Total constituent analysis of the soil revealed a maximum concentration of free cyanide at a concentration of 7.99 ppm.

(e) Faultless Hardware Division of Hopkinsville.

1. The Faultless Hardware Division of Hopkinsville, involved in the finishing of zinc die castings into hardware trim, has petitioned the secretary to exclude its wastewater treatment sludges from electroplating operations listed as EPA Hazardous Waste No. F006 from the list of hazardous wastes contained in 401 KAR 31:040, Section 2.

2. In the petition submitted to the secretary, the test results found in this paragraph were contained. EP toxicity tests of the sludge revealed maximum cadmium, chromium, and nickel concentrations of 0.019, 0.006, and 0.536 mg/l, respectively. The maximum total and distilled water EP analysis for cyanide amendable to chlorination was 4.5 ug/gm and 0.035 mg/l, respectively.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: July 11, 1996

FILED WITH LRC: July 12, 1996 at 9 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Thursday, August 29, 1996, at 7 p.m. Eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing, at the address noted below, by August 24, 1996. If by that date Mr. Hale has not received any notification of intent to attend the hearing, the hearing will be canceled. This hearing is open to the public. Any person wishing to comment on the proposed administrative regulation will be given an opportunity to do so. Persons testifying at the hearing are requested to provide a written copy of their testimony, if available. A transcript of the hearing will not be made unless a request for such is filed with Mr. Hale by August 24, 1996 and arrangements for payment of the transcript are made by that date. Written comments may also be submitted on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than the date of the close of the public hearing on August 29, 1996. Persons submitting written comments are also requested to provide an electronic copy of their comments, if available. The preferred format for the electronic format is any version of Word Perfect on 3.5 inch diskettes; however, any other format would be greatly appreciated, should Word Perfect or 3.5 inch diskettes not be available. The Natural Resources and Environmental Cabinet does not discriminate on the basis of color, national origin, sex, religion, age, or disability in employment or the provision of services. Upon request, the Cabinet will provide reasonable accommodation, including auxiliary aids and services, necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as a interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by August 24, 1996.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221.

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: These amendments affect entities that are to be excluded from regulation which work with certain hazardous wastes.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the 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. Effect on the 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. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No public comments were received.

2. Second and subsequent years: No public comments were received.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First year: There will be an increase in workload to enforce and process new entities.

2. Continuing costs or savings: Once the new entities are processed, there should be no extra workload for the agency.

3. Additional factors increasing or decreasing costs: No additional factors will increase or decrease costs. However, grants are expected to be given by the EPA to cover extra work costs.

b. Reporting and paperwork requirements: No additional paperwork will be required.

4. Assessment of anticipated effect on state and local revenues: There are no anticipated effects on state and local revenues.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: The source of revenue to cover implementation and enforcement costs are grants from the EPA.

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

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 alternatives. These amendments are consistent with federal standards..

8. Assessment of expected benefits of the administrative regulation: Kentucky industries will benefit in indirect savings with the adoption of these amendments.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: These amendments will protect the public health, environment, and the geographical area with their implementation.

b. State whether a detrimental effect on the environment and public health would result if not implemented: No detrimental effects would occur.

c. If detrimental effect would result, explain detrimental effect: Not applicable.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no statutes, policies, or regulations, that conflict with, overlap, or duplicate this regulation.

a. Necessity of proposed regulation if in conflict: Not applicable.

b. If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

11. Any additional information or comments: No additional

comments.

12. TIERING: Is tiering applied? (Explain why tiering was or was not used): Yes, tiering was used based on the types of hazardous waste referred to in this regulation, and the number of entities involved.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution.

2. State compliance standards: The proposed amendments adopt changes that include standards for certain hazardous waste facilities that are to be excluded from regulation. These changes are necessary to maintain consistency between state and federal programs. Additions and exclusions have been made to clarify and define the applicability of these standards regarding hazardous waste facilities. In addition, the regulation has been modified to reflect the requirements of regulation construction specified in KRS Chapter 13A.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part, or division of local government this administrative regulation will affect. This administrative regulation will affect any state, county, or local office of government which work with specific hazardous wastes that are to be excluded from regulation.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224 Subchapter 46 requires that the cabinet to establish a comprehensive program for the proper management of hazardous waste. The agencies affected by this administrative regulation will be subject to these requirements.

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 impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): The only expenditures to a state, county, or local office of government will be those expenditures related to compliance with this administrative regulation. If this administrative regulation does not apply to a state, county, or local office of government, there will be no expenditures.

Other Explanation: None

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

401 KAR 31:110. Appendix on toxicity characteristic leaching procedure.

RELATES TO: KRS 224.01, 224.40, 224.43, 224.46, 40 CFR 261 Appendix II

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-510(3), 40 CFR 261 Appendix II

NECESSITY AND FUNCTION: KRS 224.46-510(3) requires the cabinet to identify the characteristics of and to list hazardous wastes. This chapter identifies and lists hazardous waste. This administrative regulation contains the appendix to this chapter concerning the toxicity characteristic leaching procedure.

Section 1. Applicability. Method 1311 Toxicity Characteristic Leaching Procedure[~~which~~] is contained in SW-846, Third Edition, incorporated in 40 CFR 260.11, which is adopted in Section 3 of 401 KAR 30:010 [40 CFR 261 Appendix II (1990), is hereby adopted without change].

(1) The owner or operator of a surface impoundment, landfill, land treatment facility, waste pile, underground injection well, or other disposal facility which is newly regulated due to the toxicity characteristic leaching procedure shall comply with the requirements in Section 1 of 401 KAR 35:060 by the effective date of this amendment.

(2) Surface impoundments newly regulated due to the toxicity characteristic leaching procedure shall comply with the design requirements in Section 10 of 401 KAR 35:200 (interim status surface impoundments) or Section 2 of 401 KAR 34:200 (permitted surface impoundments) by March 29, 1994.

(3) Within thirty (30) days of the effective date of this amendment, hazardous waste generators, owners, and operators shall provide to the cabinet copies of the notification previously provided to EPA concerning TCLP. These notifications include permit applications, permit modifications, and notifications of hazardous waste activity. In addition, within thirty (30) days of the effective date of this amendment, hazardous waste generators, owners, and operators shall provide to the cabinet the completed Notification of Hazardous Waste Activity form (DEP-7037) incorporated by reference in 401 KAR 32:010, Section 4[3(2)].

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: July 11, 1996

FILED WITH LRC: July 12, 1996 at 9 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Thursday, August 29, 1996, at 7 p.m. Eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing, at the address noted below, by August 24, 1996. If by that date Mr. Hale has not received any notification of intent to attend the hearing, the hearing will be canceled. This hearing is open to the public. Any person wishing to comment on the proposed administrative regulation will be given an opportunity to do so. Persons testifying at the hearing are requested to provide a written copy of their testimony, if available. A transcript of the hearing will not be made unless a request for such is filed with Mr. Hale by August 24, 1996 and arrangements for payment of the transcript are made by that date. Written comments may also be submitted on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than the date of the close of the public hearing on August 29, 1996. Persons submitting written comments are also requested to provide an electronic copy of their comments, if available. The preferred format

for the electronic format is any version of Word Perfect on 3.5 inch diskettes; however, any other format would be greatly appreciated, should Word Perfect or 3.5 inch diskettes not be available. The Natural Resources and Environmental Cabinet does not discriminate on the basis of color, national origin, sex, religion, age, or disability in employment or the provision of services. upon request, the Cabinet will provide reasonable accommodation, including auxiliary aids and services, necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as a interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by August 24, 1996.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221.

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: The proposed amendment affects persons who must conduct toxicity characteristic and leaching tests.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the 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. Effect on the 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. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No public comments were received.

2. Second and subsequent years: No public comments were received.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First Year: There will be no direct or indirect costs or savings.

2. Continuing costs or savings: There will be no continuing costs or savings.

3. Additional factors increasing or decreasing costs: There are no additional factors affecting costs.

b. Reporting and paperwork requirements: There are no additional paperwork requirements.

4. Assessment of anticipated effect on state and local revenues: There are no anticipated effects on state and local revenues.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: EPA grants are to be used for the implementation of this regulation.

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

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: Alternatives were not considered. These changes are consistent with federal standards.

8. Assessment of expected benefits of the administrative regulation: This amendment provides consistency with federal standards.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: There will

be no effects on public health and the environment without the implementation of this regulation.

b. State whether a detrimental effect on the environment and public health would result if not implemented: Not applicable.

c. If detrimental effect would result, explain detrimental effect: Not applicable.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no statutes, policies, or regulations that conflict, overlap, or duplicate this regulation.

a. Necessity of proposed regulation if in conflict: Not applicable.

b. If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

11. Any additional information or comments: No additional comments.

12. TIERING: Is tiering applied? (Explain why tiering was or was not used): Yes, tiering was used. This administrative regulation applies to persons must conduct toxicity characteristic and leaching procedures, consistent with federal standards, to protect human health and the environment.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution.

2. State compliance standards: The proposed amendments adopt changes including toxicity characteristic and leaching procedures. This change is necessary to maintain consistency between state and federal programs. In addition, the regulation has been modified to reflect the requirements of regulation construction specified in KRS Chapter 13A.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part, or division of local government this administrative regulation will affect. This administrative regulation will affect any state, county, or local office of government that conducts toxicity characteristic and leaching procedures.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224 Subchapter 46 requires that the cabinet to establish a comprehensive program for the proper management of hazardous waste. The agencies affected by this administrative regulation will be subject to these requirements.

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 impacts of the administrative regulation.

ADMINISTRATIVE REGISTER - 538

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): The only expenditures to a state, county, or local office of government will be those expenditures related to compliance with this administrative regulation. If this administrative regulation does not apply to a state, county, or local office of government, there will be no expenditures.

Other Explanation: None

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

401 KAR 31:120. Appendix on chemical analysis test methods.

RELATES TO: KRS 224.01, 224.40, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-510(3), 224.46-530

NECESSITY AND FUNCTION: To implement provisions of KRS 224.46-510(3), 224.46-530, and to identify the characteristics of and to list hazardous wastes and to establish chemical analysis test methods.

Section 1. Chemical Analysis Test Methods. Appropriate analytical procedures to determine whether a sample contains a given toxic constituent are specified in Chapter Two, "Choosing the Correct Procedure" found in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, incorporated in 40 CFR 260.11, which is adopted in Section 3 of 401 KAR 30:010. Prior to final sampling and analysis method selection, the individual should consult the specific section or method described in SW-846 for additional guidance on which of the approved methods should be employed for a specific sample analysis situation. (1) Tables 1, 2, and 3 specify the appropriate analytical procedures described in "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods," SW-846, (incorporated by reference in Section 3 of 401 KAR 30:010), which shall be used in determining whether the waste in question contains a toxic constituent given in 401 KAR 31:160 or 31:170.

(2) Table 1 identifies each organic constituent in 401 KAR 31:160 or 31:170 along with the approved measurement method. Table 2 identifies the corresponding methods for the inorganic species. Table 3 summarizes the contents of SW-846 and supplies specific section and method numbers for sampling and analysis methods.

(3) Prior to final sampling and analysis method selection the analyst should consult the specific section or method described in SW-846 for additional guidance on which of the approved methods should be employed for a specific sample analysis situation.

(4) Table 1. Analysis Methods for Organic Chemicals Contained in SW-846

Compound	Method Numbers
Acetonitrile	8030, 8240
Acrolein	8030, 8240
Acrylamide	8015, 8240
Acrylonitrile	8030, 8240
2-Amino-1-methylbenzene (o-Toluidine)	8250
4-Amino-1-methylbenzene (p-Toluidine)	8250
Aniline	8250
Benzene	8020, 8024
Benz(a)anthracene	8100, 8250, 8310
Benzo(a)pyrene	8100, 8250, 8310

Benzotrachloride	8120, 8250
Benzyl chloride	8120, 8250
Benzo(b)fluoranthene	8100, 8250, 8310
Benzo(k)fluoranthene	8100, 8250, 8270, 8310
Bis(2-chloroethoxymethane)	8010, 8240
Bis(2-chloroethyl)ether	8010, 8240
Bis(2-chloroisopropyl)ether	8010, 8240
Carbon disulfide	8015, 8240
Carbon tetrachloride	8010, 8240
Chlordane	8080, 8250
Chlorinated biphenyls	8080, 8250
Chlorinated dibenzo-p-dioxins	8280
Chlorinated dibenzofurans	8280
Chloroacetaldehyde	8010, 8240
Chlorobenzene	8020, 8240
Chloroform	8010, 8240
Chloromethane	8010, 8240
2-Chlorophenol	8040, 8250
Chrysene	8100, 8250, 8310
Creosote*	8100, 8250
Cresol(s)	8040, 8250
Cresylic acid(s)	8040, 8250
Dichlorobenzene(s)	8010, 8120, 8250
Dichloroethane(s)	8010, 8240
Dichloromethane	8010, 8240
Dichlorophenoxy acetic acid	8150, 8250
Dichloropropanol	8120, 8250
Dimethyl sulfate	8250, 8270
1,1-Dimethylhydrazine (UDMH)	8250
2,4-Dimethylphenol	8040, 8250
Dinitrobenzene	8090, 8250
4,6-Dinitro-o-cresol	8040, 8250
2,4-Dinitrotoluene	8090, 8250
2,6-Dinitrotoluene	8060, 8250
Endrin	8080, 8250
2-Ethoxyethanol	8030, 8240
Ethyl ether	8015, 8240
Ethylene dibromide	8010, 8240
Ethylene thiourea	8250, 8330
Formaldehyde	8015, 8240
Formic acid	8250
Heptachlor	8080, 8250
Hexachlorobenzene	8120, 8250
Hexachlorobutadiene	8120, 8250
Hexachloroethane	8010, 8240
Hexachlorocyclopentadiene	8120, 8250
Lindane	8080, 8250
Maleic anhydride	8250
Methanol	8010, 8240
Methomyl	8250
Methyl bromide	8010, 8240, 8260
Methyl ethyl ketone	8015, 8240
Methyl isobutyl ketone	8015, 8240
Naphthalene	8100, 8250
Napthoquinone	8090, 8250
Nitrobenzene	8090, 8250
4-Nitrophenol	8040, 8240
2-Nitropropane	8030, 8240
Paraldehyde (trimer of acetaldehyde)	8015, 8240
Pentachlorophenol	8040, 8250
Phenol	8040, 8250
Phorate	8140
Phosphorodithioic acid esters	8140
Phthalic anhydride	8090, 8250
2-Picoline	8090, 8250
Pyridine	8090, 8250
Tetrachlorobenzene(s)	8120, 8250

ADMINISTRATIVE REGISTER - 539

Tetrachloroethane(s)	8010, 8240
Tetrachloroethene	8010, 8240
Tetrachlorophenol	8040, 8250
Toluene	8020, 8024
Toluene diisocyanate(s)	8250
Toluenediamine	8250
2,4-Toluenediamine	8250
2,6-Toluenediamine	8250
3,4-Toluenediamine	8250
Toxaphene	8080, 8250
Trichloroethane	8010, 8240
Trichloroethene(s)	8010, 8240
Trichlorofluoromethane	8010, 8240
Trichlorophenol(s)	8040, 8250
2,4,5-Trichlorophenoxy propionic acid	8150, 8250
Trichloropropane	8010, 8240
Vinyl chloride	8010, 8240
Vinylidene chloride	8010, 8240
Xylene	8020, 8240

Analyze for phenanthrene and carbazole; if these are present in ratio between 1:4:1 and 5:1, creosote should be considered present.

(5) Table 2. Analysis Methods for Inorganic Chemicals and Miscellaneous Groups of Analytes Contained in SW-846

Species	Second Edition Methods	Third Edition Methods
Aluminum		6010
Antimony	7040, 7041	6010
Arsenic	7060, 7061	6010
Barium	7080, 7081	6010
Beryllium		6010, 7090, 7091
Boron		6010
Cadmium	7090, 7091	6010
Calcium		6010
Chromium	7190, 7191	6010
Chromium: hexavalent	7195, 7196, 7197	7198
Cobalt		6010
Copper		6010, 7210, 7211
Iron		6010, 7380, 7381
Lead	7420, 7421	

Magnesium	6010
Manganese	6010, 7460, 7461
Mercury	7470, 7471
Molybdenum	6010
Nickel	7520, 7521
Osmium	7550
Potassium	6010
Selenium	7740, 7741
Silicon	6010
Silver	7760, 7761
Sodium	6010, 7770
Thallium	6010, 7840, 7841
Vanadium	6010, 7910, 7911
Zinc	6010, 7950, 7951
Cyanides	9010
total organic halides	9022
Sulfides	9030
Sulfates	9035, 9036, 9038, 9060
Total organic carbon	9060
Phenolics	9065, 9066*, 9067
Oil and grease	9070, 9071
Total coliform	9131, 9132
Nitrate	9200
Chlorides	9250, 9251, 9252
Gross alpha and gross beta	9310
Alpha emitting radium isotopes	9315
Radium-228	9320

*The Third Edition of SW-846 and its Revision I are available from the Government Printing Office, Superintendent of Documents, Washington, DC 20402, (202)783-3238, document number 955-001-00000-1.

*When Method 9066 is used it must be preceded by the manual distillation specified in procedure 7.1 of Method 9065. Just prior to distillation in Method 9065, adjust the sulfuric acid preserved sample to pH with 1=0 NaOH. After the manual distillation is completed, the auto analyzer manifold is simplified by connecting the resample line directly to the sampler.

(6) Table 3. Sampling and Analysis Methods Contained in SW-846

Table 3—Sampling and Analysis Methods Contained in SW-846*

Title	Third Edition		Second Edition	
	Section No.	Method No.	Section No.	Method No.
QUALITY CONTROL	1-0		10-0	
Introduction	1-1		10-1	
Quality Control	1-2			
Method Detection Limit	1-3			
Data Reporting	1-4			
Quality Control Documentation	1-5			
References	1-6			
CHOOSING THE CORRECT PROCEDURE	2-0			
Purpose	2-1			

ADMINISTRATIVE REGISTER - 540

Required Information	2.2			
Implementing the Guidance	2.3			
Characteristics	2.4			
Ground Water	2.5			
References	2.6			
METALLIC ANALYTES	3.0			
Sampling Considerations	3.1			
Sample Preparation Methods	3.2			
Acid Digestion of Waters for Total Recoverable or Dissolved Metals for Analysis by Flame AAS or ICP	3.2	3005		
Acid Digestion of Aqueous Samples and Extracts for Total Metals for Analysis by Flame AAS or ICP	3.2	3010	4.1	3010
Acid Digestion of Aqueous Samples and Extracts for Total Metals for Analysis by Furnace AAS	3.2	3020	4.1	3020
Dissolution Procedure for Oils, Greases, or Waxes	3.2	3040	4.1	3040
Acid Digestion of Sediments, Sludges and Soils	3.2	3050	4.1	3050
METHODS FOR THE DETERMINATION OF METALS	3.3			
Inductively Coupled Plasma Atomic Emissions Spectroscopy	3.3	*6010		
Atomic Absorption Methods	3.3	7000		
Aluminum, Flame AAS	3.3	7020		
Antimony, Flame AAS	3.3	7040	7.0	7040
Antimony, Furnace AAS	3.3	7041	7.0	7041
Arsenic, Furnace AAS	3.3	7060	7.0	7060
Arsenic, Gaseous Hydride AAS	3.3	7061	7.0	7061
Barium, Flame AAS	3.3	7080	7.0	7080
Barium, Furnace AAS	3.3	7081	7.0	7081
Beryllium, Flame AAS	3.3	*7090		
Beryllium, Furnace AAS	3.3	*7091		
Cadmium, Flame AAS	3.3	7130	7.0	7130
Cadmium, Furnace AAS	3.3	7131	7.0	7131
Calcium, Flame AAS	3.3	7140		
Chromium, Flame AAS	3.3	7190	7.0	7190
Chromium, Furnace AAS	3.3	7191	7.0	7191
Chromium, Hexavalent, Coprecipitation	3.3	7195	7.0	7195
Chromium, Hexavalent, Colorimetric	3.3	7196	7.0	7196
Chromium, Hexavalent, Chelation/Extraction	3.3	7197	7.0	7197
Chromium, Hexavalent, Differential Pulse Polarography	3.3	*7198		
Cobalt, Flame AAS	3.3	7200		
Cobalt, Furnace AAS	3.3	7201		
Copper, Flame AAS	3.3	*7210		

ADMINISTRATIVE REGISTER - 541

Copper, Furnace AAS	3.3	*7211		
Iron, Flame AAS	3.3	*7380		
Iron, Furnace AAS	3.3	*7381		
Lead, Flame AAS	3.3	7420	7.0	7420
Lead, Furnace AAS	3.3	7421	5.0	7421
Magnesium, Flame AAS	3.3	7450		
Manganese, Flame AAS	3.3	*7460		
Manganese, Furnace AAS	3.3	*7461		
Mercury in Liquid Waste, Manual Cold Vapor Technique	3.3	7470	7.0	7470
Mercury in Solid or Semisolid Waste, Manual Cold Vapor Technique	3.3	7471	7.0	7471
Molybdenum, Flame AAS	3.3	7480		
Molybdenum, Furnace AAS	3.3	7481		
Nickel, Flame AAS	3.3	7520	7.0	7520
Osmium, Flame AAS	3.3	*7550		
Potassium, Flame AAS	3.3	7610		
Selenium, Furnace AAS	3.3	7740	7.0	7740
Selenium, Gaseous Hydride AAS	3.3	7741	7.0	7741
Silver, Flame AAS	3.3	7760	7.0	7760
Silver, Furnace AAS	3.3	7761	7.0	7761
Sodium, Flame AAS	3.3	*7770		
Thallium, Flame AAS	3.3	*7840		
Thallium, Furnace AAS	3.3	*7841		
Tin, Flame AAS	3.3	7870		
Vanadium, Flame AAS	3.3	*7910		
Vanadium, Furnace AAS	3.3	*7911		
Zinc, Flame AAS	3.3	*7950		
Zinc, Furnace AAS	3.3	*7951		
ORGANIC ANALYTES	4.0		8.0	
Sampling Considerations	4.1			
Sample Preparation Methods	4.2			
Extractions and Preparations	4.2.1			
Organic Extraction and Sample Preparation	4.2.1	3500		
Separatory Funnel Liquid-Liquid Extraction	4.2.1	3510	4.2	3510
Continuous Liquid-Liquid Extraction	4.2.1	3520	4.2	3520
Soxhlet Extraction	4.2.1	3540	4.2	3540
Ultrasonic Extraction	4.2.1	3550	4.2	3550
Waste Dilution	4.2.1	3580		
Purge and Trap	4.2.1	5030	5.0	5030
Protocol for Analysis of Sorbent Cartridges from VOST	4.2.1	*5040		

ADMINISTRATIVE REGISTER - 542

Cleanup	4.2.2			
Cleanup	4.2.2	3600		
Alumina-Column-Cleanup	4.2.2	3610		
Alumina-Column-Cleanup and Separation of Petroleum Wastes	4.2.2	*3611		
Florisil-Column-Cleanup	4.2.2	3620		
Silica-Gel-Cleanup	4.2.2	3630		
Gel-Permeation-Cleanup	4.2.2	3640		
Acid-Base-Partition-Cleanup	4.2.2	3650	4.2	3630
Sulfur-Cleanup	4.2.2	3660		
DETERMINATION OF ORGANIC ANALYTES	4.3			
Gas-Chromatographic-Methods	4.3.1		8.1	
Gas-Chromatography	4.3.1	8000		
Halogenated-Volatile-Organics	4.3.1	8010	8.1	8010
EDB and DBCP	4.3.1	8011		
Nonhalogenated-Volatile-Organics	4.3.1	8015	8.1	8015
Aromatic-Volatile-Organics	4.3.1	8020	8.1	8020
Volatile Organic Compounds in Water by Purge and Trap-Capillary Column GC with PID and Electrolytic Conductivity Detector in Series	4.3.1	8021		
Acrolein, Acrylonitrile, Acetonitrile	4.3.1	8030	8.1	8030
Phenols	4.3.1	8040	8.1	8040
Phthalate-Esters	4.3.1	8060	8.1	8060
Nitrosamines	4.3.1	8070		
Organochlorine-Pesticides and PCBs as Aroclors	4.3.1	8080	8.1	8080
Nitroaromatics and Cyclic Ketones	4.3.1	8090	8.1	8090
Polynuclear-Aromatic-Hydrocarbons	4.3.1	8100	8.1	8100
Haloethers	4.3.1	8110		
Chlorinated-Hydrocarbons	4.3.1	8120	8.1	8120
Organophosphorus-Pesticides	4.3.1	8140	8.1	8140
Organophosphorus-Pesticides: Capillary-Column	4.3.1	8141		
Chlorinated-Herbicides	4.3.1	8150	8.1	8150
Gas-Chromatographic/Mass-Spectroscopic-Methods	4.3.2		8.2	
GC/MS-Volatiles	4.3.2	8240	8.2	8240
GC/MS-Semivolatiles, Packed-Column	4.3.2	8250	8.2	8250
GC/MS for Volatiles Capillary-Column	4.3.2	8260		
GC/MS-Semivolatiles, Capillary-Column	4.3.2	8270	8.2	8270
Analysis of Chlorinated Dioxins and Dibenzofurans	4.3.2	8280		
High-Performance-Liquid-Chromatographic-Methods (HPLC)	4.3.3		8.3	
Polynuclear-Aromatic-Hydrocarbons	4.3.3	8310	8.3	8310
MISCELLANEOUS SCREENING METHODS	4.4			

ADMINISTRATIVE REGISTER - 543

Headspace	4.4	3810	5.0	5020
Hexadecano Extraction and Screening of Purgeable Organics	4.4	3820		
MISCELLANEOUS TEST METHODS	5.0		9.0	
Total and Amenable Cyanide (Colorimetric, Manual)	5.0	9010	9.0	9010
Total and Amenable Cyanide (Colorimetric, Automated)	5.0	9012		
Total Organic Halides (TOX)	5.0	9020	9.0	9020
Purgeable Organic Halides (POX)	5.0	9021		
Total Organic Halides (TOX) by Neutron Activation Analysis	5.0	*9022		
Acid Soluble and Acid Insoluble Sulfides	5.0	9030	9.0	9030
Extractable Sulfides	5.0	9031		
Sulfate, (Colorimetric, Automated, Chloranilate)	5.0	*9035		
Sulfate, (Colorimetric, Automated, Methylthymol Blue, AA II)	5.0	*9036		
Sulfate, (Turbidimetric)	5.0	*9038		
Total Organic Carbon	5.0	*9060		
Phenolics, (Spectrophotometric, Manual 4 AAP)	5.0	*9065		
Phenolics, (Colorimetric, Automated 4 AAP)	5.0	*9066		
Phenolics, (Spectrophotometric, MBTH)	5.0	*9067		
Total Recoverable Oil and Grease (Gravimetric, Separatory Funnel Extraction)	5.0	*9070		
Oil and Grease Extraction Method for Sludge Samples	5.0	*9071		
Total Coliform: Multiple Tube Fermentation	5.0	*9131		
Total Coliform: Membrane Filter	5.0	*9132		
Nitrate	5.0	*9200		
Chloride (Colorimetric, Automated Ferricyanide-AAI)	5.0	*9250		
Chloride (Colorimetric, Automated Ferricyanide-AAII)	5.0	*9251		
Chloride (Titrimetric, Mercuric Nitrate)	5.0	*9252		
PROPERTIES	6.0			
Multiple Extraction Procedure	6.0	*1320		
Extraction Procedure for Oily Wastes	6.0	*1330		
pH Electrometric Measurement	6.0	9040	9.0	9040
pH Paper Method	6.0	9041		
Soil pH	6.0	9045		
Specific Conductance	6.0	9050		
Cation Exchange Capacity of Soils (Ammonium Acetate)	6.0	*9080		
Cation Exchange Capacity of Soils (Sodium Acetate)	6.0	*9081		
Compatibility Test for Wastes and Membrane Liners	6.0	9090		
Paint Filter Liquids Test	6.0	9095	9.0	9095
Saturated Hydraulic Conductivity, Saturated Leachate Conductivity, and Intrinsic Permeability	6.0	*9100		

ADMINISTRATIVE REGISTER - 544

Gross Alpha and Gross Beta	6.0	*9310		
Alpha-Emitting Radium Isotopes	6.0	*9315		
Radium-228	6.0	*9320		
INTRODUCTION AND REGULATORY DEFINITIONS	7.0		2.0	
Ignitability	7.1		2.1.1	
Corrosivity	7.2		2.1.2	
Reactivity	7.3		2.1.3	
Test Method to Determine Hydrogen Cyanide Released from Wastes	7.3			
Test Method to Determine Hydrogen Sulfide Released from Wastes	7.3			
Extraction Procedure Toxicity	7.4		2.1.4	
METHODS FOR DETERMINING CHARACTERISTICS	8.0		2.0	
Ignitability	8.1		2.1.1	
Pensky-Martens Closed-Cup Method	8.1	1010	2.1.1	1010
Setaflash Closed-Cup Method	8.1	1020	2.1.1	1020
Corrosivity	8.2		2.1.2	
Corrosivity Toward Steel	8.2	1110	2.1.2	1110
Reactivity	8.3		2.1.3	
Toxicity	8.4		2.1.4	
Extraction Procedure (EP) Toxicity Test Method and Structural Integrity Test	8.4	1310	2.1.4	1310
SAMPLING PLAN	9.0		1.0	
Design and Development	9.1		1.0, 1.1	
Implementation	9.2		1.2, 1.3, 1.4	
SAMPLING METHODS	10.0			
Modified Method 5 Sampling Train, Appendix A and B	10.0	*0010		
Source Assessment Sampling System (SASS)	10.0	*0020		
Volatile Organic Sampling Train	10.0	*0030		
GROUND-WATER MONITORING	11.0			
Background and Objectives	11.1			
Relationship to the Administrative regulations and to Other Documents	11.2			
Revisions and Additions	11.3			
Acceptable Designs and Practices	11.4			
Unacceptable Designs and Practices	11.5			
LAND TREATMENT MONITORING	12.0			
Background	12.1			
Treatment Zone	12.2			
Regulatory Definition	12.3			
Monitoring and Sampling Strategy	12.4			

ADMINISTRATIVE REGISTER - 545

Analysis	12-5		
References and Bibliography	12-6		
INCINERATION	13-0		
Introduction	13-1		
Regulatory Definition	13-2		
Waste Characterization Strategy	13-3		
Stack Gas Effluent Characterization Strategy	13-4		
Additional Effluent Characterization Strategy	13-5		
Selection of Specific Sampling and Analysis Methods	13-6		
References	13-7		

FOOTNOTE: *The Third Edition of SW 846 and its Revision 1 are available from the Government Printing Office, Superintendent of Documents, Washington, DC 20402, (202) 738-3238, document number 955-001-00000-1.

FOOTNOTE: *This method may be used in conjunction with or in addition to the methods found in the Second Edition of SW 846 as amended by Updates I and II.

FOOTNOTE: † When Method 9066 is used it shall be preceded by the manual distillation specified in procedure 7.1 of Method 9065. Just prior to distillation in Method 9065, adjust the sulfuric acid preserved sample to pH 4 with 1+9 NaOH. After the manual distillation is completed, the autoanalyzer manifold is simplified by connecting the re-sample line directly to the sampler.]

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: July 11, 1996

FILED WITH LRC: July 12, 1996 at 9 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Thursday, August 29, 1996, at 7 p.m. Eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing, at the address noted below, by August 24, 1996. If by that date Mr. Hale has not received any notification of intent to attend the hearing, the hearing will be canceled. This hearing is open to the public. Any person wishing to comment on the proposed administrative regulation will be given an opportunity to do so. Persons testifying at the hearing are requested to provide a written copy of their testimony, if available. A transcript of the hearing will not be made unless a request for such is filed with Mr. Hale by August 24, 1996 and arrangements for payment of the transcript are made by that date. Written comments may also be submitted on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than the date of the close of the public hearing on August 29, 1996. Persons submitting written comments are also requested to provide an electronic copy of their comments, if available. The preferred format for the electronic format is any version of Word Perfect on 3.5 inch diskettes; however, any other format would be greatly appreciated, should Word Perfect or 3.5 inch diskettes not be available. The Natural Resources and Environmental Cabinet does not discriminate on the basis of color, national origin, sex, religion, age, or disability in employment or the provision of services. upon request, the Cabinet will provide reasonable accommodation, including auxiliary aids and services, necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as a interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by August 24, 1996.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221.

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: The proposed amendments affect persons conducting chemical analyses and waste analyses at hazardous waste facilities.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the 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. Effect on the 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. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No public comments were received.

2. Second and subsequent years: No public comments were received.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First year: The only costs will be increased workloads for the agency, so the new entities can be processed and regulated.

2. Continuing costs or savings: There should be no additional costs after the new entities are processed.

3. Additional factors increasing or decreasing costs: There are no additional factors affecting costs.

b. Reporting and paperwork requirements: There will be no additional paperwork requirements.

4. Assessment of anticipated effect on state and local revenues: There are no anticipated effects on state or local revenue.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: Partial EPA funding will be used for the implementation and enforcement of this regulation.

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

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 were no other alternatives. These amendments are consistent with federal standards.

8. Assessment of expected benefits of the administrative regulation: The benefit of adopting this regulation is that Kentucky's regulations will be consistent with the federal ones.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: There would be no public health or environmental risks.

b. State whether a detrimental effect on the environment and public health would result if not implemented: Not applicable.

c. If detrimental effect would result, explain detrimental effect: Not applicable.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no statutes, policies, or regulations which conflict, overlap, or duplicate this regulation.

a. Necessity of proposed regulation if in conflict: Not applicable.

b. If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

11. Any additional information or comments: No additional comments.

12. TIERING: Is tiering applied? (Explain why tiering was or was not used): Yes, tiering was used. This administrative regulation only applies to entities conducting chemical analysis.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution.

2. State compliance standards: The proposed amendments adopt changes that include standards for chemical analysis and waste analysis at hazardous waste facilities. These changes are necessary to maintain consistency between state and federal programs. Several additions and exclusions have been made to clarify the analysis methods and the applicability of analysis standards. In addition, the regulation has been modified to reflect the requirements of regulation construction specified in KRS Chapter 13A.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part, or division of local government this administrative regulation will affect. This administrative regulation will affect any state, county, or local office of government that conducts chemical analyses and waste analyses on hazardous waste.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the Cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224 Subchapter 46 requires that the Cabinet to establish a comprehensive program for the proper

management of hazardous waste. The agencies affected by this administrative regulation will be subject to these requirements.

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 impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): The only expenditures to a state, county, or local office of government will be those expenditures related to compliance with this administrative regulation. If this administrative regulation does not apply to a state, county, or local office of government, there will be no expenditures.

Other Explanation: None

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

401 KAR 31:160. Appendix on basis for listing hazardous waste.

RELATES TO: KRS 224.01, 224.40, 224.46, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-510(3)

NECESSITY AND FUNCTION: To identify the characteristics of and to provide the basis for listing a hazardous waste pursuant to KRS 224.46-510(3).

Section 1. Basis for Listing Hazardous Waste. The basis for listing hazardous waste is:

EPA Hazardous Waste No.	Hazardous Constituents for Which Listed
F001	Tetrachloroethylene, methylene chloride trichloroethylene, 1,1,1-trichloroethane, carbon tetrachloride, chlorinated fluorocarbons.
F002	Tetrachloroethylene, methylene chloride, trichloroethylene, 1,1,1-trichloroethane, 1,1,2-trichloroethane, chlorobenzene, 1,1,2-trichloro-1,2,2-trifluoroethane, orthodichlorobenzene, trichlorofluoromethane.
F003	Not Applicable (hereafter N.A.).
F004	Cresols and cresylic acid, nitrobenzene.
F005	Toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, 2-ethoxyethanol, benzene, 2-nitropropane.
F006	Cadmium, hexavalent chromium, nickel, cyanide (complexed).
F007	Cyanide (salts).
F008	Cyanide (salts).
F009	Cyanide (salts).
F010	Cyanide (salts).
F011	Cyanide (salts).
F012	Cyanide (complexed).
F019	Hexavalent chromium, cyanide (complexed)
F020	Tetra- and pentachlorodibenzo-p-dioxins; tetra and pentachlorodibenzofurans; tri- and tetrachlorophenols and their chlorophenoxy derivative acids, esters, ethers, amines, and other salts.
F021	Penta- and hexachlorodibenzo-p-dioxins; penta- and hexachlorodibenzofurans; pentachlorophenol and its derivatives.
F022	Tetra-, penta-, and hexachlorodibenzo-p-dioxins; tetra-,

ADMINISTRATIVE REGISTER - 547

	penta-, and hexachlorodibenzofurans.	K008	Hexavalent chromium.
F023	Tetra-, and pentachlorodibenzo-p-dioxins; tetra- and pentachlorodibenzofurans; tri- and tetrachlorophenols and their chlorophenoxy derivative acids, esters, ethers, amines and other salts.	K009	Chloroform, formaldehyde, methylene chloride, methyl chloride, paraldehyde, formic acid.
F024	Chloromethane, dichloromethane, trichloromethane, carbon tetra-chloride, chloroethylene, 1,1-dichloroethane, 1,2-dichloroethane, trans-1,2-dichloroethylene, 1,1-dichloroethylene, 1,1,1-trichloroethane, 1,1,2-trichloroethane, trichloroethylene, 1,1,1,2-tetrachloroethane, 1,1,2,2-tetrachloroethane, tetrachloroethylene, pentachloroethane, hexachloroethane, allylchloride (3-chloropropene), dichloropropane, dichloropropene, 2-chloro-1,3-butadiene, hexachloro-1,3-butadiene, hexachlorocyclopentadiene, hexachlorocyclohexane, benzene, chlorobenzene, dichlorobenzenes, 1,2,4-trichlorobenzene, tetrachlorobenzene, pentachlorobenzene, hexachlorobenzene, toluene, naphthalene.	K010	Chloroform, formaldehyde, methylene chloride, methyl chloride, paraldehyde, formic acid, chloroacetaldehyde.
F025	Chloromethane; dichloromethane; trichloromethane; carbon tetrachloride; chloroethylene; 1,1-dichloroethane; 1,2-dichloroethane; trans-1,2-dichloroethylene; 1,1-dichloroethylene; 1,1,1-trichloroethane; 1,1,2-trichloroethane; trichloroethylene; 1,1,1,2-tetrachloroethane; 1,1,2,2-tetrachloroethane; tetrachloroethylene; pentachloroethane, hexachloroethane; allyl chloride (3-chloropropene); dichloropropane; dichloropropene; 2-chloro-1,3-butadiene; hexachloro-1,3-butadiene; hexachlorocyclopentadiene; benzene, chlorobenzene; dichlorobenzene; 1,2,4-trichlorobenzene; tetrachlorobenzene; pentachlorobenzene; hexachlorobenzene; toluene; naphthalene.	K011	Acrylonitrile, acetonitrile, hydrocyanic acid.
F026	Tetra-, penta-, and hexachlorodibenzo-p-dioxins; tetra-, penta-, and hexachlorodibenzofurans.	K013	Hydrocyanic acid, acrylonitrile, acetonitrile.
F027	Tetra-, penta-, and hexachlorodibenzo-p-dioxins; tetra-, penta-, and hexachlorodibenzofurans; tri-, tetra-, and pentachlorophenols and their chlorophenoxy derivative acids, esters, ethers, amines and other salts.	K014	Acetonitrile, acrylamide.
F028	Tetra-, penta-, and hexachlorodibenzo-p-dioxins; tetra-, penta-, and hexachlorodibenzofurans; tri-, tetra-, and pentachlorophenols and their chlorophenoxy derivative acids, esters, ethers, amines and other salts.	K015	Benzyl chloride, chlorobenzene, toluene, benzotrichloride.
F032	Benz(a)anthracene, benzo(a)pyrene, dibenz(a,h)-anthracene, indeno(1,2,3-cd)pyrene, pentachlorophenol, arsenic, chromium, tetra-, penta-, hexa-, heptachlorodibenzo-p-dioxins, tetra-, penta-, hexa-, heptachlorodibenzofurans.	K016	Hexachlorobenzene, hexachlorobutadiene, carbon tetrachloride, hexachloroethane, perchloroethylene.
F034	Benz(a)anthracene, benzo(k)fluoranthene, benzo(a)pyrene, dibenz(a,h)anthracene, indeno(1,2,3-cd)pyrene, naphthalene, arsenic, chromium	K017	Epichlorohydrin, chloroethers, (bis(chloromethyl) ether and bis(2-chloroethyl) ethers), trichloropropane, dichloropropanols.
F035	Arsenic, chromium, lead.	K018	1,2-dichloroethane, trichloroethylene, hexachlorobutadiene, hexachlorobenzene.
F037	Benzene, benzo(a)pyrene, chrysene, lead, chromium.	K019	Ethylene dichloride, 1,1,1-trichloroethane, 1,1,2-trichloroethane, tetrachloroethanes (1,1,2,2-tetrachloroethane and 1,1,1,2-tetrachloroethane), trichloroethylene, tetrachloroethylene, carbon tetrachloride, chloroform, vinyl chloride, vinylidene chloride.
F038	Benzene, benzo(a)pyrene, chrysene, lead; chromium.	K020	Ethylene dichloride, 1,1,1-trichloroethane, 1,1,2-trichloroethane, tetrachloroethanes (1,1,2,2-tetrachloroethane and 1,1,1,2-tetrachloroethane), trichloroethylene, tetrachloroethylene, carbon tetrachloride, chloroform, vinyl chloride, vinylidene chloride.
F039	All constituents for which treatment standards are specified for multisource leachate (wastewaters and nonwastewaters) under Section 6 of 401 KAR 37:040, Table CCW.	K021	Antimony, carbon tetrachloride, chloroform.
K001	Pentachlorophenol, phenol, 2-chlorophenol, p-chloro-m-cresol, 2,4-dimethylphenyl, 2,4-dinitrophenol, trichlorophenols, tetrachlorophenols, 2,4-dinitrophenol, creosote, chrysene, naphthalene, fluoranthene, benzo(b)fluoranthene, benzo(a)-pyrene, indeno(1,2,3-cd)pyrene, benz(a)anthracene, dibenz(a)anthracene, acenaphthalene.	K022	Phenol, tars (polycyclic aromatic hydrocarbons).
K002	Hexavalent chromium, lead.	K023	Phthalic anhydride, maleic anhydride.
K003	Hexavalent chromium, lead.	K024	Phthalic anhydride, 1,4-naphthoquinone.
K004	Hexavalent chromium.	K025	Meta-dinitrobenzene, 2,4-dinitrotoluene.
K005	Hexavalent chromium, lead.	K026	Paraldehyde, pyridines, 2-picoline.
K006	Hexavalent chromium.	K027	Toluene diisocyanate, toluene-2,4-diamine.
K007	Cyanide (complexed), hexavalent chromium.	K028	1,1,1-trichloroethane, vinyl chloride.
		K029	1,2-dichloroethane, 1,1,1-trichloroethane, vinyl chloride, vinylidene chloride, chloroform.
		K030	Hexachlorobenzene, hexachlorobutadiene, hexachloroethane, 1,1,1,2-tetrachloroethane, 1,1,2,2-tetrachloroethane, ethylene dichloride.
		K031	Arsenic.
		K032	Hexachlorocyclopentadiene.
		K033	Hexachlorocyclopentadiene.
		K034	Hexachlorocyclopentadiene.
		K035	Creosote, chrysene, naphthalene, fluoranthene benzo(b)-fluoranthene, benzo(a)pyrene, indeno (1,2,2-cd) pyrene, benzo(a)anthracene, dibenzo(a)anthracene, acenaphthalene.
		K036	Toluene, phosphorothioic acid esters.
		K037	Toluene, phosphorodithioic and phosphorothioic acid esters.
		K038	Phorate, formaldehyde, phosphorodithioic and phosphorothioic acid esters.
		K039	Phosphorodithioic and phosphorothioic acid esters.
		K040	Phorate, formaldehyde, phosphorodithioic and phosphorothioic acid esters.
		K041	Toxaphene.
		K042	Hexachlorobenzene, orthodichlorobenzene
		K043	2,4-dichlorophenol, 2,6-dichlorophenol, 2,4,6-trichlorophenol.
		K044	N.A.
		K045	N.A.
		K046	Lead
		K047	N.A.
		K048	Hexavalent chromium, lead.
		K049	Hexavalent chromium, lead.
		K050	Hexavalent chromium.

ADMINISTRATIVE REGISTER - 548

K051	Hexavalent chromium, lead.		
K052	Lead.	K147	<u>(a,h,)anthracene, naphthalene.</u>
K060	Cyanide, naphthalene, phenolic compounds, arsenic.		<u>Benzene, benz(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, dibenz(a,h)anthracene, indeno(1,2,3-cd)pyrene.</u>
K061	Hexavalent chromium, lead, cadmium.	K148	<u>Benz(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, dibenz(a,h)anthracene, indeno(1,2,3-cd)pyrene.</u>
K062	Hexavalent chromium, lead.		
K064	Lead, cadmium.	K149	<u>Benzotrichloride, benzyl chloride, chloroform, chloromethane, chlorobenzene, 1,4-dichlorobenzene, hexachlorobenzene, pentachlorobenzene, 1,2,4,5-tetrachlorobenzene, toluene.</u>
K065	Lead, cadmium.	K150	<u>Carbon tetrachloride, chloroform, chloromethane, 1,4-dichlorobenzene, hexachlorobenzene, pentachlorobenzene, 1,2,4,5-tetrachlorobenzene, 1,1,2,2-tetrachloroethane, tetrachloroethylene, 1,2,4-trichlorobenzene.</u>
K066	Lead, cadmium.	K151	<u>Benzene, carbon tetrachloride, chloroform, hexachlorobenzene, pentachlorobenzene, toluene, 1,2,4,5-tetrachlorobenzene, tetrachloroethylene.</u>
K069	Hexavalent chromium, lead, cadmium.	K156	<u>Benomyl, carbaryl, carbendazim, carbofuran, carbosulfan, formaldehyde, methylene chloride, triethylamine.</u>
K071	Mercury.	K157	<u>Carbon tetrachloride, formaldehyde, methyl chloride, methylene chloride, pyridine, triethylamine.</u>
K073	Chloroform, carbon tetrachloride, hexachloroethane, trichloroethane, tetrachloroethylene, dichloroethylene, 1,1,2,2-tetrachloroethane.	K158	<u>Benomyl, carbendazim, carbofuran, carbosulfan, chloroform, methylene chloride.</u>
K083	Aniline, diphenylamine, nitrobenzene, phenylenediamine.	K159	<u>Benzene, butylate, EPTC, molinate, pebulate, vernolate.</u>
K084	Arsenic.	K160	<u>Benzene, butylate, EPTC, molinate, pebulate, vernolate.</u>
K085	Benzene, dichlorobenzenes, trichlorobenzenes, tetrachlorobenzenes, pentachlorobenzene, hexachlorobenzene, benzyl chloride.	K161	<u>Antimony, arsenic, metam sodium, ziram.</u>
K086	Lead, hexavalent chromium.		
K087	Phenol, naphthalene.		
K088	Cyanide (complexes).		
K090	Chromium.		
K091	Chromium.		
K093	Phthalic anhydride, maleic anhydride.		
K094	Phthalic anhydride.		
K095	1,1,2-trichloroethane, 1,1,1,2-tetrachloroethane, 1,1,2,2-tetrachloroethane.		
K096	1,2-dichloroethane, 1,1,1-trichloroethane, 1,1,2-trichloroethane.		
K097	Chlordane, heptachlor.		
K098	Toxaphene.		
K099	2,4-dichlorophenol, 2,4,6-trichlorophenol.		
K100	Hexavalent chromium, lead, cadmium.		
K101	Arsenic.		
K102	Arsenic.		
K103	Aniline, nitrobenzene, phenylenediamine.		
K104	Aniline, benzene, diphenylamine, nitrobenzene, phenylenediamine.		
K105	Benzene, monochlorobenzene, dichlorobenzenes, 2,4,6-trichlorophenol.		
K106	Mercury.		
K111	2,4-Dinitrotoluene.		
K112	2,4-Toluenediamine, o-toluidine, p-toluidine, aniline.		
K113	2,4-Toluenediamine, o-toluidine, p-toluidine, aniline.		
K114	2,4-Toluenediamine, o-toluidine, p-toluidine.		
K115	2,4-Toluenediamine.		
K116	Carbon tetrachloride, tetrachloroethylene, chloroform, phosgene.		
K117	Ethylene dibromide.		
K118	Ethylene dibromide.		
K123	Ethylene thiourea.		
K124	Ethylene thiourea.		
K125	Ethylene thiourea.		
K126	Ethylene thiourea.		
K136	Ethylene dibromide.		
K141	<u>Benzene, benz(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, dibenz(a,h)anthracene, indeno(1,2,3-cd)pyrene.</u>		
K142	<u>Benzene, benz(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, dibenz(a,h)anthracene, indeno(1,2,3-cd)pyrene.</u>		
K143	<u>Benzene, benz(a)anthracene, benzo(b)fluoranthene, benzo(k)fluoranthene.</u>		
K144	<u>Benzene, benz(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, dibenz(a,h)anthracene.</u>		
K145	<u>Benzene, benz(a)anthracene, benzo(a)pyrene, dibenz</u>		

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: July 11, 1996

FILED WITH LRC: July 12, 1996 at 9 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Thursday, August 29, 1996, at 7 p.m. Eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing, at the address noted below, by August 24, 1996. If by that date Mr. Hale has not received any notification of intent to attend the hearing, the hearing will be canceled. This hearing is open to the public. Any person wishing to comment on the proposed administrative regulation will be given an opportunity to do so. Persons testifying at the hearing are requested to provide a written copy of their testimony, if available. A transcript of the hearing will not be made unless a request for such is filed with Mr. Hale by August 24, 1996 and arrangements for payment of the transcript are made by that date. Written comments may also be submitted on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than the date of the close of the public hearing on August 29, 1996. Persons submitting written comments are also requested to provide an electronic copy of their comments, if available. The preferred format for the electronic format is any version of Word Perfect on 3.5 inch diskettes; however, any other format would be greatly appreciated, should Word Perfect or 3.5 inch diskettes not be available. The Natural Resources and Environmental Cabinet does not discriminate on the basis of color, national origin, sex, religion, age, or disability in employment or the provision of services. Upon request, the Cabinet will provide reasonable accommodation, including auxiliary aids and services, necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as an interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by August 24, 1996.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221.

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: The proposed amendments affect all hazardous waste facilities.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the 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. Effect on the 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. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No public comments were received.

2. Second and subsequent years: No public comments were received.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First Year: There will be no costs to the administrative body.

2. Continuing costs or savings: Not applicable.

3. Additional factors increasing or decreasing costs: There will be no additional factors affecting costs.

b. Reporting and paperwork requirements: There will be no extra paperwork requirements.

4. Assessment of anticipated effect on state and local revenues: There are no anticipated effects on state and local revenues.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: The EPA funding will be used for implementation and enforcement of the regulation.

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

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 were no other alternatives. These changes are consistent with federal standards.

8. Assessment of expected benefits of the administrative regulation: KRS 224.46-510 requires the cabinet to promulgate regulations that establish a list of hazardous waste identical to the hazardous waste listing established by the U.S. EPA. These amendments are consistent with the federal listing.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: The proposed amendment will protect the public health and environmental welfare of the commonwealth.

b. State whether a detrimental effect on the environment and public health would result if not implemented: Yes, there would be detrimental effects if this regulation is not implemented.

c. If detrimental effect would result, explain detrimental effect: The health and environment would be at risk if this regulation is not implemented. The hazardous chemicals would harm people as well as the environment.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no statutes, regulations, or policies that conflict, overlap, or duplicate this regulation.

a. Necessity of proposed regulation if in conflict: Not applicable.

b. If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

11. Any additional information or comments: No additional comments.

12. TIERING: Is tiering applied? (Explain why tiering was or was not used): Tiering is applied to all of Kentucky's hazardous waste regulations, based on type and quantity of hazardous waste generated and managed and type of management activities performed by the owner or operator.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution.

2. State compliance standards: The proposed amendments adopt changes that include standards for the listing of hazardous chemicals. These changes are necessary to maintain consistency between state and federal programs. Additions have been made to clarify the listing of hazardous wastes. In addition, the regulation has been modified to reflect the requirements of regulation construction specification in KRS Chapter 13A.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part, or division of local government this administrative regulation will affect. This administrative regulation will affect any state, county, or local office of government that manages hazardous waste.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224 Subchapter 46 requires that the cabinet to establish a comprehensive program for the proper management of hazardous waste. The agencies that manage hazardous waste will be subject to these requirements.

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 impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): The only expenditures to a state, county, or local office of government will be those expenditures related to compliance with this administrative regulation. If this administrative regulation does not apply to a state, county, or local office of government, there will be no expenditures.

Other Explanation: None

ADMINISTRATIVE REGISTER - 550

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

401 KAR 31:170. Appendix on hazardous waste constituents.

RELATES TO: KRS 224.01, 224.40, 224.43, 224.46, 224.99,
Appendix VIII of 40 CFR Part 261

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-510(3)

NECESSITY AND FUNCTION: To identify the characteristics of
and to list hazardous wastes pursuant to KRS 224.46-510(3).

Section 1. Hazardous Waste Constituents. The list of hazardous
waste constituents for use in interpreting any requirement in this
chapter or any other hazardous waste administrative regulation is:

COMMON NAME	CHEMICAL ABSTRACTS NAME	CHEMICAL ABSTRACTS NO (HAZARDOUS WASTE NO.)
<u>A2213</u>	<u>Ethanimidothioic acid, 2-(dimethylamino)-N-hydroxy-2-oxo-, methyl ester</u>	<u>30558-43-1 (U394)</u>
Acetonitrile	Same	75-05-8 (U003)
Acetophenone	Ethanone, 1-phenyl-	98-86-2 (U004)
2-Acetylaminofluorene	Acetamide, N-9H-fluorene-2-yl-	53-96-3 (U005)
Acetyl chloride	Same	75-36-5 (U006)
1-Acetyl-2-thiourea	Acetamide, N-(aminothioxomethyl)-	591-08-2 (P002)
Acrolein	2-Propenal	107-02-8 (P003)
Acrylamide	2-Propenamide	79-06-1 (U007)
Acrylonitrile	2-Propenenitrile	107-13-1 (U009)
Aflatoxins	Same	1402-68-2 (----)
Aldicarb	Propanal, 2-methyl-2-(methylthio)-,0-((methylamino) carbonyl)oxime	116-06-3 (P070)
<u>Aldicarb sulfone</u>	<u>Propanal, 2-methyl-2- (methylsulfonyl)-, 9-[(methylamino) carbonyl] oxime</u>	<u>1646-88-4 (P203)</u>
Aldrin	1,4,5,8-Dimethanonaphthalene,1,2,3,4,10,10-hexachloro-1,4,4a,5,8, 8a-hexahydro-, (1alpha, 4alpha,4abeta, 5alpha, 8alpha, 8abeta)-	309-00-02 (P004)
Allyl alcohol	2-Propen-1-ol	107-18-6 (P005)
Allylchloride	1-Propane, 3-chloro	107-18-6
Aluminum phosphide	Same	20859-73-8 (P006)
4-Aminobiphenyl	(1,1'-Biphenyl)-4-amine	92-67-1 (----)
5-(Aminomethyl)-3-isoxazolol	3(2H)-Isoxazolone,5-(aminomethyl)-	2763-96-4 (P007)
4-Aminopyridine	4-Pyridinamine	504-24-5 (P008)
Amitrole	1H-1,2,4-Triazol-3-amine	61-82-5 (U011)
Ammonium vanadate	Vanadic acid, ammonium salt	7803-55-6 (P119)
Aniline	Benzenamine	62-53-3 (U012)
Antimony	Same	7440-36-0 (----)
Antimony compounds, N.O.S.**	-----	----
Aramite	Sulfurous acid, 2-chloroethyl 2-(4-(1,1- dimethylethyl)phenoxy)-1-methylethyl ester	140-57-8 (----)
Arsenic	Same	7440-38-2 (----)
Arsenic compounds, N.O.S.*	-----	---- (----)
Arsenic acid	Arsenic acid H ₃ AsO ₄	7778-39-4 (P010)
Arsenic pentoxide	Arsenic oxide As ₂ O ₅	1303-28-2 (P011)
Arsenic trioxide	Arsenic oxide As ₂ O ₃	1327-53-3 (P012)
Auramine	Benzenamine, 4,4'-carbonimidoylbis(N,N-Dimethyl)	492-80-8 (U014)
Azaserine	L-Serine, diazoacetate (ester)	115-02-6 (U015)
<u>Barban</u>	<u>Carbamic acid, (3-chlorophenyl)-, 4-chloro-2-butyryl ester</u>	<u>101-27-9 (U280)</u>
Barium	Same	7440-39-3 (----)
Barium compounds, N.O.S.*	-----	---- (----)
Barium cyanide	Same	542-62-1 (P013)
<u>Bendiocarb</u>	<u>1,3-Benzodioxol-4-ol, 2,2-dimethyl-, methyl carbamate</u>	<u>22781-23-3 (U278)</u>
<u>Bendiocarb phenol</u>	<u>1,3-Benzodioxol-4-ol, 2,2-dimethyl</u>	<u>22961-82-6 (U364)</u>
<u>Benomyl</u>	<u>Carbamic acid, [1-(butylamino) carbonyl]- 1H-benzimidazol-2-yl]-</u>	<u>17804-35-2 (U271)</u>

ADMINISTRATIVE REGISTER - 551

Benz(c)acridine	methyl ester	225-51-4 (U016)
Benz(a)anthracene	Same	56-55-3 (U018)
Benzal chloride	Same	98-87-3 (U017)
Benzene	Same	71-43-2 (U019)
Benzeneearsonic acid	Arsonic acid, phenyl-	98-05-5 (----)
Benzidine	(1,1'-Biphenyl)-4,4'-diamine	92-87-5 (U021)
Benzo(b)fluoranthene	Benz(e)acephenanthrylene	205-99-2 (----)
Benzo(j)fluoranthene	Same	205-82-3 (----)
Benzo(k)fluoranthene	Same	207-08-9
Benzo(a)pyrene	Same	50-32-8 (U022)
p-Benzoquinone	2,5-Cyclohexadiene-1,4-dione	106-51-4 (U197)
Benzo(trichloride)	Benzene, (trichloromethyl)-	98-07-7 (U023)
Benzyl chloride	Benzene, (chloromethyl)-	100-44-7 (P028)
Beryllium powder	Same	7440-41-7 (P015)
Beryllium compounds, N.O.S.*	-----	---- (----)
<u>Bis (pentamethylene)-</u>	<u>Piperidine, 1,1'-(tetrathiodicarbonothioyl)-bis-</u>	<u>120-54-7 (U400)</u>
<u>thiuram tetrasulfide</u>		
Bromoacetone	2-Propanone, 1-bromo-	598-31-2 (P017)
Bromoform	Methane, tribromo-	75-25-2 (U225)
4-Bromophenyl phenyl ether	Benzene, 1-bromo-4-phenoxy-	101-55-3 (U030)
Brucine	Strychnidin-10-one,2,3-dimethoxy-	357-57-3 (P018)
Butyl benzyl phthalate	1,2-Benzenedicarboxylic acid, butyl phenylmethyl ester	85-68-7 (----)
<u>Butylate</u>	<u>Carbamothioic acid, bis (2-methylpropyl)-, S-ethyl ester</u>	<u>2008-41-5 (U392)</u>
Cacodylic acid	Arsinic acid, dimethyl-	75-60-5 (U136)
Cadmium	Same	7440-43-9 (----)
Cadmium compounds, N.O.S.*	-----	---- (----)
Calcium chromate	Chromic acid H ₂ CrO ₄ , calcium salt	13765-19-0 (U032)
Calcium cyanide	Calcium cyanide Ca (CN) ₂	592-01-8 (P021)
<u>Carbaryl</u>	<u>1-Naphthalenol, methylcarbamate</u>	<u>63-25-2 (U279)</u>
<u>Carbendazim</u>	<u>Carbamic acid, 1H-benzimidazol-2-yl, methyl ester</u>	<u>10605-21-7 (U372)</u>
<u>Carbofuran</u>	<u>7-Benzofuranol, 2,3-dihydro-2,2-dimethyl, methylcarbamate</u>	<u>1563-66-2 (P127)</u>
<u>Carbofuran phenol</u>	<u>7-Benzofuranol, 2,2-dihydro-2,2-dimethyl-</u>	<u>1563-38-8 (U367)</u>
Carbon disulfide	Same	75-15-0 (P022)
Carbon oxyfluoride	Carbonic difluoride	353-50-4 (U033)
Carbon tetrachloride	Methane,tetrachloro-	56-23-5 (U211)
<u>Carbosulfan</u>	<u>Carbamic acid, [(dibutylamino) thio] methyl-2,3-dihydro-</u>	<u>55285-14-8 (P189)</u>
	<u>2,2-dimethyl-7-benzofuranyl ester</u>	
Chloral	Acetaldehyde, trichloro-	75-87-6 (U034)
Chlorambucil	Benzene butanoic acid, 4-(bis(2-chloroethyl)amino)-	305-03-3 (U035)
Chlordane	4,7-Methano-1H-indene, 1,2,4,5,6,7,8,8-octachloro-2,3,3a,4,7,7a-hexahydro-	57-74-9 (U036)
	-----	U036
Chlordane (alpha and gamma isomers)	-----	---- (U036)
Chlorinated benzenes, N.O.S.*	-----	---- (----)
Chlorinated ethane, N.O.S.*	-----	---- (----)
Chlorinated fluorocarbons, N.O.S.*	-----	---- (----)
Chlorinated naphthalene, N.O.S.*	-----	---- (----)
Chlorinated phenol, N.O.S.*	-----	---- (----)
Chlornaphazin	Naphthalenamine,N,N'-bis(2-chloroethyl)-	494-03-1 (U026)
Chloroacetaldehyde	Acetaldehyde, chloro-	107-20-0 (P023)
Chloroalkyl ethers, N.O.S.*	-----	---- (----)
p-Chloroaniline	Benzenamine,4-chloro-	106-47-8 (P024)
Chlorobenzene	Benzene, chloro-	108-90-7 (U037)
Chlorobenzilate	Benzeneacetic acid, 4-chloro-alpha-(4-chlorophenyl)-alpha-hydroxy-, ethyl ester	510-15-6 (U038)
p-Chloro-m-cresol	Phenol, 4-chloro-3-methyl-	59-50-7 (U039)
2-Chloroethyl vinyl ether	Ethene, (2-chloroethoxy)-	110-75-8 (U042)
Chloroform	Methane, trichloro-	67-66-3 (U044)
Chloromethyl methyl ether	Methane, chloromethoxy-	107-30-2 (U046)
beta-Chloronaphthalene	Naphthalene,2-chloro-	91-58-7 (U047)
o-Chlorophenol	Phenol, 2-chloro-	95-57-8 (U048)
1-(o-Chlorophenyl)thiourea	Thiourea, (2-chlorophenyl)-	5344-82-1 (P026)
Chloroprene	1,3-Butadiene,2-chloro-	126-99-8 (----)
3-Chloropropionitrile	Propanenitrile, 3-chloro-	542-76-7 (P027)
Chromium	Same	7440-47-3 (----)
Chromium compounds, N.O.S.*	-----	---- (----)

ADMINISTRATIVE REGISTER - 552

Chrysene	Same	218-01-9 (U050)
Citrus red No. 2	2-Naphthalenol, 1-((2,5-dimethoxyphenyl)azo)-	6358-53-8 (----)
Coal tar creosote	Same	8007-45-2 (----)
Copper cyanide	Copper cyanide CuCN	544-92-3 (P029)
<u>Copper dimethyldithio-carbamate</u>	<u>Copper, bis(dimethylcarbamodithioato-S,S')-</u>	<u>137-29-1 (U393)</u>
Creosote	Same	---- (U051)
Cresol (Cresylic acid)	Phenol, methyl-	1319-77-3 (U052)
Crotonaldehyde	2-Butenal	4170-30-3 (U053)
<u>M-Cumenyl methylcarbamate</u>	<u>Phenol, 3-(methylethyl)-, methyl carbamate</u>	<u>64-00-6 (P202)</u>
Cyanides (soluble salts and complexes), N.O.S.*	-----	---- (P030)
Cyanogen	Ethanedinitrile	460-19-5 (P031)
Cyanogen bromide	Cyanogen bromide (CN) Br	506-68-3 (U246)
Cyanogen chloride	Cyanogen chloride (CN) Cl	506-77-4 (P033)
Cycasin	beta-D-Glucopyranoside, (methyl-ONN-azoxy)methyl	14901-08-7 (----)
<u>Cycloate</u>	<u>Carbamothioic acid, cyclohexylethyl-, S-ethyl ester</u>	<u>1134-23-2 (U386)</u>
2-Cyclohexyl-4,6-dinitrophenol	Phenol, 2-cyclohexyl-4,6-dinitro-	131-89-5 (P034)
Cyclophosphamide	2H-1,3,2,-Oxazaphosphorin-2-amine, N,N-bis(2-chloroethyl)tetrahydro-, 2-oxide	50-18-0 (U058)
2,4-D	Acetic acid, (2,4-dichlorophenoxy)-	94-75-7 (U240)
2,4-D, salts, esters	-----	---- (U240)
Daunomycin	5,12-Naphthacenedione, 8-acetyl-10-((3-amino-2,3,6, trideoxy-alpha-L-lyxo-hexopyranosyl)oxy)-7,8,9,10-tetrahydro-6,8,11-trihydroxy-1-methosy-(8S-cis)-	20830-81-3 (U059)
<u>Dazomet</u>	<u>2H-1,3,5-thiadiazine-2-thione, tetrahydro-3,5-dimethyl</u>	<u>533-74-4 (U366)</u>
DDD	Benzene, 1,1'-(2,2-dichloroethylenedibis(4-chloro-	72-54-8 (U060)
DDE	Benzene, 1,1'-(dichloroethylenedibis(4-chloro-	72-55-9 (----)
DDT	Benzene, 1,1'-(2,2,2-trichloroethylenedibis(4-chloro-	50-29-3 (U061)
Diallate	Carbamothioic acid, bis(1-methylethyl)-, S-(2,3-dichloro-2-propenyl) ester	2303-16-4 (U062)
Dibenz(a,h)acridine	Same	226-36-8 (----)
Dibenz(a,i)acridine	Same	224-42-0 (----)
Dibenz(a,h)anthracene	Same	53-70-3 (U063)
7H-Dibenzo(c,g)carbazole	Same	194-59-2 (----)
Dibenzo(a,e)pyrene	Naphtho(1,2,3,4-def)chrysene	192-65-4 (----)
Dibenzo(a,h)pyrene	Dibenzo(b,def)chrysene	189-64-0 (----)
Dibenzo(a,i)pyrene	Benzo(rst)pentaphene	189-55-9 (U064)
1,2-Dibromo-3-chloropropane	Propane, 1,2-dibromo-3-chloro-	96-12-8 (U066)
Dibutyl phthalate	1,2-Benzenedicarboxylic acid, dibutyl ester	84-74-2 (U069)
o-Dichlorobenzene	Benzene, 1,2-dichloro-	95-50-1 (U070)
m-Dichlorobenzene	Benzene, 1,3-dichloro-	541-73-1 (U071)
p-Dichlorobenzene	Benzene, 1,4-dichloro-	106-46-7 (U072)
Dichlorobenzene, N.O.S.*	Benzene, dichloro-	25321-22-6 (----)
3,3'-Dichlorobenzidine	(1,1'-Biphenyl)-4,4'-diamine, 3,3'-dichloro-	91-94-1 (U073)
1,4-Dichloro-2-butene	2-Butene, 1,4-dichloro-	764-41-0 (U074)
Dichlorodifluoromethane	Methane, dichlorodifluoro-	75-71-8 (U075)
Dichloroethylene, N.O.S.*	Dichloroethylene	25323-30-2 (----)
1,1-Dichloroethylene	Ethene, 1,1-dichloro-	75-35-4 (U078)
1,2-Dichloroethylene	Ethene, 1,2-dichloro-, (E)-	156-60-5 (U079)
Dichloroethyl ether	Ethane, 1,1' oxybis (2-chloro-	111-44-4 (U025)
Dichloroisopropyl ether	Propane, 2,2'-oxybis (2-chloro-	108-60-1 (U027)
Dichloromethoxy ethane	Ethane, 1,1'-(methylenebis (oxy)) bis (2-chloro-	111-91-1 (U024)
Dichloromethyl ether	Methane, oxybis (chloro-	542-88-1 (P016)
2,4-Dichlorophenol	Phenol, 2,4-dichloro-	120-83-2 (U081)
2,6-Dichlorophenol	Phenol, 2,6-dichloro-	87-65-0 (U082)
Dichlorophenylarsine	Arsonous dichloride, phenyl-	696-28-6 (P036)
Dichloropropane, N.O.S.*	Propane, dichloro-	26638-19-7 (----)
Dichloropropanol, N.O.S.*	Propanol, dichloro	26545-73-3 (----)
Dichloropropene, N.O.S.*	1-Propene, dichloro-	26952-23-8 (----)
1,3-Dichloropropene	1-Propene, 1,3-dichloro-	542-75-6 (U084)
Dieldrin	2,7:3,6-Dimethanonaphth(2,3-b)oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-, (1aalpha,2beta,2aalpha,3beta,6beta,6aalpha,7beta,7aalpha)-	60-57-1 (P037)
1,2:3,4-Diepoxybutane	2,2'-Bioxirane	1464-53-5 (U085)
Diethylarsine	Arsine, diethyl-	692-42-2 (P038)
<u>Diethylene glycol, dicarbamate</u>	<u>Ethanol, 2,2'-oxybis-, dicarbamate</u>	<u>595-26-1 (U395)</u>
1,4-Diethylenoxide	1,4-Dioxane	123-91-1 (U108)
Diethylhexyl phthalate	1,2-Benzenedicarboxylic acid, bis(2-ethylhexyl)ester	117-81-7 (U028)

ADMINISTRATIVE REGISTER - 553

N,N'-Diethylhydrazine	Hydrazine, 1,2-diethyl-	1615-80-1 (U086)
O,O-Diethyl S-methyl dithiophosphate	Phosphorodithioic acid, O,O-diethyl S-methyl ester	3288-58-2 (U087)
Diethyl-p-nitrophenyl phosphate	Phosphoric acid, diethyl 4-nitrophenyl ester	311-45-5 (P041)
Diethyl phthlate	1,2-Benzenedicarboxylic acid, diethyl ester	84-66-2 (U088)
O,O-Diethyl O-pyrazinyl phosphorothioate	Phosphorothioic acid, O,O-diethyl O-pyrazinyl ester	297-97-2 (P040)
Diethylstilbesterol	Phenol, 4, 4'-(1,2-diethyl-1,2-ethenediyl) bis-, (E)-	56-53-1 (U089)
Dihydrosafrole	1,3-Benzodioxole, 5-propyl-	94-58-6 (U090)
Diisopropylfluorophosphate (DFP)	Phosphorofluoridic acid, bis(1-methylethyl) ester	55-91-4 (P043)
Dimethoate	Phosphorodithioic acid, O,O-dimethyl S-(2-(methylamino)-2-oxoethyl)ester	60-51-5 (P044)
3,3'-Dimethoxybenzidine	(1,1'-Biphenyl)-4,4'-diamine, 3,3'-dimethoxy-	119-90-4 (U091)
p-Dimethylaminoazobenzene	Benzenamine, N,N-dimethyl-4-(phenylazo)-	60-11-7 (U093)
7,12-Dimethylbenz(a)anthracene	Benz(a)anthracene, 7,12-dimethyl-	57-97-6 (U094)
3,3'-Dimethylbenzidine	(1,1'-Biphenyl)-4,4'-diamine, 3,3'-dimethyl-	119-93-7 (U095)
Dimethylcarbarnoyl chloride	Carbamic chloride, dimethyl-	79-44-7 (U097)
1,1-Dimethylhydrazine	Hydrazine, 1,1-dimethyl-	57-14-7 (U098)
1,2-Dimethylhydrazine	Hydrazine, 1,2-dimethyl-	540-73-8 (U099)
alpha, alpha-Dimethylphenethylamine	Benzeneethanamine, alpha, alpha-dimethyl-	122-09-8 (P046)
2,4-Dimethylphenol	Phenol, 2,4-dimethyl-	105-67-9 (U101)
Dimethyl phthalate	1,2-Benzenedicarboxylic acid, dimethyl ester	131-11-3 (U102)
Dimethyl sulfate	Sulfuric acid, dimethyl ester	77-78-1 (U103)
<u>Dimetilan</u>	<u>Carbamic acid, dimethyl-, 1-[(dimethylamino) carbonyl]-5-methyl-1H-pyrazol-3-yl ester</u>	<u>644-64-4 (P191)</u>
Dinitrobenzene, N.O.S.*	Benzene, dinitro-	25154-54-5 (----)
4,6-Dinitro-o-cresol	Phenol, 2-methyl-4,6 -dinitro-	534-52-1 (P047)
4,6-Dinitro-o-cresol salts	-----	---- (P047)
2,4-Dinitrophenol	Phenol, 2,4-dinitro-	51-28-5 (P048)
2,4-Dinitrotoluene	Benzene, 1-methyl-2,4-dinitro-	121-14-2 (U105)
2,6-Dinitrotoluene	Benzene, 2-methyl-1,3 -dinitro-	606-20-2 (U106)
Dinoseb	Phenol, 2-(1-methylpropyl)-4,6-dinitro-	88-85-7 (P020)
Di-n-octyl phthalate	1,2-Benzenedicarboxylic acid, dioctyl ester	117-84-0 (U017)
Diphenylamine	Benzenamine, N-phenyl-	122-39-4 (----)
1,2-Diphenylhydrazine	Hydrazine, 1,2-diphenyl-	122-66-7 (U109)
Di-n-propylnitrosamine	1-Propanamine, N-nitroso-N-propyl-	621-64-7 (U111)
<u>Disulfiram</u>	<u>Thioperoxydicarbonic diamide, tetraethyl</u>	<u>97-77-8 (U403)</u>
Disulfoton	Phosphorodithioic acid, O,O-diethyl S-(2-(ethylthio)ethyl)ester)	298-04-4 (P039)
Dithiobiuret	Thioimidodicarbonic diamide ((H ₂ N)C(S)) ₂ NH	541-53-7 (P049)
Endosulfan	6,9-Methano-2,4,3-benzodioxathiepen, 6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-, 3-oxide	115-29-7 (P050)
Endothall	7-Oxabicyclo(2.2.1)heptane-2,3-dicarboxylic acid	145-73-3 (P088)
Endrin	2,7:3,6-Dimethanonaphth(2,3-b)oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-, (1aalpha, 2beta, 2abeta, 3alpha, 6alpha, 6abeta, 7beta, 7aalpha)-	72-20-8 (P051)
Endrin metabolites	-----	---- (P051)
Epichlorohydrin	Oxirane, (chloromethyl)-	106-89-8 (U041)
Epinephrine	1,2-Benzenediol, 4-(1-hydroxy-2-(methylamino)ethyl)-, (R)-	51-43-4 (P042)
<u>EPTC</u>	<u>Carbamathioic acid, dipropyl-, S-ethyl ester</u>	<u>759-94-4 (U390)</u>
Ethyl carbamate (urethane)	Carbamic acid, ethyl ester	51-79-6 (U238)
Ethyl cyanide	Propanenitrile	107-12-0 (P101)
Ethylenebisdithiocarbamic acid	Carbamodithioic acid, 1,2-Ethanediybis-	111-54-6 (U114)
Ethylenebisdithiocarbamic acid, salts and esters	-----	---- (U114)
Ethylene dibromide	Ethane, 1,2-dibromo-	106-93-4 (U067)
Ethylene dichloride	Ethane, 1,2-dichloro-	107-06-2 (U077)
Ethylene glycol monoethyl ether	Ethanol, 2-ethoxy-	110-80-5 (U359)
Ethyleneimine	Aziridine	151-56-4 (P054)
Ethylene oxide	Oxirane	75-21-8 (U115)
Ethylenethiourea	2-Imidazolidinethione	96-45-7 (U116)
Ethylidene dichloride	Ethane, 1,1-dichloro-	75-34-3 (U076)
Ethyl methacrylate	2-Propenoic acid, 2-methyl-, ethyl ester	97-63-2 (U118)
Ethyl methane sulfonate	Methanesulfonic acid, ethyl ester	62-50-0 (U119)
<u>Ethyl Ziram</u>	<u>Zinc, bis(diethylcarbamodithioato-S,S')</u>	<u>14324-55-1 (U407)</u>
Famphur	Phosphorothioic acid, O-(4-((dimethylamino))sulfonyl)phenyl)0,0-dimethyl ester	52-85-7 (P097)

ADMINISTRATIVE REGISTER - 554

<u>Ferbam</u>	<u>Iron, tris(dimethylcarbamodithioat-S,S')</u>	14484-64-1 (U396)
Fluoranthene	Same	206-44-0 (U120)
Fluorine	Same	7782-41-4 (P056)
Fluoroacetamide	Acetamide, 2-fluoro-	640-19-7 (P057)
Fluoroacetic acid, sodium salt	Acetic acid, fluoro-, sodium salt	62-74-8 (P058)
Formaldehyde	Same	50-00-0 (U122)
<u>Formetanate hydrochloride</u>	<u>Methanimidamide, N,N-dimethyl-N'-[3-[[[(methylamino) carbonyl]oxy]phenyl]- monohydrochloride</u>	23422-53-9 (198)
Formic acid	Same	64-18-6 (U123)
<u>Formparanate</u>	<u>Methanimidamide, N,N-dimethyl-N'-[2-methyl-4-[[[(methylamino) carbonyl]oxy]phenyl]-</u>	17702-57-7 (P197)
Glycidylaldehyde	Oxiranecarboxyaldehyde	765-34-4 (U126)
Halomethanes, N.O.S.*	-----	---- (----)
Heptachlor	4,7-Methano-1H-indene, 1,4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro-	76-44-8 (P059)
Heptachlor epoxide	2,5-Methano-2H-indeno(1,2-b) oxirene,2,3,4,5,6,7,7-heptachloro-1a,1b,5,1024-57-3 (----)	5a, 6, 6a-hexa-hydro-, (1aalpha,1bbeta,2alpha,5alpha,5abeta,6beta, 6aalpha)-
Heptachlor epoxide (alpha, beta, and gamma isomers)	-----	---- (----)
Heptachlorodibenzofurans	-----	---- (----) (----)
Heptachlorodibenzo-p-dioxins	-----	---- (----) (----) (----)
Hexachlorobenzene	Benzene, hexachloro-	118-74-1 (U127)
Hexachlorobutadiene	1,3-Butadiene, 1,1,2,3,4,4-hexachloro-	87-68-3 (U128)
Hexachlorocyclopentadiene	1,3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro-	77-47-4 (U130)
Hexachlorodibenzo-p-dioxins	-----	---- (----)
Hexachlorodibenzofurans	-----	---- (----)
Hexachloroethane	Ethane, hexachloro-	67-72-1 (U131)
Hexachlorophene	Phenol,2,2'-Methylenebis(3,4,6-trichloro-	70-30-4 (U132)
Hexachloropropene	1-Propene, 1,1,2,3,3,3-hexachloro-	1888-71-7 (U243)
Hexaethyl tetraphosphate	Tetraphosphoric acid, hexaethyl ester	757-58-4 (P062)
Hydrazine	Same	302-01-2 (U133)
Hydrogen cyanide	Hydrocyanic acid	74-90-8 (P063)
Hydrogen fluoride	Hydrofluoric acid	7664-39-3 (U134)
Hydrogen sulfide	Hydrogen sulfide H ₂ S	7783-06-4 (U135)
<u>3-Iodo-2-propynyl n-butylcarbamate</u>	<u>Carbamic acid, butyl-, 3-iodo-2-propynyl ester</u>	55406-53-6 (U375)
Indeno(1,2,3-cd)pyrene	Same	193-39-5 (U137)
Isobutyl alcohol	1-Propanol, 2-methyl-	78-83-1 (U140)
Isodrin	1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a-hexahydro-, (1alpha,4alpha,4abeta,5beta,8beta,8abeta)-4abeta,5beta,8beta,8abeta)-	465-73-6 (P060)
<u>Isolan</u>	<u>Carbamic acid, dimethyl-, 3-methyl-1-(1-methylethyl)-1H-pyrazol-5-yl ester</u>	119-38-0 (P192)
Isosafrole	1,3-Benzodioxole,5-(1-propenyl)-	120-58-1 (U141)
Kepone	1,3,4-Metheno-2H-cyclobuta-(cd)pentalen-2-one,1,1a,3,3a,4,5,5,5a,5b,6-decachlorooctahydro-	143-50-0 (U142)
Lasiocarpine	2-Butenoic acid, 2-methyl-,7-((2,3-dihydroxy-2-(1-methoxyethyl)-3-methyl-1-oxobutoxy)methyl)-2,3,5,7a-tetrahydro-1H-pyrolizin-1-yl ester, (1S-(1alpha(Z),7(2S*,3R*),7aalpha))-	303-34-1 (U143)
Lead	Same	7439-92-1 (----)
Lead compounds, N.O.S.*	-----	---- (----)
Lead acetate	Acetic acid, lead (2+) salt	301-04-2 (U144)
Lead phosphate	Phosphoric acid, lead (2+) salt (2:3)	7446-27-7 (U145)
Lead subacetate	Lead, bis(acetato-O)tetrahydroxytri-	1335-32-6 (U146)
Lindane	Cyclohexane, 1, 2, 3, 4, 5, 6-hexachloro-, (1alpha, 2alpha, 3beta, 4alpha, 5alpha, 6beta)	58-89-9 (U129)
Maleic anhydride	2,5-Furandione	108-31-6 (U147)
Maleic hydrazide	3,6-Pyridazinedione1,2-dihydro-	123-33-1 (U148)
Malononitrile	Propanedinitrile	109-77-3 (U149)
<u>Manganese dimethyl-dithiocarbamate</u>	<u>Manganese, bis(dimethylcarbamodithioato-S,S')</u>	15339-36-3 (P196)
Melphalan	L-Phenylalanine, 4-(bis(2-chloroethyl)amino)-	148-82-3 (U150)
Mercury	Same	7439-97-6 (U151)
Mercury compounds, N.O.S.*	-----	---- (----)
Mercury fulminate	Fulminic acid, mercury (2+) salt	628-86-4 (P065)
<u>Metam Sodium</u>	<u>Carbamodithioic acid, methyl-, monosodium salt</u>	137-42-8 (U384)
Methacrylonitrile	2-Propenenitrile, 2-methyl-	126-98-7 (U152)
Methapyrilene	1,2-Ethanediamine, N,N-dimethyl-N'-2-pyridinyl-N'-(2-thienylmethyl)-	91-80-5 (U155)

ADMINISTRATIVE REGISTER - 555

<u>Methiocarb</u>	<u>Phenol, (3,5-dimethyl-4-(methylthio)-, methylcarbamate</u>	<u>2032-65-7 (P199)</u>
Methomyl	Ethanimidothioic acid, N-(((methylamino)carbonyl)oxy)-, methyl ester	16752-77-5 (P066)
Methoxychlor	Benzene, 1, 1'-(2,2,2-trichloroethylidene)bis(4-methoxy-	72-43-5 (U247)
Methyl bromide	Methane, bromo-	74-83-9 (U029)
Methyl chloride	Methane, chloro-	74-87-3 (U045)
Methyl chlorocarbonate	Carbonochloridic acid, methyl ester	79-22-1 (U156)
Methyl chloroform	Ethane, 1,1,1-trichloro-	71-55-6 (U226)
3-Methylcholanthrene	Benz(j)aceanthrylene, 1,2-dihydro-3-methyl-	56-49-5 (U157)
4,4'-Methylenebis(2-chloroaniline)	Benzenamine, 4,4'-methylenebis(2-chloro-	101-14-4 (U158)
Methylene bromide	Methane, dibromo-	74-95-3 (U068)
Methylene chloride	Methane, dichloro-	75-09-2 (U080)
Methyl ethyl ketone (MEK)	2-Butanone	78-93-3 (U159)
Methyl ethyl ketone peroxide	2-Butanone, peroxide	1338-23-4 (U160)
Methyl hydrazine	Hydrazine, methyl-	60-34-4 (P068)
Methyl iodide	Methane, iodo-	74-88-4 (U138)
Methyl isocyanate	Methane, isocyanato-	624-83-9 (P064)
2-Methylacetonitrile	Propanenitrile, 2-hydroxy-2-methyl-	75-86-5 (P069)
Methyl methacrylate	2-Propenoic acid, 2-methyl-, methyl ester	80-62-6 (U162)
Methyl methanesulfonate	Methanesulfonic acid, methyl ester	66-27-3 (----)
Methyl parathion	Phosphorothioic acid, O,O-dimethyl O-(4-nitrophenyl)ester	298-00-0 (P071)
Methylthiouracil	4(1H)-Pyrimidinone, 2,3-dihydro-6-methyl-2-thioxo-	56-04-2 (U164)
<u>Metolcarb</u>	<u>Carbamic acid, methyl-, 3-methylphenyl ester</u>	<u>1129-41-5 (P190)</u>
<u>Mexacarbate</u>	<u>Phenol, 4-(dimethylamino)-3,5-dimethyl-, methylcarbamate (ester)</u>	<u>351-18-4 (P128)</u>
Mitomycin C	Azirino(2', 3':3,4)pyrrolo(1,2-a)indole-4,7-dione,6-amino-8-(((aminocar-	50-07-7 (U010)
	bonyl)oxy)methyl)-1,1a,2,8,8a,8b-hexahydro-8a-methoxy-5-methyl-	
	(1aS-(1aalpha,8beta,8aalp,8balp)))-	
	Guanidine,N-methyl-N'-nitro-N-nitroso-	70-25-7 (U163)
	1H-Azepine-1-carbothioic acid, hexahydro, S-ethyl ester	2212-67-1 (U365)
	Ethane, 1,1'-thiobis(2-chloro-	505-60-2 (----)
	Same	91-20-3 (U165)
MNNG	1,4-Naphthalenedione	130-15-4 (U166)
<u>Molinate</u>	1-Naphthalenamine	134-32-7 (U167)
Mustard gas	2-Naphthalenamine	91-59-8 (U168)
Naphthalene	Thiourea, 1-naphthalenyl-	86-88-4 (P072)
1,4-Naphthoquinone	Same	7440-02-0 (----)
alpha-Naphthylamine	-----	---- (----)
beta-Naphthylamine	Nickel carbonyl Ni(CO) ₄ , (T-4)-	13463-39-3 (P073)
alpha-Naphthylthiourea	Nickel cyanide Ni(CN) ₂	557-19-7 (P074)
Nickel	Pyridine, 3-(1-methyl-2-pyrrolidinyl)-, (S)-	54-11-5 (P075)
Nickel compounds, N.O.S.*	-----	---- (P075)
Nickel carbonyl	Nitrogen oxide NO	10102-43-9 (P076)
Nickel cyanide	Benzenamine, 4-nitro-	100-01-6 (P077)
Nicotine	Benzene, nitro-	98-95-3 (U169)
Nicotine salts	Nitrogen oxide NO ₂	10102-44-0 (P078)
Nitric oxide	Ethanamine, 2-chloro-N-(2-chloroethyl)-N-methyl-	51-75-2 (----)
p-Nitroaniline	-----	---- (----)
Nitrobenzene	Ethanamine, 2-chloro-N-(2-chloroethyl)-N-methyl-,N-oxide	126-85-2 (----)
Nitrogen dioxide	-----	---- (----)
Nitrogen mustard	1,2,3-Propanetriol, trinitrate	55-63-0 (P081)
Nitrogen mustard, hydrochloride salt	Phenol, 4-nitro-	100-02-7 (U170)
Nitrogen mustard N-oxide	Propane, 2-nitro	79-46-9 (U171)
Nitrogen mustard, N-oxide,	-----	35576-91-1D (----)
hydrochloride salt	1-Butanamine, N-butyl-N-nitroso-	924-16-3 (U172)
Nitroglycerin	Ethanol, 2,2'-(nitrosoimino)bis-	1116-54-7 (U173)
p-Nitrophenol	Ethanamine, N-ethyl-N-nitroso-	55-18-5 (U174)
2-Nitropropane	Methanamine, N-methyl-N-nitroso-	62-75-9 (P082)
Nitrosamines, N.O.S.*	Urea, N-ethyl-N-nitroso-	759-73-9 (U176)
N-Nitrosodi-n-butylamine	Ethanamine, N-methyl- N-nitroso-	10595-95-6 (----)
N-Nitrosodiethanolamine	Urea, N-methyl-N-nitroso-	684-93-5 (U177)
N-Nitrosodiethylamine	Carbamic acid, methylnitroso-, ethyl ester	615-53-2 (U178)
N-Nitrosodimethylamine	Vinylamine, N-methyl-N-nitroso-	4549-40-0 (P084)
N-Nitroso-N-ethylurea	Morpholine, 4-nitroso-	59-89-2 (----)
N-Nitrosomethylethylamine	Pyridine, 3-(1-nitroso-2-pyrrolidinyl)-, (S)-	16543-55-8 (----)
N-Nitroso-N-methylurea	Piperidine, 1-nitroso-	100-75-4 (U179)
N-Nitroso-N-methylurethane	Pyrrolidine, 1-nitroso-	930-55-2 (U180)
N-Nitrosomethylvinylamine	Glycine, N-methyl-N-nitroso-	13256-22-9 (----)
N-Nitrosomorpholine		
N-Nitrosornicotine		
N-Nitrosopiperidine		
N-Nitrosopyrrolidine		
N-Nitrososarcosine		

ADMINISTRATIVE REGISTER - 556

5-Nitro-o-toluidine	Benzenamine, 2-methyl-5-nitro-	99-55-8 (U181)
Octamethylpyrophosphoramidate	Diphosphoramidate, octamethyl-	152-16-9 (P085)
Osmium tetroxide	Osmium oxide OsO ₄ (T-4)-	20816-12-0 (P087)
<u>Oxamyl</u>	<u>Ethanimidothioic acid, 2-(dimethylamino)-N-[(methylamino) carbonyl]oxy]-2-oxo-, methyl ester</u>	<u>23135-22-0 (P194)</u>
Paraldehyde	1,3,5-Trioxane, 2,4,6-trimethyl-	123-63-7 (U182)
Parathion	Phosphorothioic acid, O,O-diethyl O-(4-nitrophenyl) ester	56-38-2 (P089)
Pebulate	Carbamothioic acid, butylethyl-, S-propyl ester	<u>1114-71-2 (U391)</u>
Pentachlorobenzene	Benzene, pentachloro-	608-93-5 (U183)
Pentachlorodibenzo-p-dioxins	-----	---- (----)
Pentachlorodibenzofurans	-----	---- (----)
Pentachloroethane	Ethane, pentachloro-	76-01-7 (U184)
Pentachloronitrobenzene (PCNB)	Benzene, pentachloronitro-	82-68-8 (U185)
Pentachlorophenol	Phenol, pentachloro-	87-86-5 (See F027)
Phenacetin	Acetamide, N-(4-ethoxyphenyl)-	62-44-2 (U187)
Phenol	Same	108-95-2 (U188)
Phenylenediamine	Benzenediamine	25265-76-3 (----)
Phenylmercury acetate	Mercury, (acetato-O)phenyl-	62-38-4 (P092)
Phenylthiourea	Thiourea, phenyl-	103-85-5 (P093)
Phorate	Phosphorodithioic acid, O,O-diethyl S-((ethylthio)methyl)ester	298-02-2 (P094)
Phosgene	Carbonic dichloride	75-44-5 (P095)
Phosphine	Same	7803-51-2 (P096)
Phthalic acid esters, N.O.S.*	-----	---- (----)
Phthalic anhydride	1,3-Isobenzofurandione	85-44-9 (U190)
<u>Physostigmine</u>	<u>Pyrrolo[2,3-b]indol-5-01, 1,2,3,3a,8,8a-hesahydro-1,3a,8-trimethyl-, methylcarbamate (ester), (3aS-cis)-</u>	<u>57-47-6 (P204)</u>
<u>Physostigmine salicylate</u>	<u>Benzoic cid, 2-hydroxy-, compd. with (3aS-cis)-1,2,3,3a,8,8a-hesahydro-1,3a,8-trimethylpyrrolo [2,3-b]indol-5-yl methylcarbamate ester (1:1)</u>	<u>57-64-7 (P188)</u>
2-Picoline	Pyridine,2-methyl-	109-06-8 (U191)
Polychlorinated biphenyls, N.O.S.*	-----	---- (----)
Potassium cyanide	Potassium cyanide K(CN)	151-50-8 (P098)
<u>Potassium dimethyldithio-</u> <u>carbamate</u>	<u>Carbamodithioic acid, dimethyl, potassium salt</u>	<u>128-03-0 (U383)</u>
<u>Potassium hyroxymethyl-</u> <u>n-methyl-dithiocarbamate</u>	<u>Carbamodithioic acid, (hydroxymethyl) methyl-,monopotassium salt</u>	<u>51026-28-9 (U378)</u>
<u>Potassium n-methyl-</u> <u>dithiocarbamate</u>	<u>Carbamodithioic acid, methyl-monopotassium salt</u>	<u>137-41-7 (U377)</u>
<u>Potassium pentachloro-</u> <u>phenate</u>	<u>Pentachlorophenol, potassium salt</u>	<u>7778736 None</u>
Potassium silver cyanide	Argentate(1-),bis(cyano-C)-,potassium	506-61-6 (P099)
<u>Promecarb</u>	<u>Phenol, 3-methyl-5-(1-methylethyl)-, methyl carbamate</u>	<u>2631-37-0 (P201)</u>
Pronamide	Benzamide,3,5-dichloro-N-(1,1-dimethyl-2-propynyl)-	23950-58-5 (U192)
1,3-Propane sultone	1,2-Oxathiolane, 2,2-dioxide	1120-71-4 (U193)
Propargyl alcohol	2-Propyn-1-ol	107-19-7 (P102)
<u>Propham</u>	<u>Carbamic acid, phenyl-, 1-methylethyl ester</u>	<u>122-42-9 (U373)</u>
<u>Propoxur</u>	<u>Phenol, 2-(1-methylethoxy)-, methylcarbamate</u>	<u>114-26-1 (U411)</u>
n-Propylamine	1-Propanamine	107-10-8 (U194)
Propylene dichloride	Propane,1,2-dichloro-	78-87-5 (U083)
1,2-Propylenimine	Aziridine, 2-methyl-	75-55-8 (P067)
Propylthiouracil	4(1H)-Pyrimidinone,2,3-dihydro-6-propyl-2-thioxo-	51-52-5 (----)
<u>Prosulfocarb</u>	<u>Carbamothioic acid, dipropyl-, S-(phenylmethyl) ester</u>	<u>52888-80-9 (U387)</u>
Pyridine	Same	110-86-1 (U196)
Reserpine	Yohimban-16-carboxylic acid, 11,17-dimethoxy-18-((3,4,5-trimethoxy-benzoyl)oxy)-smethyl ester,(3beta,16beta,17alpha,18beta,20alpha)-	50-55-5 (U200)
Resorcinol	1,3-Benzenediol	108-46-3 (U201)
Saccharin	1,2-Benzisothiazol-3(2H)-one, 1,1-dioxide	81-07-2 (U202)
Saccharin salts	-----	---- (U202)
Safrole	1,3-Benzodioxole,5-(2-propenyl)-	94-59-7 (U203)
Selenium	Same	7782-49-2 (----)
Selenium compounds, N.O.S.*	-----	---- (----)
Selenium dioxide	Selenious acid	7783-00-8 (U204)
Selenium sulfide	Selenium sulphide SeS ₂	7488-56-4 (U205)
<u>Selenium, tetrakis</u> <u>(dimethyl-dithiocarbamate</u>	<u>Carbamodithioic acid, dimethyl-, tetraanhydrosulfide with ortho-thioselenious acid</u>	<u>144-34-3 (U376)</u>
Selenourea	Same	630-10-4 (P103)
Silver	Same	7440-22-4 (----)

ADMINISTRATIVE REGISTER - 557

Silver compounds, N.O.S.*	-----	----
Silver cyanide	Silver cyanide Ag (CN)	506-64-9 (P104)
Silvex (2,4,5-TP)	Propanoic acid, 2-(2,4,5-trichlorophenoxy)-	93-72-1 (See F027)
Sodium cyanide	Sodium cyanide Na(CN)	143-33-9 (P106)
<u>Sodium dibutylthio-carbamate</u>	<u>Carbamodithioic acid, dibutyl-, sodium salt</u>	<u>136-30-1 (U379)</u>
<u>Sodium diethylthio-carbamate</u>	<u>Carbamodithioic acid, diethyl-, sodium salt</u>	<u>148-18-5 (U381)</u>
<u>Sodium dimethyldithio-carbamate</u>	<u>Carbamadithioic acid, dimethyl-, sodium salt</u>	<u>128-04-1 (U382)</u>
<u>Sodium pentachloro-phenate</u>	<u>Pentachlorophenol, sodium salt</u>	<u>131522 None</u>
Streptozotocin	D-Glucose, 2-deoxy-2-(((Methylnitrosoamino)carbonyl)amino)-	18883-66-4 (U206)
Strychnine	Strychnidin-10-one	57-24-9 (P108)
Strychnine salts	-----	---- (P108)
<u>Sulfallate</u>	<u>Carbamodithioic acid, diethyl-, 2-chloro-2-propenyl ester</u>	<u>95-06-07 (U277)</u>
TCDD	Dibenzo(b,e)(1,4)dioxin,2,3,7,8-tetrachloro-	1746-01-6 (----
<u>Tetrabutylthiuram disulfide</u>	<u>Thioperoxydicarbonic diamide, tetrabutyl</u>	<u>1634-02-2 (U402)</u>
<u>Tetrabutylthiuram monosulfide</u>	<u>Bis (dimethylthiocarbamoyl) sulfide</u>	<u>97-74-5 (U401)</u>
1,2,4,5-Tetrachlorobenzene	Benzene, 1,2,4,5-tetrachloro-	95-94-3 (U207)
Tetrachlorodibenzo-p-dioxins	-----	----
Tetrachlorodibenzofurans	-----	----
Tetrachloroethane, N.O.S.*	Ethane, tetrachloro-, N.O.S.*	25322-20-7 (----
1,1,1,2-Tetrachloroethane	Ethane, 1,1,1,2-tetrachloro-	630-20-6 (U208)
1,1,2,2-Tetrachloroethane	Ethane, 1,1,2,2-tetrachloro-	79-34-5 (U209)
Tetrachloroethylene	Ethene, tetrachloro-	127-18-4 (U210)
2,3,4,6-Tetrachlorophenol	Phenol, 2,3,4,6-tetrachloro-	58-90-2 (See F027)
<u>2,3,4,6-Tetrachlorophenol,</u>	<u>Same</u>	<u>53535276 None</u>
<u>potassium salt</u>		
<u>2,3,4,6-Tetrachlorophenol,</u>	<u>Same</u>	<u>25567559 None</u>
<u>sodium salt</u>		
Tetraethylthiopyrophosphate	Thiodiphosphoric acid, tetraethyl ester	3689-24-5 (P109)
Tetraethyl lead	Plumbane, tetraethyl-	78-00-2 (P110)
Tetraethyl pyrophosphate	Diphosphoric acid, tetraethyl ester	107-49-3 (P111)
Tetranitromethane	Methane, tetranitro-	509-14-8 (P112)
Thallium	Same	7440-28-0 (----
Thallium compounds, N.O.S.*	-----	----
Thallic oxide	Thallium oxide Tl ₂ O ₃	1314-32-5 (P113)
Thallium (I) acetate	Acetic acid, thallium (1+) salt	563-68-8 (U214)
Thallium (I) carbonate	Carbonic acid, dithallium (1+) salt	6533-73-9 (U215)
Thallium (I) chloride	Thallium chloride TlCl	7791-12-0 (U216)
Thallium (I) nitrate	Nitric acid, thallium (1+) salt	10102-45-1 (U217)
Thallium selenite	Selenious acid, dithallium (1+) salt	12039-52-0 (P114)
Thallium (I) sulfate	Sulfuric acid, dithallium (1+) salt	7446-18-6 (P115)
Thioacetamide	Ethanethioamide	62-55-5 (U218)
<u>Thiodicarb</u>	<u>Ethanimidithioic acid N,N'-[thiobis[(methylimino) carbonyloxy]]</u>	<u>59669-26-0 (U410)</u>
	<u>bis-, dimethyl ester</u>	
Thiofanox	2-Butanone,3,3-dimethyl-1-(methylthio)-,0-((methylamino)carbonyl)oxime	39196-18-4 (P045)
Thiomethanol	Methanethiol	74-93-1 (U153)
<u>Thiophanate-methyl</u>	<u>Carbamic acid, [1,2-phenylenebis (iminocarbonothioyl)] bis-,</u>	<u>23564-05-8 (U409)</u>
	<u>dimethyl ester</u>	
Thiophenol	Benzenethiol	108-98-5 (P014)
Thiosemicarbazide	Hydrazinecarbothioamide	79-19-6 (P116)
Thiourea	Same	62-56-6 (U219)
Thiram	Thioperoxydicarbonic diamide((H ₂ N)C(S)) ₂ S ₂ , Tetramethyl	137-26-8 (U244)
<u>Tirpate</u>	<u>1,3-Dithiolane-2-carboxaldehyde, 2,4-dimethyl-, o-[(methylamino)</u>	<u>26419-73-8 (P185)</u>
	<u>carbonyl] oxime</u>	
Toluene	Benzene, methyl-	108-88-3 (U220)
Toluenediamine	Benzenediamine,ar-methyl-	25376-45-8 (U221)
Toluene-2,4-diamine	1,3-Benzenediamine,4-methyl-	95-80-7 (----
Toluene-2,6-diamine	1,3-Benzenediamine, 2-methyl-	823-40-5 (----
Toluene-3,4-diamine	1,2-Benzenediamine,4-methyl-	496-72-0 (----
Toluene diisocyanate	Benzene,1,3-diisocyanatomethyl-	26471-62-5 (U223)
o-Toluidine	Benzenamine, 2-methyl-	95-53-4 (U328)
p-Toluidine	Benzenamine,4-methyl-	106-49-0 (U353)
o-Toluidine hydrochloride	Benzenamine, 2-methyl-, hydrochloride	636-21-5 (U222)
Toxaphene	Same	8001-35-2 (P123)
<u>Triallate</u>	<u>Carbamothioic acid, bis(1-methylethyl)-, S-(2,3,3-trichloro-2-</u>	<u>2303-17-5 (U389)</u>
	<u>propenyl) ester</u>	
1,2,4-Trichlorobenzene	Benzene,1,2,4-trichloro-	120-82-1 (----
1,1,2-Trichloroethane	Ethane, 1,1,2-trichloro-	79-00-5 (U227)

ADMINISTRATIVE REGISTER - 558

Trichloroethylene	Ethene, trichloro-	79-01-6 (U228)
Trichloromethanethiol	Methanethiol, trichloro-	75-70-7 (P118)
Trichloromonofluoromethane	Methane, trichlorofluoro-	75-69-4 (U121)
2,4,5-Trichlorophenol	Phenol, 2,4,5-trichloro-	95-95-4 (See F027)
2,4,6-Trichlorophenol	Phenol, 2,4,6-trichloro-	88-06-2 (See F027)
2,4,5-T	Acetic acid (2,4,5-trichlorophenoxy)-	93-76-5 (See F027)
Trichloropropane, N.O.S.*	-----	25735-29-9 (----)
1,2,3-Trichloropropane	Propane, 1,2,3-trichloro-	96-18-4 (----)
<u>Triethylamine</u>	<u>Ethanamine, N,N-diethyl-</u>	<u>121-44-8 (U404)</u>
O,O,O-Triethyl phosphorothioate	Phosphorothioic acid, O,O,O-triethyl ester	126-68-1 (----)
1,3,5-Trinitrobenzene	Benzene,1,3,5-trinitro	99-35-4 (U234)
Tris(1-aziridinyl)-phosphine sulfide	Aziridine,1,1',1''phosphinothioylidynetris-	52-24-4 (----)
Tris(2,3-dibromopropyl) phosphate	1-Propanol, 2,3-dibromo-, phosphate (3:1)	126-72-7 (U235)
Trypan blue	2,7-Naphthalenedisulfonic acid, 3,3'-(3,3'-dimethyl)1,1'-biphenyl)-4,4'-diyl)bis(azo))-bis(5-amino-4-hydroxy-, tetrasodium salt	72-57-1 (U236)
Uracil mustard	2,4-(1H,3H)-Pyrimidinedione, 5-(bis(2-chloroethyl)amino)-	66-75-1 (U237)
Vanadium pentoxide	Vanadium oxide V ₂ O ₅	1314-62-1 (P120)
<u>Vernolate</u>	<u>Carbamothioic acid, dipropyl-, S-propyl ester</u>	<u>1929-77-7 (U385)</u>
Vinyl chloride	Ethene, chloro-	75-01-4 (U043)
Warfarin	2H-1-Benzopyran-2-one,4-hydroxy-3-(3-oxo-1-phenylbutyl)-, when present at concentrations less than 0.3%	81-81-2 (U248)
Warfarin	2H-1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenylbutyl)-, when present at concentrations greater than 0.3%	81-81-2 (P001)
Warfarin salts, when present at concentrations less than 0.3%	-----	---- (U248)
Warfarin salts, when present at concentrations greater than 0.3%	-----	---- P001
Zinc cyanide	Zinc cyanide Zn(CN) ₂	557-21-1 (P121)
Zinc phosphide	Zinc phosphide Zn ₃ P ₂ , when present at concentrations greater than 10%	1314-84-7 (P122)
Zinc phosphide	Zinc phosphide Zn ₃ P ₂ , when present at concentrations of 10% or less	1314-84-7 (U249)
<u>Ziram</u>	<u>Zinc, bis(dimethylcarbamadithioato-S,S'), (T-4)-</u>	<u>U249</u> <u>137-30-4 (P205)</u>

*The abbreviation N.O.S. (not otherwise specified) signifies those members of the general class not specifically listed by name in this appendix.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: July 11, 1996

FILED WITH LRC: July 12, 1996 at 9 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Thursday, August 29, 1996, at 7 p.m. Eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing, at the address noted below, by August 24, 1996. If by that date Mr. Hale has not received any notification of intent to attend the hearing, the hearing will be canceled. This hearing is open to the public. Any person wishing to comment on the proposed administrative regulation will be given an opportunity to do so. Persons testifying at the hearing are requested to provide a written copy of their testimony, if available. A transcript of the hearing will not be made unless a request for such is filed with Mr. Hale by August 24, 1996 and arrangements for payment of the transcript are made by that date. Written comments may also be submitted on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than the date of the close of the public hearing on August 29, 1996. Persons submitting written comments are also requested to provide an electronic copy of their comments, if available. The preferred format for the electronic format is any version of Word Perfect on 3.5 inch diskettes; however, any other format would be greatly appreciated, should Word Perfect or 3.5 inch diskettes not be available. The Natural Resources and Environmental Cabinet does not discriminate on the basis of color, national origin, sex, religion, age, or disability in employment or the provision of services. upon request, the Cabinet will provide reasonable accommodation, including auxiliary aids and

services, necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as a interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by August 24, 1996.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221.

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: The proposed amendments affect all hazardous waste facilities.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the 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. Effect on the 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. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No public comments were received.

2. Second and subsequent years: No public comments were received.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First Year: There will be no additional costs or savings by adopting these amendments. However, the adoption will increase the workload of the agency. Partial funding will be provided by EPA grants and are anticipated to help cover the costs.

2. Continuing costs or savings: There should be no additional costs after the first year.

3. Additional factors increasing or decreasing costs: There are no additional factors affecting the costs to the Cabinet. However, Kentucky industry will receive indirect savings from the adoption of these amendments.

b. Reporting and paperwork requirements: There will be no additional paperwork with the adoption of these amendments.

4. Assessment of anticipated effect on state and local revenues: There are no anticipated effects on state or local revenues.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: EPA grants will be used in the implementation and enforcement of this regulation.

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

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 were no other alternatives. These amendments are consistent with federal standards.

8. Assessment of expected benefits of the administrative regulation: KRS 224.46-510 requires that the cabinet promulgate administrative regulations that identify chemicals that are to be considered a hazardous waste. This list is to be identical to the hazardous waste list designated by the U.S. EPA. These amendments are consistent with federal hazardous waste listings.

a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: The effects on public health and the environment will improve with the implementation of this regulation.

b. State whether a detrimental effect on the environment and public health would result if not implemented: Yes, there would be detrimental effects upon the environment and public health.

c. If detrimental effect would result, explain detrimental effect: Human health and the environment would be threatened without the implementation of this regulation.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no policies, regulations, or statutes that conflict, overlap, or duplicate this regulation.

a. Necessity of proposed regulation if in conflict: Not applicable.

b. If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

11. Any additional information or comments: No additional comments.

12. TIERING: Is tiering applied? Yes, tiering was used, consistent with federal standards, based on the chemical's characteristics, to reflect the need to protect human health and the environment.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the Cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution.

2. State compliance standards: The proposed amendments adopt changes for the list of hazardous waste constituents and define chemical characteristics. These changes are necessary to maintain consistency between federal and state programs. Additions have

been made to clarify the chemical characteristics. In addition, the regulation has been modified to reflect the requirements of this regulation construction specified in KRS 13A.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part, or division of local government this administrative regulation will affect. This administrative regulation will affect any state, county, or local office of government that manages hazardous waste.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the Cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224 Subchapter 46 requires that the Cabinet to establish a comprehensive program for the proper management of hazardous waste. The agencies affected by this administrative regulation will be subject to these requirements.

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 impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): The only expenditures to a state, county, or local office of government will be those expenditures related to compliance with this administrative regulation. If this administrative regulation does not apply to a state, county, or local office of government, there will be no expenditures.

Other Explanation: None

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

401 KAR 32:010. General provisions for generators.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.46, 224.99, 40 CFR 262 Subpart A

STATUTORY AUTHORITY: KRS 10-100, 224.46-510

NECESSITY AND FUNCTION: To implement provisions of KRS 224.46-510 and to establish the applicable general provisions for generators.

Section 1. Purpose, Scope, and Applicability. (1) These administrative regulations establish standards for generators of hazardous waste.

(2) Section 5(3) and (4) of 401 KAR 31:010 shall be used to determine the applicability of provisions of this chapter that are dependent on calculations of the quality of hazardous waste generated per month.

(3) A generator who treats, stores, or disposes of hazardous waste on-site shall only comply with the following: Section 2 of this administrative regulation for determining whether or not he has a hazardous waste; Section 3 of this administrative regulation for obtaining an EPA identification number; Section 5 and 6 of 401 KAR 32:030 for accumulation of hazardous waste; Section 6 of 401 KAR 32:030 for on-site treatment of a hazardous waste; Section 1(3) and (4) of 401 KAR 32:040, for recordkeeping; Section 4 of 401 KAR 32:040 for additional reporting; and, if applicable, Section 10 of 401 KAR 32:050 for farmers.

(4) ~~(4)~~ Any person who imports hazardous waste from outside the United States into Kentucky shall comply with the standards applicable to generators established in this chapter.

(5) ~~(4)~~ A farmer who generates waste pesticides which are hazardous waste and who complies with all of the requirements of Section 10 of 401 KAR 32:050 is not required to comply with other standards in this chapter or 401 KAR Chapters 34, 35, 37, and 38 with respect to such pesticides.

(6) ~~(5)~~ A person who generates a hazardous waste as defined by 401 KAR Chapter 31 is subject to the compliance requirements and penalties prescribed in KRS Chapter 224 if he does not comply with the requirements of this chapter.

(7) ~~(6)~~ An owner or operator who initiates a shipment of hazardous waste from a treatment, storage, or disposal facility shall comply with the generator standards established in this chapter.

~~(7) A small quantity generator (that is, one who generates between 100 and 1,000 kg/mo of hazardous waste) shall comply with the generator standards established in this chapter.~~

~~(8) A limited quantity generator (that is, one who generates no more than 100 kilograms of hazardous waste a month or less than one (1) kilogram of acute hazardous waste per month) shall comply with the requirements of Section 5 of 401 KAR 31:010.]~~

Section 2. Hazardous Waste Determination. A person who generates a waste, as defined in Section 2 of 401 KAR 31:010 shall determine if that waste is a hazardous waste using the following method:

(1) He shall first determine if the waste is excluded from administrative regulation under Section 4 of 401 KAR 31:010.

(2) If not, he shall then determine if the waste is listed as a hazardous waste in 401 KAR 31:040.

(3) For purposes of compliance with 401 KAR Chapter 37 or if the waste is not listed as a hazardous waste in 401 KAR 31:040 the generator shall then determine whether the waste is identified in 401 KAR 31:030, by either:

(a) Testing the waste according to the methods set forth in 401 KAR 31:030, or according to an equivalent method approved by the cabinet; or

(b) Applying knowledge of the hazard characteristic of the waste in light of the materials or the processes used.

(4) If the waste is determined to be hazardous, the generator shall refer to 401 KAR Chapters 31, 34, 35, 36, 37, [and] 38, and 43 for possible exclusions or restrictions pertaining to management of his specific waste.

Section 3. Registration and Identification Number. (1) A generator shall not treat, store, dispose, transport, or offer for transportation, hazardous waste without having registered with the cabinet by submitting a complete registration form and without having received an EPA identification number. Generators shall register initially by submitting a complete Notification of Hazardous Waste Activity Form, DEP-7037, which is incorporated by reference in Section 4 of this administrative regulation [subsection (2) of this section]. After October 26, 1988, generators shall submit an initial registration on a schedule determined by the cabinet. Subsequent annual registrations shall be submitted to the cabinet on the Annual Registration of Hazardous Waste Activity Form, DEP-7050, at least forty-five (45) days before

the expiration date shown on the generator's registration. This form is incorporated by reference in Section 4 of this administrative regulation [subsection (2) of this section]. Registration shall be filed within ninety (90) days after promulgation or revision of administrative regulations under 401 KAR Chapter 31 identifying by its characteristics or listing any substance as a hazardous waste. The registration shall include:

(a) Known or anticipated types, potential sources, general characteristics, and weights or volumes of hazardous wastes generated annually;

(b) The place of generation and the name and address of a contact agent; and

(c) If the waste is a special waste, generators shall, either individually or collectively as a categorical group, within ninety (90) days after promulgation or revision of administrative regulations under 401 KAR Chapter 31, file a report, according to procedures previously approved by the cabinet, which details, by geographic area, the known or anticipated types, potential sources, general characteristics, and weights or volumes of special wastes generated annually. Not more than one (1) registration shall be required to be filed with respect to the same substance.

(2) A generator who has not received an EPA identification number may obtain one by registering with the cabinet as described in subsection (1) of this section, using forms provided by the cabinet ~~[and incorporated by reference]~~. The Notification of Hazardous Waste Activity Form (July 1996 ~~[November 1990]~~), DEP 7037, and Annual Registration of Hazardous Waste Activity Form (July 1996 ~~[November 1990]~~), DEP 7050, are incorporated by reference in Section 4 of this administrative regulation, [available for copying and inspection from the Division of Waste Management, 18 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716, between 8 a.m. and 4:30 p.m., Monday through Friday.] Upon receiving the request and reviewing the information the cabinet shall assign an EPA identification number to the generator.

(3) A generator shall not offer his hazardous waste to transporters or to treatment, storage, or disposal facilities that have not received an EPA identification number.

(4) Hazardous waste generation and on-site management of hazardous waste shall be consistent with registration. Any changes in waste streams, on-site management methods, or other information submitted on the registration form requires the generator to submit a modified registration form. A modified Notification of Hazardous Waste Activity Form, DEP-7037, shall be submitted if a waste stream is added or the name of the contact person or registrant is changed. The registrant shall timely file a modified registration form with the cabinet. A required modification shall be considered timely filed if it is received by the cabinet not later than thirty (30) days following the change requiring the submittal of the modification. The Notification of Hazardous Waste Activity Form, DEP-7037, is incorporated by reference in Section 4 of this administrative regulation, [subsection (2) of this section.]

(5) Hazardous waste generators that no longer generate hazardous waste on site, close their facility, or go out of business shall notify the cabinet in writing within thirty (30) days after the generation of hazardous waste ceases. This notification shall be submitted on DEP Form 7086, entitled Request to be Removed from the Hazardous Waste Handler List (August 1991), which is incorporated ~~[into this administrative regulation]~~ by reference in Section 4 of this administrative regulation. [This form is available for copying and inspection at the Division of Waste Management, 18 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716, between 8 a.m. and 4:30 p.m., Monday through Friday.]

Section 4. Incorporation by Reference. (1) The following documents are hereby incorporated by reference into this administrative regulation:

(a) Notification of Hazardous Waste Activity Form (November

1990), DEP Form 7037;

(b) Annual Registration of Hazardous Waste Activity Form (November 1990), DEP Form 7050; and

(c) Request to be Removed from the Hazardous Waste Handler List (August 1991), DEP Form 7086.

(2) These documents are available for inspection and copying, subject to copyright law, from the Hazardous Waste Branch, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716, between 8 a.m. and 4:30 p.m., Monday through Friday.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: July 11, 1996

FILED WITH LRC: July 12, 1996 at 9 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Thursday, August 29, 1996, at 7 p.m. Eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing, at the address noted below, by August 24, 1996. If by that date Mr. Hale has not received any notification of intent to attend the hearing, the hearing will be canceled. This hearing is open to the public. Any person wishing to comment on the proposed administrative regulation will be given an opportunity to do so. Persons testifying at the hearing are requested to provide a written copy of their testimony, if available. A transcript of the hearing will not be made unless a request for such is filed with Mr. Hale by August 24, 1996 and arrangements for payment of the transcript are made by that date. Written comments may also be submitted on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than the date of the close of the public hearing on August 29, 1996. Persons submitting written comments are also requested to provide an electronic copy of their comments, if available. The preferred format for the electronic format is any version of Word Perfect on 3.5 inch diskettes; however, any other format would be greatly appreciated, should Word Perfect or 3.5 inch diskettes not be available. The Natural Resources and Environmental Cabinet does not discriminate on the basis of color, national origin, sex, religion, age, or disability in employment or the provision of services. Upon request, the Cabinet will provide reasonable accommodation, including auxiliary aids and services, necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as a interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by August 24, 1996.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: The proposed amendments affect all hazardous waste generators. Currently there are 442 generators, 699 small quantity generators, and 1690 conditionally exempt generators registered in Kentucky.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the 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. Effect on the 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. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any

effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No public comments were received.

2. Second and subsequent years: No public comments were received.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First Year: There will be no costs or savings.

2. Continuing costs or savings: There will be no costs or savings.

3. Additional factors increasing or decreasing costs: There should not be additional factors affecting costs.

b. Reporting and paperwork requirements: There should not be any additional paperwork requirements.

4. Assessment of anticipated effect on state and local revenues: There are no anticipated effects on state or local revenue.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: EPA grants will be used for the implementation and enforcement of the regulation.

6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative 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 considered. These amendments are consistent with federal standards.

8. Assessment of expected benefits of the administrative regulation: The benefits expected are the EPA grants.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: The implementation of this regulation will improve public health and environmental welfare.

b. State whether a detrimental effect on the environment and public health would result if not implemented: There would not be any detrimental effects.

c. If detrimental effect would result, explain detrimental effect: Not applicable.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no statutes, policies, or regulations that conflict, overlap, or duplicate the proposed regulation.

a. Necessity of proposed regulation if in conflict: Not applicable.

b. If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

11. Any additional information or comments: No additional comments.

12. TIERING: Is tiering applied? Yes, tiering was used. This administrative regulation only applies to hazardous waste generators, consistent with federal standards, in order to protect public health and the environment.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the Cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution.

2. State compliance standards: The proposed amendments adopt changes that include standards for all hazardous waste generators. These changes are necessary to maintain consistency between the state and federal programs. Additions and exclusions have been made to clarify the applicability of these standards. In addition, the regulation has been modified to reflect the requirements of regulation

construction specified in KRS Chapter 13A.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part, or division of local government this administrative regulation will affect. This administrative regulation will affect any state, county, or local office of government that are hazardous waste generators.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the Cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224 Subchapter 46 requires that the Cabinet to establish a comprehensive program for the proper management of hazardous waste. The agencies affected by this administrative regulation will be subject to these requirements.

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 impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): The only expenditures to a state, county, or local office of government will be those expenditures related to compliance with this administrative regulation. If this administrative regulation does not apply to a state, county, or local office of government, there will be no expenditures.

Other Explanation: None

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

401 KAR 32:020. Manifest system.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.46, 224.99, 40 CFR 262 Subpart B

STATUTORY AUTHORITY: KRS 10-100, 224.46-510

NECESSITY AND FUNCTION: To implement provisions of KRS 224.46-510 and to establish general requirements and procedures involving the use of the manifest system by generators of hazardous waste.

Section 1. General Requirements. (1) A generator who transports, or offers for transportation, hazardous waste for off-site treatment, storage, or disposal shall prepare a manifest, incorporated by reference in Section 2 [contained in Appendix A] of 401 KAR 32:100, and if necessary, the continuation sheet that is incorporated by reference in Section 4 [Appendix B] of 401 KAR 32:100, according to the instructions included in 401 KAR 32:100.

(2) A generator shall designate on the manifest the facility which is permitted to handle the waste described on the manifest.

(3) A generator may also designate on the manifest one (1) alternate facility which is permitted to handle his waste in the event an emergency prevents delivery of the waste to the primary designated facility.

(4) If the transporter is unable to deliver the hazardous waste to the designated facility or the alternate facility, the generator shall either designate another facility or instruct the transporter to return the waste.

Section 2. Acquisition of Manifests. (1) If the state to which the shipment is manifested (consignment state) supplies the manifest and requires its use, then the generator shall use that manifest and include all information required in 401 KAR 32:100.

(2) If the consignment state does not supply the manifest, but the state in which the generator is located (generator state) supplies the manifest and requires its use, then the generator shall use that state's manifest and include all information required in 401 KAR 32:100.

(3) If neither the generator state nor the consignment state supplies the manifest, then the manifest shall be filled out in accordance with the requirements of 401 KAR 32:100 and the generator may obtain the manifest from any source.

Section 3. Number of Copies. The manifest consists of at least the number of copies which will provide the generator, each transporter, and the owner or operator of the designated facility with one (1) copy each for their records and another copy to be returned by the operator of the designated facility to the generator.

Section 4. Use of the Manifest. (1) The generator shall:

(a) Sign the manifest certification by hand; and

(b) Obtain the handwritten signature of the initial transporter and date of acceptance on the manifest; and

(c) Retain one (1) copy, in accordance with Section 1(1) of 401 KAR 32:040.

(2) The generator shall give the transporter the remaining copies of the manifest.

(3) For shipments of hazardous waste within the United States solely by water (bulk shipments only), the generator shall send three (3) copies of the manifest dated and signed in accordance with this section to the owner or operator of the designated facility or the last water (bulk shipment) transporter to handle the waste in the United States if exported by water. Copies of the manifest are not required for each transporter.

(4) For rail shipments of hazardous waste within the United States which originate at the site of generation in Kentucky, the generator shall send at least three (3) copies of the manifest dated and signed in accordance with this section to:

(a) The next nonrail transporter, if any; or

(b) The designated facility if transported solely by rail; or

(c) The last rail transporter to handle the waste in the United States if exported by rail.

(5) For shipments of hazardous waste to a designated facility in an authorized state which has not yet obtained authorization to regulate that particular waste as hazardous, the generator shall assure that the designated facility agrees to sign and return the manifest to the generator, and that any out-of-state transporter signs and forwards the manifest to the designated facility with the shipment.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: July 11, 1996

FILED WITH LRC: July 12, 1996 at 9 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Thursday, August 29, 1996, at 7 p.m. Eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing, at the address noted below, by August 24, 1996. If by that date Mr. Hale

has not received any notification of intent to attend the hearing, the hearing will be canceled. This hearing is open to the public. Any person wishing to comment on the proposed administrative regulation will be given an opportunity to do so. Persons testifying at the hearing are requested to provide a written copy of their testimony, if available. A transcript of the hearing will not be made unless a request for such is filed with Mr. Hale by August 24, 1996 and arrangements for payment of the transcript are made by that date. Written comments may also be submitted on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than the date of the close of the public hearing on August 29, 1996. Persons submitting written comments are also requested to provide an electronic copy of their comments, if available. The preferred format for the electronic format is any version of Word Perfect on 3.5 inch diskettes; however, any other format would be greatly appreciated, should Word Perfect or 3.5 inch diskettes not be available. The Natural Resources and Environmental Cabinet does not discriminate on the basis of color, national origin, sex, religion, age, or disability in employment or the provision of services. Upon request, the Cabinet will provide reasonable accommodation, including auxiliary aids and services, necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as an interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by August 24, 1996.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: The proposed amendments affect all hazardous waste generators. Currently there are 442 generators, 699 small quantity generators, and 1690 conditionally exempt generators registered in Kentucky.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the 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. Effect on the 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. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No public comments were received.

2. Second and subsequent years: No public comments were received.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First Year: There will be no costs or savings.

2. Continuing costs or savings: There will be no continuing costs or savings.

3. Additional factors increasing or decreasing costs: There are no additional factors effecting the costs.

b. Reporting and paperwork requirements: There should be no additional paperwork requirements.

4. Assessment of anticipated effect on state and local revenues: There are no anticipated effects on state and local revenues.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: The EPA grants will be used for the implementation and enforcement of the regulation.

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

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: Alternatives were not considered. These changes are consistent with federal standards.

8. Assessment of expected benefits of the administrative regulation: This amendment incorporates the hazardous waste manifest form by reference.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: There will be no effects on public health and environmental welfare.

b. State whether a detrimental effect on the environment and public health would result if not implemented: No detrimental effects will occur.

c. If detrimental effect would result, explain detrimental effect: Not applicable.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no policies, regulations, or statutes that conflict, overlap, or duplicate the proposed regulation.

a. Necessity of proposed regulation if in conflict: Not applicable.

b. If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

11. Any additional information or comments: No additional comments.

12. TIERING: Is tiering applied? Tiering is applied to all of Kentucky's hazardous waste regulations, based on type and quantity of hazardous waste generated and managed and type of management activities performed by the owner or operator.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate:

There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the Cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution.

2. State compliance standards: The proposed amendments adopt changes that include all hazardous waste generators. These changes are necessary to maintain consistency between the state and federal programs. Additions and exclusions have been made to clarify the applicability of these standards. In addition, the regulation has been modified to reflect the requirements of regulation construction specified in KRS Chapter 13A.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part, or division of local government this administrative regulation will affect. This administrative regulation will affect any state, county, or local office of government that are

hazardous waste generators.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the Cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224 Subchapter 46 requires that the Cabinet to establish a comprehensive program for the proper management of hazardous waste. The agencies affected by this administrative regulation will be subject to these requirements.

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 impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): The only expenditures to a state, county, or local office of government will be those expenditures related to compliance with this administrative regulation. If this administrative regulation does not apply to a state, county, or local office of government, there will be no expenditures.

Other Explanation: None

**NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET**
Department for Environmental Protection
Division of Waste Management
(Amendment)

401 KAR 32:030. Pretransport requirements.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.46, 224.99, 40 CFR 262 Subpart C

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-510

NECESSITY AND FUNCTION: To implement provisions of KRS 224.46-510 and 49 CFR Subpart C ~~(Parts 172, 173, 178, and 179)~~ and to establish requirements for labeling, marking, placarding, and accumulation time.

Section 1. Packaging. Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator shall package the waste in accordance with the applicable DOT U.S. Department of Transportation regulations on packaging under 49 CFR Subpart C ~~(Parts 173, 178, and 179 (1989))~~.

Section 2. Labeling. Before transporting or offering hazardous waste for transportation off-site, a generator shall label each package in accordance with the applicable DOT U. S. Department of Transportation regulations on hazardous materials, under 49 CFR Subpart C ~~(172 (1989))~~.

Section 3. Marking. (1) Before transporting or offering hazardous waste for transportation off-site, a generator shall mark each package of hazardous waste in accordance with the applicable DOT U.S. Department of Transportation regulations on hazardous materials under 49 CFR Subpart C ~~(172 (1989))~~.

(2) Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator shall mark each container of 110 gallons or less used in such transportation in accordance with the requirements of 49 CFR Subpart C ~~(172.304 (1989))~~. The following words and information shall be displayed: "Hazardous Waste - Federal Law Prohibits Improper Disposal. If found, contact the nearest police or public safety authority or the U.S. Environmental Protection Agency.

Generator's Name and Address _____

Manifest Document Number _____

Section 4. Placarding. Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator shall offer the initial transporter the appropriate placards according to DOT U.S. Department of Transportation regulations for hazardous materials under 49 CFR Subpart C and ~~(Part 172,)~~ Subpart F ~~(1989)~~.

Section 5. Accumulation Time. (1) Except as provided in subsections (3), (4), (5), and (6) of this section and Section 6 of this administrative regulation, a generator may accumulate hazardous waste on-site for ninety (90) days or less without a permit or without having interim status if:

(a) The waste is placed:

1. In containers and the generator complies with 401 KAR 35:180, 35:275, 35:280, and 35:281; or

2. In tanks and the generator complies with 401 KAR 35:190 ~~[(except Sections 8(3) and 11 and forty five (45) days prior to closing a tank, the generator notifies the cabinet in writing of the intent to begin closure)],~~ 35:275, 35:280, and 35:281; or

3. On drip pads and the generator complies with 401 KAR 35:285 and maintains the following records at the facility:

a. A description of procedures that will be followed to ensure that all wastes are removed from the drip pad and associated collection system at least once every ninety (90) days; and

b. Documentation of each waste removal, including the quantity of waste removed from the drip pad and the sump or collection system and the date and time of removal.

4. The waste is placed in containment buildings and the generator complies with 401 KAR 35:245, and placed its professional engineer certification that the building complies with the design standards specified in Section 2 of 401 KAR 35:245 in the facility's operating record no later than sixty (60) days after the date of initial operation of the unit. After February 18, 1993, professional engineer (PE) certification will be required prior to operation of the unit. The owner or operator shall maintain the following records at the facility:

a. A written description of procedures to ensure that each waste volume remains in the unit for no more than ninety (90) days, a written description of the waste generation and management practices for the facility showing that they are consistent with respecting the ninety (90) day limit, and documentation that the procedures are complied with; or

b. Documentation that the unit is emptied at least once every ninety (90) days.

(b) The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container;

(c) While being accumulated on-site, each container and tank is labeled or marked clearly with the words "Hazardous Waste;" and

(d) The generator complies with the requirements for owners or operators in 401 KAR 35:030, and 401 KAR 35:040, with Section 7 of 401 KAR 35:020, and with Section 7(1)(d) of 401 KAR 37:010. In addition, the generator is exempt from all requirements in 401 KAR 35:070 and 35:130 ~~(35:080)~~, except for Sections 2~~(-4-)~~ and 5 of 401 KAR 35:070.

(2) A generator who accumulates hazardous waste for more than ninety (90) days is an operator of a storage facility and is subject to the requirements of 401 KAR Chapter 34, 401 KAR Chapter 35 and the permit requirements of 401 KAR Chapter 38, unless he has been granted an extension to the ninety (90) day period. Such extensions may be granted by the cabinet if hazardous wastes will remain on-site for longer than ninety (90) days due to unforeseen, temporary, and uncontrolled circumstances. An extension of up to thirty (30) days may be granted at the discretion of the cabinet on a case-by-case basis.

(3) Satellite accumulation.

(a) A generator may accumulate as much as fifty-five (55) gallons of hazardous waste or one (1) quart of acutely hazardous waste listed in Section 4 of 401 KAR 31:040 in containers at or near any point of generation where wastes initially accumulate, which is under the

control of the operator of the process generating the waste, without a permit or interim status and without complying with subsection (1) of this section provided that upon commencement of accumulation, he:

1. Complies with Sections 2, 3, and 4(1) of 401 KAR 35:180; and
2. Marks his containers with the words "Hazardous Waste."

(b) A generator who accumulates either hazardous waste or acutely hazardous waste listed in Section 4 of 401 KAR 31:040 in excess of the amounts listed in paragraph (a) of this subsection at or near any point of generation shall, with respect to that amount of excess waste, comply with subsection (1) of this section or other applicable provisions of this chapter and continue to comply with paragraph (a)1 and 2 of this subsection. The generator must mark the container holding the excess accumulation of hazardous waste with the date the excess amount began accumulating. The date shall be placed on the container on the day that excess accumulation began.

(4) A generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month may accumulate hazardous waste on-site for 180 days or less without a permit or without having interim status provided that:

(a) The quantity of waste accumulated on-site never exceeds 6000 kilograms;

(b) The generator complies with the requirements of 401 KAR 35:180, except Section 6;

(c) he generator complies with the requirements of 401 KAR 35:190, except Section 13;

(d) The generator complies with the requirements of subsection (1)(b) and (c) of this section, the requirements of 401 KAR 35:030, the requirements of Section 7(1)(d) of 401 KAR 37:010; and

(e) The generator complies with the following requirements:

1. At all times there shall be at least one (1) employee either on the premises or on call (that is, available to respond to an emergency by reaching the facility within a short period of time) with the responsibility for coordinating all emergency response measures specified in subparagraph 4 of this paragraph. This employee is the emergency coordinator.

2. The generator shall post the following information next to the telephone:

a. The name and telephone number of the emergency coordinator;

b. Location of fire extinguishers and spill control material, and, if present, fire alarm; and

c. The telephone number of the fire department, unless the facility has a direct alarm.

3. The generator shall ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies;

4. The emergency coordinator or his designee shall respond to any emergencies that arise. The applicable responses are as follows:

a. In the event of a fire, call the fire department or attempt to extinguish it using a fire extinguisher;

b. In the event of a spill, contain the flow of hazardous waste to the extent possible, and as soon as is practicable, clean up the hazardous waste and any contaminated materials or soil;

c. In the event of a fire, explosion, or other release which could threaten human health outside the facility or when the generator has knowledge that a spill has reached surface water, the generator shall immediately notify the cabinet in accordance with KRS 224.01-400(11) and (12).

(5) A generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month and who shall transport his waste, or offer his waste for transportation, over a distance of 200 miles or more for off-site treatment, storage or disposal may accumulate hazardous waste on-site for 270 days or less without a permit or without having interim status provided that he complies with the requirements of subsection (4) of this

section.

(6) A generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month and who accumulates hazardous waste in quantities exceeding 6000 kilograms or accumulates hazardous waste for more than 180 days (or for more than 270 days if he transports his waste, or offers his waste for transportation, over a distance of 200 miles or more) is an operator of a storage facility and is subject to the requirements of 401 KAR Chapters 34 and 35 and the permit requirements of 401 KAR Chapter 38 unless he has been granted an extension to the 180-day (or 270-day if applicable) period. Such extension may be granted by the Cabinet if hazardous wastes remain on-site for longer than 180 days (or 270 days if applicable) due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to thirty (30) days may be granted at the discretion of the cabinet on a case-by-case basis.

Section 6. On-site Treatment by Generators. (1) A generator may treat his own hazardous waste on site in tanks, containers, and drip pads, provided:

(a)1. A generator complies with the hazardous waste accumulation provisions of Section 5 of this administrative regulation.

2. A small quantity generator complies with the hazardous waste accumulation provisions of Section 5 of this administrative regulation.

3. A limited quantity generator complies with the provisions of Section 5 of 401 KAR 31:010; and

(b) The generator notifies that cabinet of the intent to treat hazardous waste as required by Section 3 of 401 KAR 32:010; and

(c) The cabinet issues written approval to the generator. The cabinet shall not approve any treatment process that is not demonstrated to provide adequate protection to human health, safety, and the environment in a manner consistent with the purpose of the waste management regulations and KRS Chapter 224.

(2) A generator shall not conduct the on-site treatment of hazardous waste unless all of the requirements of subsection (1) of this section have been met.

(3) If it is determined that the approved treatment is not protective of human health, safety, and the environment, the cabinet may revoke the approval and all treatment activities shall cease.

[Section 6. Accumulation Time for Small Quantity Generators. (1) A generator generating a total quantity of hazardous waste greater than 100 kilograms, but less than 1,000 kilograms during a calendar month for every month in a calendar year (that is, a registered small quantity generator), may accumulate without a permit for up to 180 days. The on-site accumulation may occur without a permit for not more than 6,000 kilograms for up to 270 days if the generator is obligated to ship or haul the waste over 200 miles.

(2) A generator who generates greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month and who accumulates hazardous waste in quantities exceeding 6,000 kilograms or accumulates hazardous waste for more than 180 days (or for more than 270 days if he transports his waste or offers his waste for transportation over a distance of 200 miles or more) is an operator of a storage facility and is subject to the requirements of 401 KAR Chapters 34 and 35 and the permit requirements of 401 KAR Chapter 38 unless he has been granted an extension to the 180 day (or 270 day if applicable) period. Such extension may be granted by the cabinet if hazardous wastes will remain on-site for longer than 180 days (or 270 days if applicable) due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to thirty (30) days may be granted at the discretion of the cabinet on a case-by-case basis.

(3) A small quantity generator may accumulate hazardous waste on-site for 180 days (or for 270 days if he is obligated to transport his waste or offer his waste for transportation over a distance of 200 miles or more) or less without a permit or without having interim

~~status provided that he complies with the requirements of Section 5(1) of this administrative regulation.~~

~~(4) A small quantity generator may accumulate hazardous waste in satellite areas provided that he complies with the requirements of Section 5(3) of this administrative regulation.]~~

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: July 11, 1996

FILED WITH LRC: July 12, 1996 at 9 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Thursday, August 29, 1996, at 7 p.m. Eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing, at the address noted below, by August 24, 1996. If by that date Mr. Hale has not received any notification of intent to attend the hearing, the hearing will be canceled. This hearing is open to the public. Any person wishing to comment on the proposed administrative regulation will be given an opportunity to do so. Persons testifying at the hearing are requested to provide a written copy of their testimony, if available. A transcript of the hearing will not be made unless a request for such is filed with Mr. Hale by August 24, 1996 and arrangements for payment of the transcript are made by that date. Written comments may also be submitted on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than the date of the close of the public hearing on August 29, 1996. Persons submitting written comments are also requested to provide an electronic copy of their comments, if available. The preferred format for the electronic format is any version of Word Perfect on 3.5 inch diskettes; however, any other format would be greatly appreciated, should Word Perfect or 3.5 inch diskettes not be available. The Natural Resources and Environmental Cabinet does not discriminate on the basis of color, national origin, sex, religion, age, or disability in employment or the provision of services. Upon request, the Cabinet will provide reasonable accommodation, including auxiliary aids and services, necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as a interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by August 24, 1996.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: The proposed amendments affect all hazardous waste generators. Currently there are 442 generators, 699 small quantity generators, and 1690 conditionally exempt generators registered in Kentucky.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the 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. Effect on the 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. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No public comments were received.

2. Second and subsequent years: No public comments were

received.

3. Effects on the promulgating administrative body: The agency will have an increased workload in order to process the newly regulated entities.

a. Direct and indirect costs or savings:

1. First Year: The increased workload will increase the costs until the new regulated entities are processed.

2. Continuing costs or savings: After the new entities are processed, there should not be any continuing costs.

3. Additional factors increasing or decreasing costs: There are no additional factors effecting costs.

b. Reporting and paperwork requirements: There are no additional paperwork requirements.

4. Assessment of anticipated effect on state and local revenues: There are no anticipated effects on state or local revenues.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: EPA grants will be used in the implementation and enforcement of the proposed regulation.

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

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: No alternatives were considered. These changes are consistent with federal standards.

8. Assessment of expected benefits of the administrative regulation: This administrative regulation allows the generator to accumulate a hazardous waste in a containment building.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: There will be no effects on public health and environmental welfare across the commonwealth.

b. State whether a detrimental effect on the environment and public health would result if not implemented: Not applicable.

c. If detrimental effect would result, explain detrimental effect: Not applicable.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no statutes, policies, or regulations that conflict, overlap, or duplicate this regulation.

a. Necessity of proposed regulation if in conflict: Not applicable.

b. If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

11. Any additional information or comments: No additional information.

12. TIERING: Is tiering applied? Tiering is applied to all of Kentucky's hazardous waste regulations, based on type and quantity of hazardous waste generated and managed and type of management activities performed by the owner or operator.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the Cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution.

2. State compliance standards: The proposed amendments adopt changes that include packaging, labeling, marking, placarding, and accumulation time for all hazardous waste generators. These changes are necessary to maintain consistency between the state and federal programs. Additions have been made to clarify the applicability of these standards. In addition, the regulation has been modified to reflect the requirements of regulation construction specified in KRS

Chapter 13A.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part, or division of local government this administrative regulation will affect. This administrative regulation will affect any state, county, or local office of government that generate hazardous waste.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the Cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224 Subchapter 46 requires that the Cabinet to establish a comprehensive program for the proper management of hazardous waste. The agencies affected by this administrative regulation will be subject to these requirements.

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 impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): The only expenditures to a state, county, or local office of government will be those expenditures related to compliance with this administrative regulation. If this administrative regulation does not apply to a state, county, or local office of government, there will be no expenditures.

Other Explanation: None

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

401 KAR 32:040. Recordkeeping and reporting.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.46, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-510

NECESSITY AND FUNCTION: KRS 224.46-510 requires the cabinet to promulgate administrative regulations to establish standards for the generation of hazardous waste. This chapter establishes standards applicable to generators of hazardous waste. This administrative regulation establishes recordkeeping and reporting standards.

Section 1. Recordkeeping. (1) A generator shall ~~[must]~~ keep a copy of each manifest signed in accordance with Section 4(1) ~~[(3)]~~ of 401 KAR 32:020 in addition to the signed copy returned from the designated facility which received the waste. Both copies shall ~~[must]~~ be retained on record for at least three (3) years from the date the waste was accepted by the initial transporter.

(2) A generator shall ~~[must]~~ keep a copy of each annual report and exception report for a period of at least three (3) years from the due date of the report (March 1).

(3) A generator shall ~~[must]~~ keep records of any test results, waste analyses, or other determinations made in accordance with Section 2 of 401 KAR 32:010 for at least three (3) years from the date that the waste was last sent to on-site or off-site treatment, storage, or disposal.

(4) A generator shall ~~[must]~~ keep a log showing all facility and equipment inspections as required in Section 6 of 401 KAR 35:020.

(5) The periods of retention referred to in this section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the secretary.

Section 2. Annual Reporting. (1) A generator who ships any hazardous waste off-site to a treatment, storage or disposal facility within the United States shall ~~[must]~~ prepare and submit a Hazardous Waste Annual Report, DEP Form 7072-91, incorporated by reference in Section 5 of this administrative regulation ~~[annual reports on a form approved by the cabinet according to the instructions on the form]~~. The Hazardous Waste Annual Report shall ~~[annual report must]~~ be submitted to the cabinet no later than March 1 for the preceding calendar year. ~~(and must, at a minimum, include the following information:~~

~~(a) The EPA identification number, name and address of the generator;~~

~~(b) The calendar year covered by the report;~~

~~(c) A description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated;~~

~~(d) A description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for years prior to 1984.~~

~~(e) The EPA identification number, name, and address for each off site treatment, storage, or disposal facility in the United States to which waste was shipped during the year.~~

~~(f) The name and EPA identification number of each transporter used during the reporting year for shipments to a treatment, storage or disposal facility within the United States.~~

~~(g) A description, EPA hazardous waste number (from 401 KAR 31:030), DOT hazard class, and quantity of each hazardous waste shipped off site for shipments to a treatment, storage or disposal facility within the United States. This information must be listed by EPA identification number for each such off site facility to which waste was shipped.~~

~~(h) The certification signed by the generator or authorized representative.]~~

(2) Any generator who treats, stores, or disposes of hazardous waste on-site shall ~~[must]~~ submit the Hazardous Waste Annual Report ~~[an annual report]~~ covering those wastes in accordance with provisions of 401 KAR Chapters 34, 35, 36, and 38. Reporting for exports of hazardous waste outside the United States is not required on the annual report form but shall be accomplished by a separate annual report pursuant to 401 KAR 32:050.

(3) Generators shall ~~[must]~~ provide a duplicate copy of the Hazardous Waste Annual Report ~~[required in Section 2 of this administrative regulation]~~ to the county judge/executive of the county or chief executive officer of an urban county government within which the waste site or facility which will receive waste from the generator is located and to the county judge/executive of the county or chief executive officer of an urban-county government within which the generator is located in order that the county judge/executive or chief executive officer may make the report available to the county law enforcement and emergency services for emergency planning purposes.

Section 3. Exception Reporting. (1) A generator who does not

receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within thirty-five (35) days of the date the waste was accepted by the initial transporter shall ~~[must]~~ contact the transporter and/or the owner or operator of the designated facility to determine the status of the hazardous waste.

(2) A generator shall ~~[must]~~ submit an exception report to the cabinet if he has not received a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within forty-five (45) days of the date the waste was accepted by the initial transporter. The exception report shall ~~[must]~~ include:

(a) A legible copy of the manifest for which the generator does not have confirmation of delivery;

(b) A cover letter signed by the generator or his authorized representative explaining the efforts taken to locate the hazardous waste and the results of those efforts.

Section 4. Additional Reporting. The secretary may require generators to furnish additional reports concerning the quantities and disposition of wastes identified or listed in 401 KAR Chapter 31.

Section 5. Incorporation by Reference. (1) The following document is hereby incorporated by reference: "Hazardous Waste Annual Report", DEP Form 7072-91 (1994).

(2) The document referenced in subsection (1) of this section is available for inspection and copying, subject to copyright law, from the Hazardous Waste Branch of the Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502)564-6716, from 8 a.m. to 4:30 p.m. eastern time, Monday through Friday, excluding state holidays.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: July 11, 1996

FILED WITH LRC: July 12, 1996 at 9 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Thursday, August 29, 1996, at 7 p.m. Eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing, at the address noted below, by August 24, 1996. If by that date Mr. Hale has not received any notification of intent to attend the hearing, the hearing will be canceled. This hearing is open to the public. Any person wishing to comment on the proposed administrative regulation will be given an opportunity to do so. Persons testifying at the hearing are requested to provide a written copy of their testimony, if available. A transcript of the hearing will not be made unless a request for such is filed with Mr. Hale by August 24, 1996 and arrangements for payment of the transcript are made by that date. Written comments may also be submitted on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than the date of the close of the public hearing on August 29, 1996. Persons submitting written comments are also requested to provide an electronic copy of their comments, if available. The preferred format for the electronic format is any version of Word Perfect on 3.5 inch diskettes; however, any other format would be greatly appreciated, should Word Perfect or 3.5 inch diskettes not be available. The Natural Resources and Environmental Cabinet does not discriminate on the basis of color, national origin, sex, religion, age, or disability in employment or the provision of services. Upon request, the Cabinet will provide reasonable accommodation, including auxiliary aids and services, necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as an interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by August 24, 1996.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: The proposed amendments affect all hazardous waste generators. Currently there are 442 generators, 699 small quantity generators, and 1690 conditionally exempt generators registered in Kentucky.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the 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. Effect on the 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. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No public comments were received.

2. Second and subsequent years: No public comments were received.

3. Effects on the promulgating administrative body: There will be no effects on the cabinet.

a. Direct and indirect costs or savings:

1. First Year: There will be no additional costs or savings.

2. Continuing costs or savings: There will be no additional costs or savings.

3. Additional factors increasing or decreasing costs: There are no additional factors affecting costs.

b. Reporting and paperwork requirements: There are no additional paperwork requirements.

4. Assessment of anticipated effect on state and local revenues: There are no anticipated effects on state or local revenues.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: EPA grants will be used for the implementation and enforcement of the regulation.

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

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: No alternatives were considered. These changes are consistent with federal standards.

8. Assessment of expected benefits of the administrative regulation: These amendments clearly incorporate the form for the hazardous waste annual report.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: The public health and environmental welfare will improve across the commonwealth with the implementation of this regulation.

b. State whether a detrimental effect on the environment and public health would result if not implemented: There would be no detrimental effects.

c. If detrimental effect would result, explain detrimental effect: Not applicable.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no statutes, policies, or regulations that conflict, overlap, or duplicate this proposed regulation.

a. Necessity of proposed regulation if in conflict: Not applicable.

b. If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

11. Any additional information or comments: No additional comments.

12. TIERING: Is tiering applied? Yes, tiering was used. This administrative regulation only applies to hazardous waste generators.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the Cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution.

2. State compliance standards: The proposed amendments adopt changes that include record keeping and reporting standards for hazardous waste generators. These changes are necessary to maintain consistency between state and federal programs. Additions and exclusions have been made to clarify the applicability of these standards. In addition, the regulation has been modified to reflect the requirements of the regulation construction specified in KRS Chapter 13A.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part, or division of local government this administrative regulation will affect. This administrative regulation will affect any state, county, or local office of government that generates hazardous waste.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the Cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224 Subchapter 46 requires that the Cabinet to establish a comprehensive program for the proper management of hazardous waste. The agencies affected by this administrative regulation will be subject to these requirements.

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 impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): The only expenditures to a state, county, or local office of government will be those expenditures related to compliance with this administrative regulation. If this administrative regulation does not apply to a state, county, or local office of government, there will be no expenditures.

Other Explanation: None

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

401 KAR 32:050. Special conditions.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.46, 224.99, 40 CFR 260.2, 262 Subparts E to G, 262.54(h), 262.58, 263.20(g)(4)

STATUTORY AUTHORITY: KRS 10-100, 224.46-510

NECESSITY AND FUNCTION: To implement provisions of KRS 224.46-510 and to establish special conditions for generators who export or import hazardous waste. This administrative regulation exempts farmers from certain requirements.

Section 1. Definitions. The definitions previously found in this section have been relocated to the definition regulation for this chapter, which is 401 KAR 32:005. [In addition to the definitions set forth at Section 1 of 401 KAR 32:010, the following definitions apply to this administrative regulation:

(1) "Consignee" means the ultimate treatment, storage or disposal facility in a receiving country to which the hazardous waste is sent.

(2) "EPA acknowledgment of consent" means the cable sent to EPA from the U.S. Embassy in a receiving country that acknowledges the written consent of the receiving country to accept the hazardous waste and describes the terms and conditions of the receiving country's consent to the shipment.

(3) "Primary exporter" means any person who is required to originate the manifest for a shipment of hazardous waste in accordance with Section 1 of 401 KAR 32:020 which specifies a treatment, storage, or disposal facility in a receiving country as the facility to which the hazardous waste will be sent and any intermediary arranging for the export.

(4) "Receiving country" means a foreign country to which a hazardous waste is sent for the purpose of treatment, storage or disposal (except short term storage incidental to transportation).

(5) "Transit country" means any foreign country, other than a receiving country, through which a hazardous waste is transported.]

Section 2. Applicability. This administrative regulation establishes requirements applicable to exports of hazardous waste. A primary exporter of hazardous waste shall comply with the special requirements of this administrative regulation and a transporter transporting hazardous waste for export shall comply with applicable requirements of 401 KAR Chapter 33. 40 CFR 262.58 [(4989)] sets forth the requirements of international agreements between the United States and receiving countries which establish different notice, export, and enforcement procedures for the transportation, treatment, storage and disposal of hazardous waste for shipments between the United States and those countries.

Section 3. General Requirements. Exports of hazardous waste are prohibited except in compliance with the applicable requirements of this administrative regulation and 401 KAR Chapter 33. Exports of hazardous waste are prohibited unless:

(1) Notification in accordance with Section 4 of this administrative regulation has been provided;

(2) The receiving country has consented to accept the hazardous waste;

(3) A copy of the EPA acknowledgment of consent to the shipment accompanies the hazardous waste shipment and, unless exported by rail, is attached to the manifest (or shipping paper for exports by water (bulk shipment)); and

(4) The hazardous waste shipment conforms to the terms of the receiving country's written consent as reflected in the EPA acknowledgment of consent.

Section 4. Notification of Intent to Export. (1) A primary exporter of hazardous waste shall notify EPA of an intended export before the waste is scheduled to leave the United States. A complete notification shall be submitted sixty (60) days before the initial shipment is intended to be shipped off site. This notification may cover export activities extending over a twelve (12) month or lesser period. The notification shall be in writing, signed by the primary exporter, and include the following information:

(a) Name, mailing address, telephone number and EPA ID number of the primary exporter;

(b) By consignee, for each hazardous waste type:

1. A description of the hazardous waste and the EPA hazardous waste number (from 401 KAR 31:030 and 31:040), U.S. DOT proper shipping name, hazard class and ID number (UN/NA) for each hazardous waste as identified in 49 CFR Subpart C [~~Part 171-177~~ (~~1989~~)];

2. The estimated frequency or rate at which such waste is to be exported and the period of time over which such waste is to be exported;

3. The estimated total quantity of the hazardous waste in units as specified in the instructions to the Uniform Hazardous Waste Manifest Form (8700-22);

4. All points of entry to and departure from each foreign country through which the hazardous waste will pass;

5. A description of the means by which each shipment of the hazardous waste will be transported (for example, mode of transportation vehicle (air, highway, rail, or water) type(s) of container (drums, boxes, or tanks));

6. A description of the manner in which the hazardous waste will be treated, stored or disposed of in the receiving country (for example, land or ocean incineration, other land disposal, ocean dumping, recycling);

7. The name and site address of the consignee and any alternate consignee; and

8. The name of any transit countries through which the hazardous waste will be sent and a description of the approximate length of time the hazardous waste will remain in such country and the nature of its handling while there.

(2) Notification shall be sent to the Office of Waste Programs Enforcement, RCRA Enforcement Division (OS-520), U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460 with "Attention: Notification to Export" prominently displayed on the front of the envelope.

(3) Except for changes to the telephone number in subsection (1)(a) of this section, changes to subsection (1)(b)5 of this section and decreases in the quantity indicated pursuant to subsection (1)(b)3, of this section when the conditions specified on the original notification change (including any exceedance of the estimate of the quantity of hazardous waste specified in the original notification), the primary exporter shall provide EPA with a written renotification of the change. The shipment cannot take place until consent of the receiving country to the changes (except for changes to subsection (1)(b)8 of this section and in the ports of entry to and departure from transit countries pursuant to subsection (1)(b)4 of this section) has been obtained and the primary exporter receives an EPA acknowledgment of consent reflecting the receiving country's consent to the changes.

(4) Upon request by EPA, a primary exporter shall furnish to EPA any additional information which a receiving country requests in order to respond to a notification.

(5) In conjunction with the department of state, EPA shall provide a complete notification to the receiving country and any transit countries. A notification is complete when EPA receives a notification which EPA determines satisfies the requirements of subsection (1) of this section. Where a claim of confidentiality is asserted with respect to any notification information required by subsection (1) of this section, EPA may find the notification not complete until any such claim is resolved in accordance with 40 CFR 260.2 [~~(1989)~~].

(6) Where the receiving country consents to the receipt of the hazardous waste, EPA shall forward an EPA acknowledgment of consent to the primary exporter for purposes of 40 CFR 262.54(h) [~~(1989)~~]. Where the receiving country objects to receipt of the hazardous waste or withdraws a prior consent, EPA shall notify the primary exporter in writing. EPA shall also notify the primary exporter of any responses from transit countries.

Section 5. Special Manifest Requirements. A primary exporter shall comply with the manifest requirements of Sections 1 to 4 of 401 KAR 32:020 except that:

(1) In lieu of the name, site address and EPA ID number of the designated permitted facility, the primary exporter shall enter the name and site address of the consignee;

(2) In lieu of the name, site address and EPA ID number of a permitted alternate facility, the primary exporter may enter the name and site address of any alternate consignee;

(3) In special handling instructions and additional information, the primary exporter shall identify the point of departure from the United States;

(4) The following statement shall be added to the end of the first sentence of the certification set forth in Item 16 of the Uniform Hazardous Waste Manifest Form: "and conforms to the terms of the attached EPA acknowledgment of consent;"

(5) In lieu of the requirements of Section 2 of 401 KAR 32:020, the primary exporter shall obtain the manifest form from the primary exporter's state if that state supplies the manifest form and requires its use. If the primary exporter's state does not supply the manifest form, the primary exporter may obtain a manifest form from any source;

(6) The primary exporter shall require the consignee to confirm in writing the delivery of the hazardous waste to that facility and to describe any significant discrepancies (as defined in Section 3(1) of 401 KAR 34:050) between the manifest and the shipment. A copy of the manifest signed by the facility may be used to confirm delivery of the hazardous waste;

(7) In lieu of the requirements of Section 1(4) of 401 KAR 32:020, where a shipment cannot be delivered for any reason to the designated or alternate consignee, the primary exporter shall:

(a) Renotify EPA of a change in the conditions of the original notification to allow shipment to a new consignee in accordance with Section 4(3) of this administrative regulation and obtain an EPA acknowledgment of consent prior to delivery; or

(b) Instruct the transporter to return the waste to the primary exporter in the United States or designate another facility within the United States; and

(c) Instruct the transporter to revise the manifest in accordance with the primary exporter's instructions.

(8) The primary exporter shall attach a copy of the EPA acknowledgment of consent to the shipment to the manifest which shall accompany the hazardous waste shipment. For exports by rail or water (bulk shipment), the primary exporter shall provide the transporter with an EPA acknowledgment of consent which shall accompany the hazardous waste but which need not be attached to the manifest except that for exports by water (bulk shipment) the primary exporter shall attach the copy of the EPA acknowledgment of consent to the shipping paper.

(9) The primary exporter shall provide the transporter with an additional copy of the manifest for delivery to the U.S. Customs official at the point the hazardous waste leaves the United States in accordance with 40 CFR 263.20(g)(4) [~~(1989)~~].

Section 6. Exception Reports. In lieu of the requirements of Section 3 of 401 KAR 32:040, a primary exporter shall file an exception report with the cabinet if:

(1) He has not received a copy of the manifest signed by the transporter stating the date and place of departure from the United

ADMINISTRATIVE REGISTER - 571

States within forty-five (45) days from the date it was accepted by the initial transporter;

(2) Within ninety (90) days from the date the waste was accepted by the initial transporter, the primary exporter has not received written confirmation from the consignee that the hazardous waste was received;

(3) The waste is returned to the United States.

Section 7. Annual Reports. (1) Primary exporters of hazardous waste shall file with the cabinet no later than March 1 of each year a report summarizing the types, quantities, frequency, and ultimate destination of all hazardous waste exported during the previous calendar year. The reports shall include the following:

(a) The EPA identification number, name, and mailing and site address of the exporter;

(b) The calendar year covered by the report;

(c) The name and site address of each consignee;

(d) By consignee, for each hazardous waste exported, a description of the hazardous waste, the EPA hazardous waste number (from 401 KAR 31:030 and 31:040), DOT hazard class, the name and EPA ID number (where applicable) for each transporter used, the total amount of waste shipped and number of shipments pursuant to each notification;

(e) Except for hazardous waste produced by exporters of greater than 100 kilograms but less than 1000 kilograms in a calendar month, unless provided pursuant to Section 2 of 401 KAR 32:040:

1. A description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated; and

2. A description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for years prior to 1984.

(f) A certification signed by the primary exporter which states:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment."

(2) Reports shall be sent to the cabinet and the Office of Waste Programs Enforcement, RCRA Enforcement Division (OS-520), U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460.

Section 8. Recordkeeping. (1) For all exports a primary exporter shall:

(a) Keep a copy of each notification of intent to export for a period of at least three (3) years from the date the hazardous waste was accepted by the initial transporter;

(b) Keep a copy of each EPA acknowledgment of consent for a period of at least three (3) years from the date the hazardous waste was accepted by the initial transporter;

(c) Keep a copy of each confirmation of delivery of the hazardous waste from the consignee for at least three (3) years from the date the hazardous waste was accepted by the initial transporter; and

(d) Keep a copy of each annual report for a period of at least three (3) years from the due date of the report.

(2) The periods of retention referred to in this section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the cabinet.

Section 9. Imports of Hazardous Waste. (1) Any person who imports hazardous waste from a foreign country into the United States shall comply with the requirements of this chapter and the special requirements of this section.

(2) When importing hazardous waste, a person shall meet all the

requirements of Section 1(1) of 401 KAR 32:020 for the manifest except that:

(a) In place of the generator's name, address and EPA identification number, the name and address of the foreign generator and the importer's name, address and EPA identification number shall be used.

(b) In place of the generator's signature on the certification statement, the U.S. importer or his agent shall sign and date the certification and obtain the signature of the initial transporter.

(3) A person who imports hazardous waste shall obtain the manifest form from the consignment state if the state supplies the manifest and requires its use. If the consignment state does not supply the manifest form, then the manifest form may be obtained from any source.

Section 10. Farmers. A farmer disposing of waste pesticides from his own use which are hazardous wastes is not required to comply with the standards in this chapter or other standards in 401 KAR Chapters 34, 35, 37, or 38 for those wastes provided he triple rinses each emptied pesticide container in accordance with Section 7(2)(c) of 401 KAR 31:010, and disposes of the pesticide residues on his own farm in a manner consistent with the disposal instructions on the pesticide label.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: July 11, 1996

FILED WITH LRC: July 12, 1996 at 9 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Thursday, August 29, 1996, at 7 p.m. Eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing, at the address noted below, by August 24, 1996. If by that date Mr. Hale has not received any notification of intent to attend the hearing, the hearing will be canceled. This hearing is open to the public. Any person wishing to comment on the proposed administrative regulation will be given an opportunity to do so. Persons testifying at the hearing are requested to provide a written copy of their testimony, if available. A transcript of the hearing will not be made unless a request for such is filed with Mr. Hale by August 24, 1996 and arrangements for payment of the transcript are made by that date. Written comments may also be submitted on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than the date of the close of the public hearing on August 29, 1996. Persons submitting written comments are also requested to provide an electronic copy of their comments, if available. The preferred format for the electronic format is any version of Word Perfect on 3.5 inch diskettes; however, any other format would be greatly appreciated, should Word Perfect or 3.5 inch diskettes not be available. The Natural Resources and Environmental Cabinet does not discriminate on the basis of color, national origin, sex, religion, age, or disability in employment or the provision of services. Upon request, the Cabinet will provide reasonable accommodation, including auxiliary aids and services, necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as a interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by August 24, 1996.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: The proposed amendments affect hazardous generators who export hazardous waste.

Currently there are 442 generators, 699 small quantity generators, and 1690 conditionally exempt generators registered in Kentucky.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the 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. Effect on the 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. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No public comments were received.

2. Second and subsequent years: No public comments were received.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First Year: There are no additional costs or savings

2. Continuing costs or savings: There will be no additional costs.

3. Additional factors increasing or decreasing costs: There are no additional factors affecting costs.

b. Reporting and paperwork requirements: There are no additional paperwork requirements.

4. Assessment of anticipated effect on state and local revenues: There are no anticipated effects on state and local revenues.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: EPA grants are to be used for the implementation and enforcement of this regulation.

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

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: Alternatives were not considered. These changes are in compliance with KRS 13A.222.

8. Assessment of expected benefits of the administrative regulation: These changes are in compliance with KRS 13A.222.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: Not applicable.

b. State whether a detrimental effect on the environment and public health would result if not implemented: Not applicable.

c. If detrimental effect would result, explain detrimental effect: Not applicable.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no statutes, policies, or regulations that conflict, overlap, or duplicate this regulation.

a. Necessity of proposed regulation if in conflict: Not applicable.

b. If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

11. Any additional information or comments: No additional comments.

12. TIERING: Is tiering applied? Tiering is applied to all of Kentucky's hazardous waste regulations, based on type and quantity of hazardous waste generated and managed and type of management activities performed by the owner or operator.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate:

There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the Cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution.

2. State compliance standards: The proposed amendments adopt changes including the definitions of exporters of hazardous waste. These changes are necessary to maintain consistency between state and federal programs. Exclusions and additions have been made to clarify the applicability of these standards. In addition, the regulation has been modified to reflect the requirements of regulation construction specified in KRS Chapter 13A.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part, or division of local government this administrative regulation will affect. This administrative regulation will affect any state, county, or local office of government that are hazardous waste generators which export hazardous waste.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the Cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS Chapter 224 Subchapter 46 requires that the Cabinet to establish a comprehensive program for the proper management of hazardous waste. The agencies affected by this administrative regulation will be subject to these requirements.

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 impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): The only expenditures to a state, county, or local office of government will be those expenditures related to compliance with this administrative regulation. If this administrative regulation does not apply to a state, county, or local office of government, there will be no expenditures.

Other Explanation: None

ADMINISTRATIVE REGISTER - 573

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department of Environmental Protection Division of Waste Management (Amendment)

401 KAR 32:100. Appendix on hazardous waste manifest and instructions.

RELATES TO: KRS 224.10, 224.40, 224.46, 224.99, 49 CFR Subpart C [471-177 (1990)]

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-510

NECESSITY AND FUNCTION: KRS 224.46-510 requires the cabinet to promulgate administrative regulations to establish standards for the generation of hazardous wastes. This chapter establishes standards applicable to generators of hazardous waste. This administrative regulation establishes a uniform hazardous waste manifest and the Kentucky instructions for each form.

Section 1. Applicability. This administrative regulation prescribes the manifest forms and the instructions which are required by the cabinet in accordance with the provisions of 401 KAR 32:020 and 401 KAR 32:050. When a generator or a hazardous waste site or facility prints copies of these forms, the following two (2) sentences may be printed on the top of the first page:

THE INFORMATION IN THE SHADED AREAS - D, F, H, I, AND K - IS REQUIRED BY KENTUCKY LAW.

IN THE EVENT OF A SPILL INSIDE KENTUCKY, CALL (502) 564-2380 WITHIN TWO (2) HOURS OF THE SPILL.

When a generator or a hazardous waste site or facility prints copies of these forms, the following sentence may be printed on the top of the continuation sheet(s):

THE INFORMATION IN THE SHADED AREAS - O, Q, R AND T - IS REQUIRED BY KENTUCKY LAW.

Section 2. Manifest Form. The "Uniform Hazardous Waste Manifest" EPA form 8700-22 dated September 1988, is hereby incorporated by reference. The form is available for copying and inspection, subject to copyright law, at [from] the Division of Waste Management, 14 [48] Reilly Road, Frankfort, Kentucky 40601. The normal business hours of the division are from 8 a.m. to 4:30 p.m., eastern time, Monday through Friday.

Section 3. Kentucky Instructions for First Page of the Manifest Form. Read all instructions before completing this form.

This form has been designed for use on a twelve (12) pitch (elite) typewriter; a firm point pen may also be used - press down hard.

KENTUCKY REGULATIONS REQUIRE GENERATORS AND TRANSPORTERS OF HAZARDOUS WASTE AND OWNERS OR OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES TO USE THIS FIRST PAGE OF THE FORM AND, IF NECESSARY, THE CONTINUATION SHEET.

KENTUCKY REGULATIONS ALSO REQUIRE GENERATORS AND TRANSPORTERS OF HAZARDOUS WASTE AND OWNERS OR OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES TO COMPLETE THE FOLLOWING INFORMATION:

GENERATORS

Item 1. Generator's U.S. EPA ID Number - Manifest Document Number. Enter the generator's U.S. EPA twelve digit identification number and the unique serially increasing, five (5) digit number assigned to this Manifest (e.g., 00001) by the generator.

Item 2. Page 1 of _____. Enter the total number of pages used to complete this Manifest, i.e., the first page plus the number of Continuation Sheets, if any.

Item 3. Generator's Name and Mailing Address. Enter the name and mailing address of the generator. The address shall be the location that shall manage the returned Manifest forms.

Item 4. Generator's Phone Number. Enter a telephone number where an authorized agent of the generator may be reached in the event of an emergency.

Item 5. Transporter 1 Company Name. Enter the company name of the first transporter who shall transport the waste.

Item 6. U.S. EPA ID Number. Enter the U.S. EPA twelve (12) digit identification number of the first transporter identified in Item 5.

Item D. Transporter's Phone. Enter the telephone number of the transporter identified in Item 5.

Item 7. Transporter 2 Company Name. If applicable, enter the company name of the second transporter who shall transport the waste. If more than two transporters are used to transport the waste, use a Continuation Sheet (EPA form 8700-22A) and list the transporters in the order they shall be transporting the waste.

Item 8. U.S. EPA ID Number. If applicable, enter the U.S. EPA twelve (12) digit identification number of the second transporter identified in Item 7.

Item F. Transporter's Phone. Enter the telephone number of the transporter identified in Item 7.

NOTE: If more than two (2) transporters are used, enter each additional transporter's company name and U.S. EPA twelve (12) digit identification number in Items 24-27 on the Continuation Sheet. Each Continuation Sheet has space to record two (2) additional transporters. Every transporter used between the generator and the designated facility shall be listed.

Item 9. Designated Facility Name and Site Address. Enter the company name and site address of the facility designated to receive the waste listed on this Manifest. The address shall be the site address, which may differ from the company mailing address.

Item 10. U.S. EPA ID Number. Enter the U.S. EPA twelve (12) digit identification number of the designated facility identified in Item 9.

Item H. Facility's Phone. Enter the telephone number of the facility identified in Item 9.

Item 11. U.S. DOT Description Including Proper Shipping Name, Hazard Class, and ID Number (UN/NA). Enter the U.S. DOT Proper Shipping Name, Hazard Class, and ID Number (UN/NA) for each waste as identified in 49 CFR Parts 171 through 177 (1990).

NOTE: If additional space is needed for waste descriptions, enter these additional descriptions in Item 28 on the Continuation Sheet.

Item 12. Containers (No. and Type). Enter the number of containers for each waste and the appropriate abbreviation from Table I (below) for the type of container.

Table I - Types of Containers

DM = Metal drums, barrels, kegs
DW = Wooden drums, barrels, kegs
DF = Fiberboard or plastic drums, barrels, kegs
TP = Tanks portable
TT = Cargo tanks (tank trucks)
TC = Tank cars
DT = Dump truck
CY = Cylinders
CM = Metal boxes, cartons, cases (including roll-offs)
CW = Wooden boxes, cartons, cases
CF = Fiber or plastic boxes, cartons, cases
BA = Burlap, cloth, paper or plastic bags

Item 13. Total Quantity. Enter the total quantity of waste described on each line.

Item 14. Unit (Wt./Vol.). Enter the appropriate abbreviation from

ADMINISTRATIVE REGISTER - 574

Table II (below) for the unit of measure.

Table II - Units of Measure

G = Gallons (liquids only)
P = Pounds
T = Tons (2000 lbs)
Y = Cubic yards
L = Liters (liquids only)
K = Kilograms
M = Metric tons (1000 kg)
N = Cubic meters

Item I. Waste Number. Enter the EPA hazardous waste number for each waste.

Item K. Handling Codes for Waste Listed Above. Enter the appropriate handling code for each waste listed in Item 11. Table III contains the handling codes.

Table III - Handling Codes for Treatment, Storage, and Disposal Methods

(Enter the handling code listed below that most closely represents the technique used at the facility to treat, store, or dispose of each quantity of hazardous waste received.)

1. Metals Recovery for Reuse

M011 High temperature metals recovery
M012 Retorting
M013 Secondary smelting
M014 Other metals recovery for reuse; for example, ion exchange, reverse osmosis, acid leaching (Specify in item J)
M019 Metals recovery - type unknown

2. Solvents Recovery

M021 Fractionation/distillation
M022 Thin film evaporation
M023 Solvent extraction
M024 Other solvent recovery (Specify in item J)
M029 Solvents recovery - type unknown

3. Other (Nonsolvent) Recovery

M031 Acid regeneration
M032 Other recovery; for example, waste oil recovery, nonsolvent organics recovery (Specify in item J)
M039 Other recovery - type unknown

4. Incineration

M041 Incineration - liquids
M042 Incineration - sludges
M043 Incineration - solids
M044 Incineration - gases

5. Energy Recovery (Reuse as Fuel)

M051 Energy Recovery - liquids
M052 Energy Recovery - sludges
M053 Energy Recovery - solids

6. Fuel Blending

M061 Fuel Blending

7. Aqueous Inorganic Treatment

M071 Chrome reduction followed by chemical precipitation
M072 Cyanide destruction followed by chemical precipitation
M073 Cyanide destruction only
M074 Chemical oxidation followed by chemical precipitation
M075 Chemical oxidation only
M076 Wet air oxidation

M077 Chemical precipitation

M078 Other aqueous inorganic treatment; for example, ion exchange, reverse osmosis (Specify in item J)

8. Aqueous Organic Treatment

M081 Biological treatment
M082 Carbon adsorption
M083 Air/stream stripping
M084 Wet air oxidation
M085 Other aqueous organic treatment (Specify in item J)

9. Aqueous Organic and Inorganic Treatment

M091 Chemical precipitation combined with biological treatment
M092 Chemical precipitation combined with carbon adsorption
M093 Wet air oxidation
M094 Other organic/inorganic treatment (Specify in item J)

10. Sludge Treatment

M101 Sludge dewatering
M102 Addition of excess lime
M103 Absorption/adsorption
M104 Solvent extraction

11. Stabilization

M111 Stabilization/chemical fixation using cement and/or pozzolanic materials
M112 Other stabilization (Specify in item J)

12. Other Treatment

M121 Neutralization only
M122 Evaporation only
M123 Settling/clarification only
M124 Phase separation (for example, emulsion breaking, filtration) only
M125 Other treatment (Specify in item J)

13. Disposal

M131 Land treatment/application/farming
M132 Landfill
M133 Surface impoundment to be closed as a landfill
M134 Deepwell/underground injection well
M135 Direct discharge to sewer/POTW (no prior treatment)
M137 Other disposal (Specify in item J)

14. Storage

M141 Storage only.

(1. Storage

S01 Container (barrel, drum, etc.)
S02 Tank
S03 Waste pile
S04 Surface impoundment
S05 Other (specify)

2. Treatment

(a) Thermal Treatment

T06 Liquid injection incinerator
T07 Rotary kiln incinerator
T08 Fluidized bed incinerator
T09 Multiple hearth incinerator
T10 Infrared furnace incinerator
T11 Molten salt destructor
T12 Pyrolysis
T13 Wet air oxidation
T14 Calcination
T15 Microwave discharge
T16 Cement kiln
T17 Lime kiln
T18 Other (specify)

(b) Chemical Treatment

ADMINISTRATIVE REGISTER - 575

T19 Absorption mound	T27 Cyanide destruction
T20 Absorption field	T28 Degradation
T21 Chemical fixation	T29 Detoxification
T22 Chemical oxidation	T30 Ion exchange
T23 Chemical precipita tion	T31 Neutralization
T24 Chemical reduction	T32 Ozonation
T25 Chlorination	T33 Photolysis
T26 Chlorinolysis	T34 Other (specify)

(e) Physical Treatment

(1) Separation of components

T35 Centrifugation	T42 Flotation
T36 Clarification	T43 Foaming
T37 Coagulation	T44 Sedimentation
T38 Decanting	T45 Thickening
T39 Encapsulation	T46 Ultrafiltration
T40 Filtration	T47 Other (specify)
T41 Flocculation	

(2) Removal of Specific Components

T48 Absorption-molecular sieve	T58 High-gradient magnetic separation
T49 Activated carbon	T59 Leaching
T50 Blending	T60 Liquid-ion-exchange
T51 Catalysis	T61 Liquid-liquid- extraction
T52 Crystallization	
T53 Dialysis	T62 Reverse osmosis
T54 Distillation	T63 Solvent recovery
T55 Electrodialysis	T64 Stripping
T56 Electrolysis	T65 Sand filter
T57 Evaporation	T66 Other (specify)

(d) Biological treatment

T67 Activated sludge	T73 Spray irrigation
T68 Aerobic lagoon	T74 Thickening filter
T69 Aerobic tank	T75 Trickling filter
T70 Anaerobic lagoon	T76 Waste stabilization pond
T71 Composting	
T72 Septic tank	T77 Other (specify)

3. Disposal

D80 Underground injection	D84 Surface impoundment (to be closed as a landfill)
D81 Landfill	
D82 Land treatment	D85 Other (specify)
D83 Ocean disposal	

Item 15. Special Handling Instructions and Additional Information. Generators may use this space to indicate special transportation, treatment, storage, or disposal information or Bill of Lading Information. New, additional, or different information shall not be provided in this space. For international shipments, generators shall enter in this space the point of departure (city and state) for those shipments destined for treatment, storage, or disposal outside the jurisdiction of the United States.

Item 16. Generator's Certification. The generator shall read, sign (by hand), and date the certification statement. If a mode other than highway is used, the word "highway" shall be lined out and the appropriate mode (rail, water, or air) inserted in the space below. If another mode in addition to the highway mode is used, enter the appropriate additional mode (e.g., and rail) in the space below. In signing the waste minimization certification statement, those generators who have not been exempted by statute or administrative regulation from the duty to make a waste minimization certification under KRS Chapter 224 are also certifying that they have complied with the waste minimization requirements.

Generators may preprint the words, "On behalf of" in the signature block or may hand write this statement in the signature block prior to signing the generator certifications.

Primary exporters shipping hazardous wastes to a facility located outside of the United States shall add to the end of the first sentence of the certification the following words "and conforms to the terms of the EPA acknowledgment of consent to the shipment."

NOTE: All of the above information except the handwritten signature required in Item 16 may be preprinted.

TRANSPORTERS

Item 17. Transporter 1 Acknowledgment of Receipt of Materials. Enter the name of the person accepting the waste on behalf of the first transporter. That person shall acknowledge acceptance of the waste described on the Manifest by signing and entering the date of receipt.

Item 18. Transporter 2 Acknowledgment of Receipt of Materials. Enter, if applicable, the name of the person accepting the waste on behalf of the second transporter. That person shall acknowledge acceptance of the waste described on the Manifest by signing and entering the date of receipt.

NOTE: International Shipments - Transporter Responsibilities.

Exports - Transporters shall sign and enter the date the waste left the United States in Item 15 on the first page of the manifest form.

Imports - Shipments of hazardous waste regulated by RCRA and transported into the United States from another country shall, upon entry, be accompanied by the U.S. EPA Uniform Hazardous Waste Manifest. Transporters who transport hazardous waste into the United States from another country are responsible for completing the Manifest (Section 1(3) of 401 KAR 32:010).

OWNERS AND OPERATORS OF TREATMENT, STORAGE, OR DISPOSAL FACILITIES

Item 19. Discrepancy Indication Space. The authorized representative of the designated (or alternate) facility's owner or operator shall note in this space any significant discrepancy between the waste described on the Manifest and waste actually received at the facility.

Owners and operators of facilities located in Kentucky who cannot resolve significant discrepancies within fifteen (15) days of receiving the waste shall submit to the Cabinet (Division of Waste Management, 18 Reilly Road, Frankfort, Ky. 40601) a letter with a copy of the Manifest at issue describing the discrepancy and attempts to reconcile it (Section 3 of 401 KAR 34:050 and Section 3 of 401 KAR 35:050).

Item 20. Facility Owner or Operator: Certification of Receipt of Hazardous Materials Covered by This Manifest Except as Noted in Item 19. Print or type the name of the person accepting the waste on behalf of the owner or operator of the facility. That person shall acknowledge acceptance of the waste described on the Manifest by signing and entering the date of receipt.

SHADED AREAS

Kentucky requires generators to complete Items D, F, H, I and K as part of Kentucky's manifest reporting requirements.

Section 4. Continuation Sheet. When all the required information cannot be entered on the first page of the manifest form, the generator shall use one (1) or more continuation sheet. The Uniform Hazardous Waste Manifest Continuation Sheet, EPA form 8700-22A dated September 1988, is hereby incorporated by reference. The form is available for copying and inspection, subject to copyright law, at ~~from~~ the Division of Waste Management, 14 ~~18~~ Reilly Road, Frankfort, Kentucky 40601. The normal business hours of the division

ADMINISTRATIVE REGISTER - 576

are from 8 a.m. to 4:30 p.m., eastern time, Monday through Friday.

Section 5. Instructions for the Continuation Sheet. Read all instructions before completing this form.

This form has been designed for use on a twelve (12) pitch (elite) typewriter; a firm point pen may also be used - press down hard.

The form shall be used as a continuation sheet to the first page of the manifest if:

- More than two transporters are to be used to transport the waste;

- More space is required for the U.S. DOT description and related information in Item 11 of the first page of the manifest form.

GENERATORS

Item 21. Generator's U.S. EPA ID Number - Manifest Document Number. Enter the generator's U.S. EPA twelve (12) digit identification number and the unique five (5) digit number assigned to this Manifest (e.g., 00001) as it appears in Item 1 on the first page of the Manifest.

Item 22. Page _____. Enter the page number of this Continuation Sheet.

Item 23. Generator's Name. Enter the generator's name as it appears in Item 3 on the first page of the Manifest.

Item 24. Transporter _____ Company Name. If additional transporters are used to transport the waste described on this Manifest, enter the company name of each additional transporter in the order in which they shall transport the waste. Enter after the word "Transporter" the order of the transporter. For example, Transporter 3 Company Name. Each Continuation Sheet shall record the names of two (2) additional transporters.

Item 25. U.S. EPA ID Number. Enter the U.S. EPA twelve (12) digit identification number of the transporter described in Item 24.

Item O. Transporter's Phone. Enter the telephone number of the transporter identified in Item 24.

Item 26. Transporter _____ Company Name. If additional transporters are used to transport the waste described on this Manifest, enter the company name of each additional transporter in the order in which they shall transport the waste. Enter after the word "Transporter" the order of the transporter. For example, Transporter 4 Company Name. Each Continuation Sheet shall record the names of two (2) additional transporters.

Item 27. U.S. EPA ID Number. Enter the U.S. EPA twelve (12) digit identification number of the transporter described in Item 26.

Item Q. Transporter's Phone. Enter the telephone number of the transporter identified in Item 26.

Item 28. U.S. DOT Description including Proper Shipping Name, Hazard Class, and ID Number (UN/NA). Refer to Item 11.

Item 29. Containers (No. and Type). Refer to Item 12.

Item 30. Total Quantity. Refer to Item 13.

Item 31. Unit (Wt./Vol.). Refer to Item 14.

Item R. Waste Number. Enter the EPA hazardous waste number for each waste.

Item T. Handling Codes for Waste Listed Above. Enter the appropriate handling code for the wastes listed in Item 28. Table III under Item K contains the handling codes.

Item 32. Special Handling Instructions. Generators may use this space to indicate special transportation, treatment, storage, or disposal information or Bill of Lading information. Additional, new, or different information shall not be provided in this space.

TRANSPORTERS

Item 33. Transporter _____ Acknowledgment of Receipt of Materials. Enter the same number of the Transporter as identified in Item 24. Enter also the name of the person accepting the waste on behalf of the Transporter (Company Name) identified in Item 24. That

person shall acknowledge acceptance of the waste described on the Manifest by signing and entering the date of receipt.

Item 34. Transporter _____ Acknowledgment of Receipt of Materials. Enter the same number as identified in Item 26. Enter also the name of the person accepting the waste on behalf of the Transporter (Company Name) identified in Item 26. That person shall acknowledge acceptance of the waste described on the Manifest by signing and entering the date of receipt.

OWNERS AND OPERATORS OF TREATMENT, STORAGE, OR DISPOSAL FACILITIES

Item 35. Discrepancy Indication Space. Refer to Item 19.

SHADED AREAS

Kentucky does require generators to complete Items O, Q, R, and T as part of Kentucky's manifest reporting requirements.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: July 11, 1996

FILED WITH LRC: July 12, 1996 at 9 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Thursday, August 29, 1996, at 7 p.m. Eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing, at the address noted below, by August 24, 1996. If by that date Mr. Hale has not received any notification of intent to attend the hearing, the hearing will be canceled. This hearing is open to the public. Any person wishing to comment on the proposed administrative regulation will be given an opportunity to do so. Persons testifying at the hearing are requested to provide a written copy of their testimony, if available. A transcript of the hearing will not be made unless a request for such is filed with Mr. Hale by August 24, 1996 and arrangements for payment of the transcript are made by that date. Written comments may also be submitted on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than the date of the close of the public hearing on August 29, 1996. Persons submitting written comments are also requested to provide an electronic copy of their comments, if available. The preferred format for the electronic format is any version of Word Perfect on 3.5 inch diskettes; however, any other format would be greatly appreciated, should Word Perfect or 3.5 inch diskettes not be available. The Natural Resources and Environmental Cabinet does not discriminate on the basis of color, national origin, sex, religion, age, or disability in employment or the provision of services. Upon request, the Cabinet will provide reasonable accommodation, including auxiliary aids and services, necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as a interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by August 24, 1996.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: The proposed amendments affect hazardous waste generators, transporters, and owners and operators of treatment, storage, and disposal facilities.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the 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. Effect on the 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. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No public comments were received.

2. Second and subsequent years: No public comments were received.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First Year: There will be no additional costs or savings.

2. Continuing costs or savings: There will be no continuing costs or savings.

3. Additional factors increasing or decreasing costs: There are no additional factors affecting costs.

b. Reporting and paperwork requirements: There will be no additional paperwork requirements.

4. Assessment of anticipated effect on state and local revenues: There are no anticipated effects on state or local revenues.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: EPA grants will be the source of revenue for the implementation and enforcement of the regulation.

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

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 were no other alternatives considered. These changes provide consistency with the hazardous waste annual report.

8. Assessment of expected benefits of the administrative regulation: These changes provide consistency with the hazardous waste annual report.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: The will be no effects on the environment and public health.

b. State whether a detrimental effect on the environment and public health would result if not implemented: There will be no detrimental effects.

c. If detrimental effect would result, explain detrimental effect: There will be no detrimental effects.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no statutes, policies, or regulations that conflict with, overlap, or duplicate the proposed regulation.

a. Necessity of proposed regulation if in conflict: Not applicable.

b. If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

11. Any additional information or comments: There are no additional comments.

12. TIERING: Is tiering applied? Tiering is applied to all of Kentucky's hazardous waste regulations, based on type and quantity of hazardous waste generated or managed and type of management activities performed by the owner or operator.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the Cabinet to promulgate administrative regulations establishing a comprehensive program

for the prevention, abatement, and control of all water, land, and air pollution.

2. State compliance standards: The proposed amendments adopt changes that include hazardous waste generators, transporters, treatment facilities, storage facilities, and disposal facilities. These changes are necessary to maintain consistency between state and federal programs. Additions and exclusions have been made to clarify the applicability of these standards. In addition, the regulation has been modified to reflect the requirements of the regulation construction specified in KRS Chapter 13A.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part, or division of local government this administrative regulation will affect. This administrative regulation will affect any state, county, or local office of government that manages hazardous waste.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the Cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS Chapter 224 Subchapter 46 requires that the Cabinet to establish a comprehensive program for the proper management of hazardous waste. Agencies that manage hazardous waste will be subject to these requirements.

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 impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): The only expenditures to a state, county, or local office of government will be those expenditures related to compliance with this administrative regulation. If this administrative regulation does not apply to a state, county, or local office of government, there will be no expenditures.

Other Explanation: None

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

401 KAR 33:010. General provisions for transporters.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.46, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-510

NECESSITY AND FUNCTION: KRS 224.46-510 requires the cabinet to promulgate administrative regulations establishing standards applicable to transporters of hazardous waste regarding record-keeping and compliance with the manifest system. This chapter establishes standards for transporters of hazardous waste. This

administrative regulation sets forth the general provisions applicable to these transporters.

Section 1. Scope. (1) This chapter establishes standards which apply to persons transporting hazardous waste within the Commonwealth of Kentucky if the transportation requires a manifest under 401 KAR Chapter 32.

(2) This chapter does not apply to on-site transportation of hazardous waste by generators or by owners or operators of permitted hazardous waste management facilities.

(3) A transporter of hazardous waste must also comply with the manifest requirements in 401 KAR Chapter 32 if he:

(a) Transports hazardous waste into Kentucky from a foreign country; or

(b) Mixes hazardous wastes of different DOT shipping descriptions by placing them into a single container.

Section 2. EPA Identification Number. (1) A transporter must not transport hazardous wastes within the Commonwealth of Kentucky without having received an EPA identification number from the cabinet.

(2) A transporter who has not received an EPA identification number may obtain one (1) by applying to the cabinet using a notification form approved by the cabinet.

(3) A transporter who transports or intends to transport hazardous waste within the Commonwealth of Kentucky must register with the cabinet. The application for registration shall include but not be limited to:

(a) The name, legal structure and permanent address of the organization;

(b) The EPA identification number.

Section 3. Hazardous Waste Transfer Facility Requirements. A transporter who stores manifested shipments of hazardous waste in containers meeting the requirements of Section 1 of 401 KAR 32.030 at a hazardous waste transfer facility for a period of ten (10) days or less is not subject to regulation under 401 KAR Chapters 34, 35, 37, and 38 with respect to storage of those wastes.

Section 4. Incorporation by Reference. (1) The following document is hereby incorporated by reference: "Notification of Hazardous Waste Transportation Activities", DEP Form 7053 (December 1989).

(2) The document referenced in subsection (1) of this section is available for inspection and copying, subject to copyright law, at the Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502)564-6716, from 8 a.m. to 4:30 p.m. eastern time, Monday through Friday, excluding state holidays.

JAMES E. BICKFORD, Secretary

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date of the close of the public hearing on August 29, 1996. Persons submitting written comments are also requested to provide an electronic copy of their comments, if available. The preferred format for the electronic format is any version of Word Perfect on 3.5 inch diskettes; however, any other format would be greatly appreciated, should Word Perfect or 3.5 inch diskettes not be available. The Natural Resources and Environmental Cabinet does not discriminate on the basis of color, national origin, sex, religion, age, or disability in employment or the provision of services. Upon request, the Cabinet will provide reasonable accommodation, including auxiliary aids and services, necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as an interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by August 24, 1996.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: The proposed amendments affect all hazardous waste transporters.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the 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. Effect on the 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. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No public comments were received.

2. Second and subsequent years: No public comments were received.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First Year: There will be no costs or savings.

2. Continuing costs or savings: There will be no continuing costs or savings.

3. Additional factors increasing or decreasing costs: There are no additional factors affecting costs.

b. Reporting and paperwork requirements: There are no additional paperwork requirements.

4. Assessment of anticipated effect on state and local revenues: There are no anticipated effects on state and local revenues.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: EPA grants are to be used for the implementation and enforcement of this regulation.

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

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: Alternatives were not considered. These amendments simply clarify that the requirements relate to hazardous waste transfer facilities.

8. Assessment of expected benefits of the administrative regulation: These amendments clarify that the requirements relate to

hazardous waste transfer facilities.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: The environmental welfare and public health will improve across the commonwealth with the implementation of this regulation.

b. State whether a detrimental effect on the environment and public health would result if not implemented: Not applicable.

c. If detrimental effect would result, explain detrimental effect: Not applicable.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no statutes, regulations, or policies that conflict, duplicate, or overlap this regulation.

a. Necessity of proposed regulation if in conflict: Not applicable.

b. If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

11. Any additional information or comments: No additional comments.

12. TIERING: Is tiering applied? Yes, tiering was used. This administrative regulation only applies to transporters who use hazardous waste transfer facilities.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the Cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution.

2. State compliance standards: The proposed amendments adopt changes that apply to recordkeeping by hazardous waste transporters. The changes are necessary to maintain consistency between state and federal programs. In addition, the regulation has been modified to reflect the requirements of regulation construction specified in KRS Chapter 13A.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part, or division of local government this administrative regulation will affect. This administrative regulation will affect any state, county, or local office of government that transport hazardous waste.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the Cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224 Subchapter 46 requires that the Cabinet to establish a comprehensive program for the proper management of hazardous waste. The agencies applicable to this administrative regulation will be subject to these requirements.

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 impacts of

the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): The only expenditures to a state, county, or local office of government will be those expenditures related to compliance with this administrative regulation. If this administrative regulation does not apply to a state, county, or local office of government, there will be no expenditures.

Other Explanation: None

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

401 KAR 34:010. General provisions for facilities.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.46, 224.70, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-520, 224.46-530

NECESSITY AND FUNCTION: KRS 224.46-520 requires that persons engaging in the storage, treatment, and disposal of hazardous waste obtain a permit. KRS 224.46-520 requires the Natural Resources and Environmental Protection Cabinet to establish standards for these permits, to require adequate financial responsibility, to establish minimum standards for closure for all facilities and the postclosure monitoring and maintenance of hazardous waste disposal facilities. This chapter establishes minimum standards for new hazardous waste sites or facilities. This administrative regulation establishes the purpose, scope and applicability of the standards in this chapter and the relationship to the interim status standards for facilities.

Section 1. Purpose, Scope and Applicability. (1) The purpose of this chapter is to establish minimum standards which define the acceptable management of hazardous waste.

(2) The standards in this chapter apply to owners and operators of all hazardous waste sites or facilities which treat, store, or dispose of hazardous waste, except as specifically provided otherwise in this chapter or in 401 KAR Chapter 31.

(3) The requirements of this chapter apply to a person disposing of hazardous waste by means of ocean disposal subject to a permit issued under the Marine Protection, Research, and Sanctuaries Act only to the extent they are included in a permit by rule granted to such a person under 401 KAR Chapter 38.

(4) The requirements of this chapter apply to a person disposing of hazardous waste by means of underground injection subject to a permit issued under an Underground Injection Control (UIC) program approved or promulgated under the Safe Drinking Water Act only to the extent they are required by Section 5 of 401 KAR 38:060.

(5) The requirements of this chapter apply to the owner or operator of a POTW which treats, stores, or disposes of hazardous waste only to the extent they are included in a hazardous waste permit by rule granted to such a person under 401 KAR Chapter 38.

(6) The requirements of this chapter do not apply to:

(a) The owner or operator of a facility permitted by the cabinet to manage solid waste, if the only hazardous waste the facility treats, stores, or disposes of is excluded from administrative regulation under Section 5 of 401 KAR 31:010.

(b) The owner or operator of a facility managing recyclable materials described in Section 6(1)(b) and (c) of 401 KAR 31:010 (except to the extent that requirements of this chapter are referred to in 401 KAR Chapter 36 or in 401 KAR Chapter 44);

(c) A generator accumulating waste on-site in compliance with

2. State what unit, part, or division of local government this administrative regulation will affect. This administrative regulation will affect any state, county, or local office of government that manages hazardous waste facilities.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the Cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224 Subchapter 46 requires that the Cabinet to establish a comprehensive program for the proper management of hazardous waste. Agencies that manage hazardous waste will be subject to these requirements.

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 impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): The only expenditures to a state, county, or local office of government will be those expenditures related to compliance with this administrative regulation. If this administrative regulation does not apply to a state, county, or local office of government, there will be no expenditures.

Other Explanation: None

**NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Amendment)**

401 KAR 34:050. Manifest system, recordkeeping and reporting.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.46, 224.70, 224.99, 40 CFR 264 Subpart E

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-520

NECESSITY AND FUNCTION: To implement provisions of KRS 224.46-520 and to establish a manifest system, recordkeeping and reporting requirements for facilities.

Section 1. Applicability. This administrative regulation applies to owners and operators of both on-site and off-site hazardous waste sites or facilities, except as Section 1 of 401 KAR 34:010 provides otherwise. Sections 2, 3 and 7 of this administrative regulation do not apply to owners and operators of on-site facilities that do not receive any hazardous waste from off-site sources.

Section 2. Use of Manifest System. (1) If a facility receives hazardous waste accompanied by a manifest, the owner or operator, or his agent, shall:

(a) Sign and date each copy of the manifest to certify that the hazardous waste covered by the manifest was received;

(b) Note any significant discrepancies in the manifest (as defined in Section 3(1) of this administrative regulation) on each copy of the manifest;

(c) Immediately give the transporter at least one (1) copy of the signed manifest;

(d) Within thirty (30) days after the delivery, send a copy of the manifest to the generator; and

(e) Retain at the facility a copy of each manifest for at least three (3) years after the date of delivery.

(2) If a facility receives, from a rail or water (bulk shipment) transporter, hazardous waste which is accompanied by a shipping paper containing all the information required on the manifest (exclud-

ing the EPA identification numbers, generator's certification, and signatures), the owner or operator, or his agent, shall:

(a) Sign and date each copy of the manifest or shipping paper (if the manifest has not been received) to certify that the hazardous waste covered by the manifest or shipping paper was received;

(b) Note any significant discrepancies (as defined in Section 3(1) of this administrative regulation) in the manifest or shipping paper (if the manifest has not been received) on each copy of the manifest or shipping paper.

(c) Immediately give the rail or water (bulk shipment) transporter at least one (1) copy of the manifest (or shipping paper if the manifest has not been received);

(d) Within thirty (30) days after the delivery, send a copy of the signed and dated manifest to the generator; however, if the manifest has not been received within thirty (30) days after delivery, the owner or operator, or his agent, shall send a copy of the shipping paper signed and dated to the generator; and

(e) Retain at the facility a copy of the manifest and shipping paper (if signed in lieu of the manifest at the time of delivery) for at least three (3) years from the date of delivery.

(3) Whenever a shipment of hazardous waste is initiated from a facility, the owner or operator of that facility shall comply with the requirements of 401 KAR Chapter 32.

Section 3. Manifest Discrepancies. (1) Manifest discrepancies are differences between the quantity or type of hazardous waste designated on the manifest or shipping paper, and the quantity or type of hazardous waste a facility actually receives. Significant discrepancies in quantity are:

(a) For bulk waste, variations greater than ten (10) percent in weight; and

(b) For batch waste, any variation in piece count, such as a discrepancy of one (1) drum in a truckload. Significant discrepancies in type are obvious differences which can be discovered by inspection or waste analysis, such as waste solvent substituted for waste acid, or toxic constituents not reported on the manifest or shipping paper.

(2) Upon discovering a significant discrepancy, the owner or operator shall attempt to reconcile the discrepancy with the waste generator or transporter (for example, with telephone conversations). If the discrepancy is not resolved within fifteen (15) days after receiving the waste, the owner or operator shall immediately submit to the cabinet a letter describing the discrepancy and attempts to reconcile it, and a copy of the manifest or shipping paper at issue.

Section 4. Operating Record. (1) The owner or operator shall keep a written operating record at his facility.

(2) The following information shall be recorded, as it becomes available, and maintained in the operating record until closure of the facility:

(a) A description and the quantity of each hazardous waste received, and the method and date of its treatment, storage, or disposal at the facility as described in 401 KAR 34:290;

(b) The location of each hazardous waste within the facility and the quantity at each location. For disposal facilities, the location and quantity of each hazardous waste shall be recorded on a map or diagram of each cell or disposal area. For all facilities, this information shall include cross-references to specific manifest document numbers, if the waste was accompanied by a manifest;

(c) Records and results of waste analyses and waste determinations performed as specified in Sections 4 and 8 of 401 KAR 34:020, Section 9 of 401 KAR 34:230, Section 2 of 401 KAR 34:240, Section 5 of 401 KAR 34:275, and Section 14 of 401 KAR 34:280, Section 3 of 401 KAR 34:281 and Sections 4(1) and 7 of 401 KAR 37:010;

(d) Summary reports and details of all incidents that require implementing the contingency plan as specified in Section 7(10) of 401 KAR 34:040;

(e) Records and results of inspections as required by Section 6(4)

of 401 KAR 34:020 (except these data need be kept only three (3) years);

(f) Monitoring, testing or analytical data, and corrective action where required by 401 KAR 34:060, and Section 10 of 401 KAR 34:020, Sections 2, 4 and 6 of 401 KAR 34:190, Sections 3, 4 and 10 of 401 KAR 34:200, Sections 3, 4, and 5 of 401 KAR 34:210, Sections 5, 6 and 8 of 401 KAR 34:220, Sections 3, 4, 5 and 13 of 401 KAR 34:230, Section 7 of 401 KAR 34:240 and Section 3 of 401 KAR 34:250, Sections 5(3) to (6) and 6 of 401 KAR 34:275, ~~and~~ Sections 14(4) to (9) and 15 of 401 KAR 34:280, ~~and~~ Sections 8, 9, and 11 of 401 KAR 34:281;

(g) For off-site facilities, notices to generators as specified in Section 3(2) of 401 KAR 34:020;

(h) All closure cost estimates under Section 1 of 401 KAR 34:090 and, for disposal facilities, postclosure cost estimates under Section 1 of 401 KAR 34:100;

(i) A certification by the permittee no less often than annually, that the permittee has a program in place to reduce the volume and toxicity of hazardous waste that he generates to the degree determined by the permittee to be economically practicable; and the proposed method of treatment, storage or disposal is that practicable method currently available to the permittee which minimizes the present and future threat to human health and environment;

(j) Records of the quantities (and date of placement) for each shipment of hazardous waste placed in land disposal units under an extension to the effective date of any land disposal restriction granted pursuant to Section 5 of 401 KAR 37:010, a petition pursuant to Section 6 of 401 KAR 37:010, or a certification under 401 KAR 37:010, Section 8, and the applicable notice required of a generator under Section 7(1) of 401 KAR 37:010;

(k) For an off-site treatment facility, a copy of the notice, and the certification and demonstration, if applicable, required of a generator or the owner or operator under Section 7 or 8 of 401 KAR 37:010;

(l) For an on-site treatment facility, the information contained in the notice (except the manifest number), and the certification and demonstration if applicable, required of the generator or the owner or operator under Section 7 or 8 of 401 KAR 37:010;

(m) For an off-site land disposal facility, a copy of the notice and certification and demonstration if applicable required of the generator or the owner or operator of a treatment facility under Section 7 or 8 of 401 KAR 37:010, whichever is applicable;

(n) For an on-site land disposal facility, the information contained in the notice required of the generator or owner or operator of a treatment facility under 401 KAR 37:010, Section 7, except for the manifest number, and the certification and demonstration if required under 401 KAR 37:010, Section 8, whichever is applicable;

(o) For surface impoundments, water balance calculations as required in 401 KAR 34:200, Section 4;

(p) For an off-site storage facility, a copy of the notice, and the certification and demonstration if applicable, required of the generator or the owner or operator under Section 7 or 8 of 401 KAR 37:010; and

(q) For an on-site storage facility, the information contained in the notice (except the manifest number), and the certification and demonstration if applicable, required of the generator or the owner or operator under Section 7 or 8 of 401 KAR 37:010.

Section 5. Availability, Retention, and Disposition of Records. (1) All records, including plans, required under this chapter shall be furnished upon request, and made available at all reasonable times for inspection by any officer, employee, or representative of the cabinet who is duly designated by the secretary of the cabinet.

(2) The retention period for all records required under this chapter is extended automatically during the course of any unresolved enforcement action regarding the facility or as requested by the cabinet.

(3) A copy of records of waste disposal locations and quantities

under Section 4(2)(b) of this administrative regulation shall be submitted to the cabinet and local land authority upon closure of the facility.

Section 6. Annual Report. The owner or operator shall prepare and submit a single copy of the Hazardous Waste Annual Report, DEP Form 7072-91, incorporated by reference in Section 5 of 401 KAR 32:040, [an annual report] to the cabinet by March 1 of each year. ~~[The report form designated by the secretary shall be used for this report.]~~ The Hazardous Annual Report shall cover facility activities during the previous calendar year, ~~and shall include at a minimum the following information:~~

~~(1) The EPA identification number, name, and address of the facility;~~

~~(2) The calendar year covered by the report;~~

~~(3) For off-site facilities, the name and EPA identification number of each hazardous waste generator from which the facility received a hazardous waste during the year; for imported shipments, the report shall give the name and address of the foreign generator;~~

~~(4) A description and the quantity of each hazardous waste the facility received during the year. For off-site facilities, this information shall be listed by EPA identification number of each generator;~~

~~(5) The method of treatment, storage, or disposal for each hazardous waste;~~

~~(6) Information on transportation, the use of the manifest, and other information from the manifest, as applicable;~~

~~(7) For generators who treat, store, or dispose of hazardous waste on-site, a description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated;~~

~~(8) For generators who treat, store, or dispose of hazardous waste on-site, a description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent the information is available for the years prior to 1984; and~~

~~(9) The certification signed by the owner or operator of the facility or his authorized representative.]~~

Section 7. Unmanifested Waste Report. If a facility accepts for treatment, storage, or disposal any hazardous waste from an off-site source without an accompanying manifest, or without an accompanying shipping paper as described in Section 1(5)(b) of 401 KAR 33:020 and if the waste is not excluded from the manifest requirement by Section 5 of 401 KAR 31:010, then the owner or operator shall prepare and submit a single copy of a report to the secretary within fifteen (15) days after receiving the waste. The unmanifested waste report shall be submitted on a form approved by the cabinet. The report shall be designated "Unmanifested Waste Report" and include the following information:

(1) The EPA identification number, name, and address of the facility;

(2) The date the facility received the waste;

(3) The EPA identification number, name, and address of the generator and the transporter, if available;

(4) A description and the quantity of each unmanifested hazardous waste received;

(5) The method of treatment, storage, or disposal for each hazardous waste;

(6) The certification signed by the owner or operator of the facility or his authorized representative; and

(7) A brief explanation of why the waste was unmanifested, if known.

Section 8. Additional Reports. In addition to submitting the annual report and unmanifested waste reports described in Sections 6 and 7 of this administrative regulation the owner or operator shall also report to the cabinet:

(1) Releases, fires, and explosions as specified in Section 7(10)

ADMINISTRATIVE REGISTER - 588

of 401 KAR 34:040;

(2) Facility closure as specified in Section 6 of 401 KAR 34:070; and

(3) As otherwise required by 401 KAR 34:060, 34:200, 34:210, 34:220, 34:230, 34:275, ~~[and]~~ 34:280, and 34:281.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: July 11, 1996

FILED WITH LRC: July 12, 1996 at 9 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Thursday, August 29, 1996, at 7 p.m. Eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing, at the address noted below, by August 24, 1996. If by that date Mr. Hale has not received any notification of intent to attend the hearing, the hearing will be canceled. This hearing is open to the public. Any person wishing to comment on the proposed administrative regulation will be given an opportunity to do so. Persons testifying at the hearing are requested to provide a written copy of their testimony, if available. A transcript of the hearing will not be made unless a request for such is filed with Mr. Hale by August 24, 1996 and arrangements for payment of the transcript are made by that date. Written comments may also be submitted on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than the date of the close of the public hearing on August 29, 1996. Persons submitting written comments are also requested to provide an electronic copy of their comments, if available. The preferred format for the electronic format is any version of Word Perfect on 3.5 inch diskettes; however, any other format would be greatly appreciated, should Word Perfect or 3.5 inch diskettes not be available. The Natural Resources and Environmental Cabinet does not discriminate on the basis of color, national origin, sex, religion, age, or disability in employment or the provision of services. Upon request, the Cabinet will provide reasonable accommodation, including auxiliary aids and services, necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as an interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by August 24, 1996.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: The proposed amendments affect owners and operators of on-site and off-site hazardous waste facilities.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the 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. Effect on the 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. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No public comments were received.

2. Second and subsequent years: No public comments were received.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First Year: The only costs will be due to expenses to cover increased workloads in order to process the new regulated entities.

2. Continuing costs or savings: Once the new entities are processed, there will not be any extra costs.

3. Additional factors increasing or decreasing costs: There are no additional factors affecting costs.

b. Reporting and paperwork requirements: There are no additional paperwork requirements.

4. Assessment of anticipated effect on state and local revenues: There are no anticipated effects on state or local revenues.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: EPA grants are anticipated to cover the costs of implementing and enforcing the regulation.

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

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: No alternatives were considered. These changes are consistent with federal standards.

8. Assessment of expected benefits of the administrative regulation: The expected benefit is consistency with federal standards.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: The public health and environmental welfare will improve across the commonwealth with the implementation of this regulation.

b. State whether a detrimental effect on the environment and public health would result if not implemented: There would be detrimental effects if this regulation is not implemented.

c. If detrimental effect would result, explain detrimental effect: Human health and the environment would be threatened without the implementation of this regulation.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no statutes, policies, or regulations that conflict, overlap, or duplicate this regulation.

a. Necessity of proposed regulation if in conflict: Not applicable.

b. If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

11. Any additional information or comments: No additional comments.

12. TIERING: Is tiering applied? Yes, this administrative regulation applies to on-site and off-site hazardous waste facilities across the commonwealth, consistent with federal standards, to protect human health and the environment.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the Cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution.

2. State compliance standards: The proposed amendments adopt changes that apply to on-site and off-site hazardous waste facilities. The changes are necessary to maintain consistency between state and federal programs. Additions and exclusions have been made to clarify the applicability of the standards. In addition, the regulation has been modified to reflect the requirements of regulation construction specified in KRS 13A.

3. Minimum or uniform standards contained in the federal

mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part, or division of local government this administrative regulation will affect. This administrative regulation will affect any state, county, or local office of government that manages on-site and off-site hazardous waste facilities.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the Cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224 Subchapter 46 requires that the Cabinet to establish a comprehensive program for the proper management of hazardous waste. The agencies affected by this administrative regulation will be subject to these requirements.

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 impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): The only expenditures to a state, county, or local office of government will be those expenditures related to compliance with this administrative regulation. If this administrative regulation does not apply to a state, county, or local office of government, there will be no expenditures.

Other Explanation: None

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

401 KAR 34:060. Groundwater protection.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.46, 224.50, 224.70, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-520

NECESSITY AND FUNCTION: KRS 224.46-520 requires that persons engaging in the storage, treatment, and disposal of hazardous waste obtain a permit. KRS 224.46-520 requires the cabinet to establish standards for these permits, to establish minimum standards for closure for all facilities and the postclosure monitoring and maintenance of hazardous waste disposal facilities. This chapter establishes minimum standards for hazardous waste sites or facilities. This administrative regulation establishes the minimum groundwater protection standards for new hazardous waste sites or facilities.

Section 1. Applicability. (1)(a) Except as provided in subsection (2) of this section, the requirement in this administrative regulation apply to owners and operators of facilities that treat, store, or dispose of hazardous waste. The owner or operator shall satisfy the requirements of paragraph (b) of this subsection for all wastes (or constitu-

ents thereof) contained in solid waste management units at the facility regardless of the time at which waste was placed in such units.

(b) All solid waste management units shall comply with the requirements in Section 12 of this administrative regulation. A surface impoundment, waste pile, land treatment unit or landfill that receives hazardous waste after July 26, 1982 (hereinafter referred to as a "regulated unit") shall comply with the requirements of Sections 2 through 11 of this administrative regulation in lieu of Section 12 of this administrative regulation for purposes of detecting, characterizing and responding to releases to the uppermost aquifer. The financial responsibility requirements of Section 12 of this administrative regulation apply to regulated units.

(2) The owner or operator's regulated unit or units are not subject to administrative regulation for releases into the uppermost aquifer under this administrative regulation if:

(a) The owner or operator is exempted under Section 1 of 401 KAR 34:010; or

(b) He operates a unit which the cabinet finds:

1. Is an engineered structure;

2. Does not receive or contain liquid waste or wastes containing free liquids;

3. Is designed and operated to exclude liquid, precipitation, and other run-on and run-off;

4. Has both inner and outer layers of containment enclosing the waste;

5. Has a leak detection system built into each containment layer;

6. The owner or operator shall provide continuing operation and maintenance of these leak detection systems during the active life of the unit and the closure and postclosure care periods; and

7. To a reasonable degree of certainty, shall not allow hazardous constituents to migrate beyond the outer containment layer prior to the end of the postclosure care period.

(c) The cabinet finds pursuant to 401 KAR 34:220, Section 8(4) that the treatment zone of a land treatment unit that qualifies as a regulated unit does not contain levels of hazardous constituents that are above background levels of those constituents by an amount that is statistically significant, and if an unsaturated zone monitoring program meeting the requirements of 401 KAR 34:220, Section 6, has not shown a statistically significant increase in hazardous constituents below the treatment zone during the operating life of the unit. An exemption under this subsection can only relieve an owner or operator of responsibility to meet the requirements of this administrative regulation during the postclosure care period; or

(d) The cabinet finds that there is no potential for migration of liquid from a regulated unit to the uppermost aquifer during the active life of the regulated unit (including the closure period) and the postclosure care period specified under 401 KAR 34:070, Section 8. This demonstration shall be certified by a qualified geologist or geotechnical engineer. In order to provide an adequate margin of safety in the prediction of potential migration of liquid, the owner or operator shall base any predictions made under this paragraph on assumptions that maximize the rate of liquid migration;

(e) He designs and operates a pile in compliance with 401 KAR 34:210, Section 1(3).

(3) This administrative regulation applies during the active life of the regulated unit (including the closure period). After closure of the regulated unit, this administrative regulation:

(a) Does not apply if all waste, waste residues, contaminated containment system components, and contaminated subsoils are removed or decontaminated at closure;

(b) Applies during the postclosure care period under Section 8 of 401 KAR 34:070 if the owner or operator is conducting a detection monitoring program under Section 9 of this administrative regulation; or

(c) Applies during the compliance period under Section 7 of this administrative regulation if the owner or operator is conducting a compliance monitoring program under Section 10 of this administrative

tive regulation or a corrective action program under Section 11 of this administrative regulation.

(4) This administrative regulation may apply to miscellaneous units when necessary to comply with Sections 2 through 4 of 401 KAR 34:250.

Section 2. Required Programs. (1) Owners and operators subject to this administrative regulation shall conduct a monitoring and response program as follows:

(a) Whenever hazardous constituents under Section 4 of this administrative regulation from a regulated unit are detected at the compliance point under Section 6 of this administrative regulation, the owner or operator shall institute a compliance monitoring program under Section 10 of this administrative regulation. Detected means statistically significant evidence of contamination as described in Section 9(6) of this administrative regulation;

(b) Whenever the groundwater protection standard under Section 3 of this administrative regulation is exceeded, the owner or operator shall institute a corrective action program under Section 11 of this administrative regulation. Exceeded means statistically significant evidence of increased contamination as described in Section 10(4) of this administrative regulation;

(c) Whenever hazardous constituents under Section 4 of this administrative regulation from a regulated unit exceed concentration limits under Section 5 of this administrative regulation in groundwater between the compliance point under Section 6 of this administrative regulation and the downgradient facility property boundary, the owner or operator shall institute a corrective action program under Section 11 of this administrative regulation; or

(d) In all other cases, the owner or operator shall institute a detection monitoring program under Section 9 of this administrative regulation.

(2) The cabinet shall specify in the facility permit the specific elements of the monitoring and response program. The cabinet may include one (1) or more of the programs identified in subsection (1) of this section in the facility permit as may be necessary to protect human health and the environment and shall specify the circumstances under which each of the programs shall be required. In deciding whether to require the owner or operator to be prepared to institute a particular program, the cabinet shall consider the potential adverse effects on human health and the environment that might occur before final administrative action on a permit modification application to incorporate such a program shall be taken.

Section 3. Groundwater Protection Standard. The owner or operator shall comply with conditions specified in the facility permit that are designed to ensure the hazardous constituents under Section 4 of this administrative regulation detected in the groundwater from a regulated unit do not exceed the concentration limits under Section 5 of this administrative regulation in the uppermost aquifer underlying the waste management area beyond the point of compliance under Section 6 of this administrative regulation during the compliance period under Section 7 of this administrative regulation. The cabinet shall establish this groundwater protection standard in the facility permit when hazardous constituents have been detected in the groundwater.

Section 4. Hazardous Constituents. (1) The cabinet shall specify in the facility permit the hazardous constituents to which the groundwater protection standard of Section 3 of this administrative regulation applies. Hazardous constituents are constituents identified in 401 KAR 31:170 that have been detected in groundwater in the uppermost aquifer underlying a regulated unit and that are reasonably expected to be in or derived from waste contained in a regulated unit, unless the cabinet has excluded them under subsection (2) of this section.

(2) The cabinet shall exclude a 401 KAR 31:170 constituent from the list of hazardous constituents specified in the facility permit if he

finds that the constituent is not capable of posing a substantial present or potential hazard to human health or the environment. In deciding whether to grant an exemption, the cabinet shall consider the following:

(a) Potential adverse effects on groundwater quality, considering:

1. The physical and chemical characteristics of the waste in the regulated unit, including its potential for migration;

2. The hydrogeological characteristics of the facility and surrounding land;

3. The quantity of groundwater and the direction of groundwater flow;

4. The proximity and withdrawal rates of groundwater users;

5. The current and future uses of groundwater in the area;

6. The existing quality of groundwater, including other sources of contamination and their cumulative impact on the groundwater quality;

7. The potential for health risks caused by human exposure to waste constituents;

8. The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents;

9. The persistence and permanence of the potential adverse effects; and

(b) Potential adverse effects of hydraulically connected surface water quality, considering:

1. The volume and physical and chemical characteristics of the waste in the regulated unit;

2. The hydrogeological characteristics of the facility and surrounding land;

3. The quantity and quality of groundwater, and the direction of groundwater flow;

4. The patterns of rainfall in the region;

5. The proximity of the regulated unit to surface waters;

6. The current and future uses of surface waters in the area and any water quality standards established for those surface waters;

7. The existing quality of surface water, including other sources of contamination and the cumulative impact on surface water quality;

8. The potential for health risks caused by human exposure to waste constituents;

9. The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents; and

10. The persistence and permanence of the potential adverse effects.

(3) In making any determination under subsection (2) of this section about the use of groundwater in the area around the facility, the cabinet shall consider any identification of underground sources of drinking water and exempted aquifers made under 40 CFR 144.7 or as designated by the cabinet.

Section 5. Concentration Limits. (1) The cabinet shall specify in the facility permit concentration limits in the groundwater for hazardous constituents established under Section 4 of this administrative regulation. The concentration of a hazardous constituent:

(a) Must not exceed the background level of that constituent in the groundwater at the time that limit is specified in the permit; or

(b) For any of the constituents listed in 401 KAR Chapter 8 [Table 4], shall not exceed the respective value listed [given] in 401 KAR Chapter 8 [that Table] if the background level of the constituent is below the value given in 401 KAR Chapter 8 and the owner or operator has utilized appropriate sampling methods capable of detecting the constituent values listed in 401 KAR Chapter 8 [Table 4]; or

(c) Shall not exceed an alternate limit established by the cabinet under subsection (2) of this section.

(2) The cabinet shall establish an alternate concentration limit for a hazardous constituent if he finds that the constituent shall not pose a substantial present or potential hazard to human health or the environment as long as the alternate concentration limit is not exceeded. In establishing alternate concentration limits, the cabinet

shall consider the following factors:

(a) Potential adverse effects on groundwater quality, considering:

[TABLE 1]

MAXIMUM CONCENTRATION OF CONSTITUENTS
FOR GROUNDWATER PROTECTION

Constituent	Maximum Concentration
Arsenic	0.05 mg/l
Barium	1.0 mg/l
Cadmium	0.01 mg/l
Chromium	0.05 mg/l
Lead	0.05 mg/l
Mercury	0.002 mg/l
Selenium	0.01 mg/l
Silver	0.05 mg/l
Endrin (1,2,3,4,10,10-hexachloro- 1,7-epoxy-1,4,4a,5,6,7,8,9a- octahydro-1,4-endo, endo-5,8- dimethanonaphthalene)	0.0002 mg/l
Lindane (1,2,3,4,5,6-hexachloro- cyclohexane, gamma isomer)	0.004 mg/l
Methoxychlor (1,1,1-Trichloro-2, 2-bis-(p-methoxyphenyl-ethane))	0.1 mg/l
Toxaphene (C ₁₂ H ₁₀ Cl ₈ , Techni- cal chlorinated camphene, 67-69 percent chlorine)	0.005 mg/l
2,4-D(2,4-Dichlorophenoxyacetic acid)	0.1 mg/l
2,4,5-TP Silvex (2,4,5-Trichloro- phenoxypropionic acid)	0.01 mg/l

1. The physical and chemical characteristics of the waste in the regulated unit, including its potential for migration;

2. The hydrogeological characteristics of the facility and surrounding land;

3. The quantity of groundwater and the direction of groundwater flow;

4. The proximity and withdrawal rates of groundwater users;

5. The current and future uses of groundwater in the area;

6. The existing quality of groundwater, including other sources of contamination and their cumulative impact on the groundwater quality;

7. The potential for health risks caused by human exposure to waste constituents;

8. The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents;

9. The persistence and permanence of the potential adverse effects; and

(b) Potential adverse effects of hydraulically connected surface water quality, considering:

1. The volume and physical and chemical characteristics of the waste in the regulated unit;

2. The hydrogeological characteristics of the facility and surrounding land;

3. The quantity and quality of groundwater, and the direction of groundwater flow;

4. The patterns of rainfall in the region;

5. The proximity of the regulated unit to surface waters;

6. The current and future uses of surface waters in the area and any water quality standards established for those surface waters;

7. The existing quality of surface water, including other sources of contamination and the cumulative impact on surface water quality;

8. The potential for health risks caused by human exposure to waste constituents;

9. The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents; and

10. The persistence and permanence of the potential adverse effects.

(3) In making any determination under subsection (2) of this section about the use of groundwater in the area around the facility, the cabinet shall consider any identification of underground sources of drinking water and exempted aquifers made under 40 CFR 144.7 or as designated by the cabinet.

Section 6. Point of Compliance. (1) The cabinet shall specify in the facility permit the point of compliance at which the groundwater protection standard of Section 3 of this administrative regulation applies and at which monitoring shall be conducted. The point of compliance is a vertical surface located at the hydraulically downgradient limit of the waste management area that extends down into the uppermost aquifer underlying the regulated units.

(2) The waste management area is the limit projected in the horizontal plane of the area on which waste shall be placed during the active life of a regulated unit.

(a) The waste management area includes horizontal space taken up by any liner, dike, or other barrier designed to contain waste in a regulated unit.

(b) If the facility contains more than one (1) regulated unit, the waste management area is described by an imaginary line circumscribing the several regulated units.

Section 7. Compliance Period. (1) The cabinet shall specify in the facility permit the compliance period during which the groundwater protection standard of Section 3 of this administrative regulation applies. The compliance period is the number of years equal to the active life of the waste management area (including any waste management activity prior to permitting, and the closure period).

(2) The compliance period begins when the owner or operator initiates a compliance monitoring program meeting the requirements of Section 10 of this administrative regulation.

(3) If the owner or operator is engaged in a corrective action program at the end of the compliance period specified in subsection (1) of this section, the compliance period is extended until the owner or operator can demonstrate that the groundwater protection standard of Section 3 of this administrative regulation has not been exceeded for a period of three (3) consecutive years.

Section 8. General Groundwater Monitoring Requirements. The owner or operator shall comply with the requirements of this section for any groundwater monitoring program developed to satisfy Section 9, 10 or 11 of this administrative regulation:

(1) The groundwater monitoring system shall consist of a sufficient number of wells, installed at appropriate locations and depths to yield groundwater samples from the uppermost aquifer that:

(a) Represents the quality of back groundwater that has not been affected by leakage from a regulated unit.

1. A determination of background quality may include sampling of wells that are not hydraulically upgradient of the waste management area where:

a. Hydrogeologic conditions do not allow the owner or operator to determine what wells are hydraulically upgradient; and

b. Sampling at other wells shall provide an indication of background groundwater quality that is representative or more representative than that provided by the upgradient wells; and

(b) Represent the quality of groundwater passing the point of compliance; and

(c) Allows for the detection of contamination when hazardous waste or hazardous constituents have migrated from the waste management area to the uppermost aquifer.

(2) If a facility contains more than one (1) regulated unit, separate groundwater monitoring systems are not required for each regulated

unit provided that provisions for sampling the groundwater in the uppermost aquifer shall enable detection and measurement at the compliance point of hazardous constituents from the regulated units that have entered the groundwater in the uppermost aquifer.

(3) All monitoring wells shall be cased in a manner that maintains the integrity of the monitoring-well bore hole and shall be at least two (2) inches in diameter. This casing shall be screened or perforated and packed with gravel or sand, where necessary, to enable collection of groundwater samples. The annular space (i.e., the space between the bore hole and well casing) above the sampling depth shall be sealed to prevent contamination of samples and the groundwater.

(4) The groundwater monitoring program shall include consistent sampling and analysis procedures that are designed to ensure monitoring results that provide a reliable indication of groundwater quality below the waste management area. At a minimum the program shall include procedures and techniques for:

- (a) Sample collection;
- (b) Sample preservation and shipment;
- (c) Analytical procedures; and
- (d) Chain of custody control.

(5) The groundwater monitoring program shall include sampling and analytical methods that are appropriate for groundwater sampling and that accurately measure hazardous constituents in groundwater samples.

(6) The groundwater monitoring program shall include a determination of the groundwater surface elevation each time groundwater is sampled.

(7) In detection monitoring or where appropriate in compliance monitoring, data on each hazardous constituent specified in the permit shall be collected from background wells and wells at the compliance points. The number and kinds of samples collected to establish background shall be appropriate for the form of statistical test employed, following generally accepted statistical principles. The sample size shall be as large as necessary to ensure with reasonable confidence that a contaminant release to groundwater from a facility shall be detected. The owner or operator shall determine an appropriate sampling procedure and interval for each hazardous constituent listed in the facility permit which shall be specified in the unit permit upon approval by the cabinet. This sampling procedure shall be:

(a) A sequence of at least four (4) samples, taken at an interval that assures, to the greatest extent technically feasible, that an independent sample is obtained, by reference to the uppermost aquifer's effective porosity, hydraulic conductivity, and hydraulic gradient, and the fate and transport characteristics of the potential contaminants; or

(b) An alternate sampling procedure proposed by the owner or operator and approved by the cabinet.

(8) The owner or operator shall specify one (1) of the statistical methods listed in paragraphs (a) through (e) of this subsection to be used in evaluating groundwater monitoring data for each hazardous constituent. The statistical method which the owner or operator specifies, if approved by the cabinet, shall be included in the unit permit. The statistical test chosen shall be conducted separately for each hazardous constituent in each well. Where practical quantification limits (pql's) are used in any of the following statistical procedures to comply with subsection (9)(e) of this section, the pql shall be proposed by the owner or operator and approved by the cabinet. Use of any of the following statistical methods shall be protective of human health and the environment and shall comply with the performance standards outlined in subsection (9) of this section. The statistical methods which an owner or operator may specify are:

(a) A parametric analysis of variance (ANOVA) followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method shall include estimation and testing of the contrasts between each compliance well's mean and the background mean levels for each constituent.

(b) An analysis of variance (ANOVA) based on ranks followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method shall include estimation and testing of the contrasts between each compliance well's median and the background median levels for each constituent.

(c) A tolerance or prediction interval procedure in which an interval for each constituent is established from the distribution of the background data, and the level of each constituent in each compliance well is compared to the upper tolerance or prediction limit.

(d) A control chart approach that gives control limits for each constituent.

(e) Another statistical test method submitted by the owner or operator and approved by the cabinet.

(9) Any statistical method chosen under subsection (8) of this section for specification in the unit permit shall comply with the following performance standards, as appropriate:

(a) The statistical method used to evaluate groundwater monitoring data shall be appropriate for the distribution of chemical parameters or hazardous constituents. If the distribution of the chemical parameters or hazardous constituents is shown by the owner or operator to be inappropriate for a normal theory test, then the data shall be transformed or a distribution-free theory test shall be used. If the distributions for the constituents differ, more than one (1) statistical method may be needed.

(b) If an individual well comparison procedure is used to compare an individual compliance well constituent concentration with background constituent concentrations or a groundwater protection standard, the test shall be done at a Type I error level no less than 0.01 for each testing period. If a multiple comparisons procedure is used, the Type I error rate for each testing period shall be no less than 0.05; however, the Type I error of no less than 0.01 for individual well comparisons shall be maintained. This performance standard does not apply to tolerance intervals, prediction intervals, or control charts.

(c) If a control chart approach is used to evaluate groundwater monitoring data, the specific type of control chart and its associated parameter values shall be proposed by the owner or operator and shall be approved by the cabinet if it is protective of human health and the environment.

(d) If a tolerance interval or a prediction interval is used to evaluate groundwater monitoring data, the levels of confidence and, for tolerance intervals, the percentage of the population that the interval shall contain, shall be proposed by the owner or operator and shall be approved by the cabinet if it finds these parameters to be protective of human health and the environment. These parameters shall be determined after considering the number of samples in the background data base, the data distribution, and the range of concentration values for each constituent of concern.

(e) The statistical method shall account for data below the limit of detection with one (1) or more statistical procedures that are protective of human health and the environment. Any practical quantification limit (pql) approved by the cabinet under subsection (8) of this section that is used in the statistical method shall be the lowest concentration level that can be reliably achieved within specified limits of precision and accuracy during routine laboratory operation conditions that are available to the facility.

(f) If necessary, the statistical method shall include procedures to control or correct for seasonal and spatial variability as well as temporal correlation in the data.

(10) Groundwater monitoring data collected in accordance with subsection (7) of this section, including actual levels of constituents, shall be maintained in the facility operating record. The cabinet shall specify in the permit when the data shall be submitted for review.

(11) The groundwater monitoring data may be submitted on Groundwater Sample Analysis form, DEP Form 8046 (August 1995), and Hazardous Waste Groundwater Report form, DEP Form 8046A (March 1996). These forms are incorporated by reference in Section

13 of this administrative regulation. The owner or operator may use their own document, provided the language is identical to that specified in DEP Form 8046 and DEP Form 8046A.

Section 9. Detection Monitoring Program. An owner or operator required to establish a detection monitoring program under this administrative regulation shall, at a minimum, discharge the following responsibilities:

(1) The owner or operator shall monitor for indicator parameters (e.g., specific conductance, total organic carbon, or total organic halogen), waste constituents, or reaction products that provide a reliable indication of the presence of hazardous constituents in groundwater. The cabinet shall specify the parameters or constituents to be monitored in the facility permit, after considering the following factors:

(a) The types, quantities, and concentrations of constituents in wastes managed at the regulated unit;

(b) The mobility, stability, and persistence of waste constituents or their reaction products in the saturated and unsaturated zone beneath the waste management area;

(c) The detectability of indicator parameters, waste constituents, and reaction products in groundwater; and

(d) The concentrations or values and coefficients of variation of proposed monitoring parameters or constituents in the background groundwater quality.

(2) The owner or operator shall install a groundwater monitoring system at the compliance point as specified under Section 6 of this regulation. The groundwater monitoring system shall comply with Section 8(1)(b), (2) and (3) of this administrative regulation.

(3) The owner or operator shall conduct a groundwater monitoring program for each chemical parameter and hazardous constituent specified in the permit pursuant to subsection (1) of this section in accordance with Section 8(7) of this administrative regulation. The owner or operator shall maintain a record of groundwater analytical data as measured and in a form necessary for the determination of statistical significance under Section 8(8) of this administrative regulation.

(4) The cabinet shall specify the frequencies for collecting samples and conducting statistical tests to determine whether there is statistically significant evidence of contamination for any parameter or hazardous constituent specified in the permit under subsection (1) of this section in accordance with Section 8(7) of this administrative regulation. A sequence of at least four (4) samples from each well (background and compliance wells) shall be collected at least semiannually during detection monitoring.

(5) The owner or operator shall determine the groundwater flow rate and direction in the uppermost aquifer as specified in the permit. This determination shall be made at least annually.

(6) The owner or operator shall determine whether there is statistically significant evidence of contamination for any chemical parameter of hazardous constituent specified in the permit pursuant to subsection (1) of this section at a frequency specified under subsection (4) of this section.

(a) In determining whether statistically evidence of contamination exists, the owner or operator shall use the method specified in the permit under Section 8(8) of this administrative regulation. These methods shall compare data collected at the compliance point to the background groundwater quality data.

(b) The owner or operator shall determine whether there is statistically significant evidence of contamination at each monitoring well at the compliance point within a reasonable period of time after completion of sampling. The cabinet shall specify in the facility permit what period of time is reasonable, after considering the complexity of the statistical test and the availability of laboratory facilities to perform the analysis of groundwater samples.

(7) If the owner or operator determines pursuant to subsection (6) of this section that there is statistically significant evidence of

contamination for chemical parameters or hazardous constituents specified pursuant to subsection (1) of this section at any monitoring well at the compliance point, he or she shall:

(a) Notify the cabinet of this finding in writing within seven (7) days. The notification shall indicate what chemical parameters or hazardous constituents have shown statistically significant evidence of contamination;

(b) Immediately sample the groundwater in all monitoring wells and determine whether constituents in the list of 401 KAR 34:360 are present, and if so, in what concentration;

(c) For any 401 KAR 34:360 compounds found in the analysis pursuant to subsection (7)(b) of this section, the owner or operator may resample within one (1) month and repeat the analysis for those compounds detected. If the results of the second analysis confirm the initial results, then these constituents shall form the basis for compliance monitoring. If the owner or operator does not resample for the compounds found pursuant to subsection (7)(b) of this section, the hazardous constituents found during this initial 401 KAR 34:360 analysis shall form the basis for compliance monitoring;

(d) Within ninety (90) days, submit to the cabinet an application for a permit modification to establish a compliance monitoring program meeting the requirements of Section 10 of this administrative regulation. The application shall include the following information:

1. An identification of the concentration of any 401 KAR 34:360 constituent detected in the groundwater at each monitoring well at the compliance point;

2. Any proposed changes to the groundwater monitoring system at the facility necessary to meet the requirements of Section 10 of this administrative regulation;

3. Any proposed additions or changes to the monitoring frequency, sampling and analysis procedures or methods, or statistical methods used at the facility necessary to meet the requirements of Section 10 of this administrative regulation;

4. For each hazardous constituent detected at the compliance point, a proposed concentration limit under Section 5(1)(a) or (b) of this administrative regulation, or a notice of intent to seek an alternate concentration limit under Section 5(2) of this administrative regulation; and

(e) Within 180 days, submit to the cabinet:

1. All data necessary to justify an alternate concentration limit sought under Section 5(2) of this administrative regulation; and

2. An engineering feasibility plan for a corrective action program necessary to meet the requirement of Section 11 of this administrative regulation, unless:

a. All hazardous constituents identified under subsection (7)(b) of this section are listed in 401 KAR Chapter 8 (Table 1 of Section 6 of this administrative regulation) and their concentrations do not exceed the respective values given in that chapter (table); or

b. The owner or operator has sought an alternative concentration limit under Section 5(2) of this administrative regulation for every hazardous constituent identified under subsection 7(b) of this section.

(f) If the owner or operator determines, pursuant to subsection (6) of this section, that there is a statistically significant difference for chemical parameters or hazardous constituents specified pursuant to subsection (1) of this section at any monitoring well at the compliance point, he or she may demonstrate that a source other than a regulated unit caused the contamination or that the detection is an artifact caused by an error in sampling, analysis, or statistical evaluation or natural variation in the groundwater. The owner or operator may make a demonstration under this subsection in addition to, or in lieu of, submitting a permit modification application under subsection (7)(d) of this section; however, the owner or operator is not relieved of this requirement to submit a permit modification application within the time specified in subsection (7)(d) of this section unless the demonstration made under this subsection successfully shows that a source other than a regulated unit caused the increase, or that the increase resulted from error in sampling, analysis, or

(e) During the period of corrective action, the owner or operator shall provide semiannual reports to the cabinet that describe the progress of the corrective action program, compile all groundwater monitoring data, and evaluate the effect of the continued receipt of nonhazardous wastes on the effectiveness of corrective action.

(f) The cabinet may require the owner or operator to commence closure of the unit if the owner or operator fails to implement corrective action measures in accordance with the approved contingent corrective measures plan within one (1) year as required in paragraph (d) of this subsection, or fails to make substantial progress in implementing corrective action and achieving the facility's groundwater protection standard or background levels if the facility has not yet established a groundwater protection standard.

(g) If the owner or operator fails to implement corrective measures as required in paragraph (d) of this subsection, or if the cabinet determines that substantial progress has not been made pursuant to paragraph (f) of this subsection the cabinet shall:

1. Notify the owner or operator in writing that the owner or operator must begin closure in accordance with the deadlines in subsections (1) and (2) of this section and provide a detailed statement of reasons for this determination; and

2. Provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments on the decision no later than twenty (20) days after the date of the notice.

3. If the cabinet receives no written comments, the decision shall become final five (5) days after the close of the comment period. The cabinet shall notify the owner or operator that the decision is final, and that a revised closure plan, if necessary, shall be submitted within fifteen (15) days of the final notice and that closure shall begin in accordance with the deadlines in subsection (1) and (2) of this section.

4. If the cabinet receives written comments on the decision, a final decision shall be made within thirty (30) days after the end of the comment period. The cabinet shall provide the owner or operator in writing and the public through a newspaper notice, a detailed statement of reasons for the final decision. If the cabinet determines that substantial progress has not been made, the owner or operator shall initiate closure in accordance with the deadlines in subsections (1) and (2) of this section.

Section 5. Disposal or Decontamination of Equipment, Structures and Soils. During the partial and final closure periods, all contaminated equipment, structures and soils shall be properly disposed of or decontaminated unless otherwise specified in Section 8 of 401 KAR 34:190, Section 6 of 401 KAR 34:200, Section 8 of 401 KAR 34:210, Section 8 of 401 KAR 34:220, or Section 6 of 401 KAR 34:230 or under the authority of Section 2 and 4 of 401 KAR 34:250. By removing any hazardous wastes or hazardous constituents during partial and final closure, the owner or operator may become a generator of hazardous waste and shall handle that waste in accordance with all applicable requirements of 401 KAR Chapter 32.

Section 6. Certificate of Closure. Within sixty (60) days of completion of closure of each hazardous waste surface impoundment, waste pile, land treatment, and landfill unit, and within sixty (60) days of the completion of final closure, the owner or operator shall submit to the cabinet, by registered mail, a certification that the hazardous waste management unit or facility, as applicable, has been closed in accordance with the specifications in the approved closure plan. The certification shall be signed by the owner or operator and by an engineer. Documentation supporting the engineer's certification shall be furnished to the cabinet upon request until it releases the owner or operator from the financial assurance requirements for closure under Section 12 of 401 KAR 34:090.

Section 7. Survey Plat. No later than the submission of the certification of closure of each hazardous waste disposal unit, the

owner or operator shall submit to the local zoning authority, or the authority with jurisdiction over local land use, and to the cabinet, a survey plat indicating the location and dimensions of landfill cells or other hazardous waste disposal units with respect to permanently displayed benchmarks. This plat shall be prepared and certified by a professional land surveyor registered in Kentucky. The plat filed with the local zoning authority, or the authority with jurisdiction over local land use, shall contain a note, prominently displayed, which states the owner's or operator's obligation to restrict disturbance of the hazardous waste disposal unit in accordance with this administrative regulation.

Section 8. Postclosure Care and Use of Property. (1)(a) Postclosure care for each hazardous waste management unit subject to the requirements of Sections 8 to 11 of this administrative regulation shall begin after completion of closure of the unit and continue for thirty (30) years after that date and shall consist of at least the following:

1. Monitoring and reporting in accordance with the requirements of 401 KAR 34:060, 401 KAR 34:200, 401 KAR 34:210, 401 KAR 34:220, 401 KAR 34:230, and 401 KAR 34:250; and

2. Maintenance and monitoring of waste containment systems in accordance with the requirements of 401 KAR 34:060, 401 KAR 34:200, 401 KAR 34:210, 401 KAR 34:220, 401 KAR 34:230, and 401 KAR 34:250.

(b) Any time preceding partial closure of a hazardous waste management unit subject to postclosure care requirements or final closure, or any time during the postclosure period for a particular unit, the cabinet may, in accordance with the permit modification procedures in 401 KAR Chapter 38:

1. Shorten the postclosure care period applicable to the hazardous waste management unit, or facility, to not less than thirty (30) years as specified in KRS 224.46-520 if all disposal units have been closed, if the cabinet finds that the reduced period is sufficient to protect human health and the environment (e.g., leachate or groundwater monitoring results, characteristics of the hazardous wastes, application of advanced technology, or alternative disposal, treatment, or reuse techniques indicate that the hazardous waste management unit or facility is secure); or

2. Extend the postclosure care period applicable to the hazardous waste management unit or facility if the cabinet finds that the extended period is necessary to protect human health and the environment (e.g., leachate or groundwater monitoring results indicate a potential for migration of hazardous wastes at levels which may be harmful to human health and the environment).

(2) The cabinet may require, at partial and final closure, continuation of any of the security requirements of Section 5 of 401 KAR 34:020 during part or all of the postclosure period when:

(a) Hazardous wastes may remain exposed after completion of partial or final closure; or

(b) Access by the public or domestic livestock may pose a hazard to human health.

(3) Postclosure use of property on or in which hazardous wastes remain after partial or final closure shall never be allowed to disturb the integrity of the final cover, liner(s), or any other components of any containment system, or the function of the facility's monitoring systems, unless the cabinet finds that the disturbance:

(a) Is necessary to the proposed use of the property, and will not increase the potential hazard to human health or the environment; or

(b) Is necessary to reduce a threat to human health or the environment.

(4) All postclosure care activities shall be in accordance with the provisions of the approved postclosure plan as specified in Section 9 of this administrative regulation.

Section 9. Postclosure Plan; Amendment of Plan. (1) Written plan. The owner or operator of a hazardous waste disposal unit shall have a written postclosure plan. In addition, certain waste piles and certain

surface impoundments from which the owner or operator intends to remove or decontaminate the hazardous wastes at partial or final closure are required by Section 6(3)(a)2 of 401 KAR 34:200, and Section 8(3)(a)2 of 401 KAR 34:210 to have contingent postclosure plans. Owners or operators of surface impoundments and waste piles not otherwise required to prepare contingent postclosure plans under Section 6(3)(a)2 of 401 KAR 34:200 and Section 8(3)(a)2 of 401 KAR 34:210 shall submit a postclosure plan to the cabinet within ninety (90) days from the date that the owner or operator or cabinet determines that the hazardous waste management unit shall be closed as a landfill, subject to the requirements of Sections 8 to 11 of this administrative regulation. The plan shall be submitted with the permit application, in accordance with Section 2(13) of 401 KAR 38:090, and approved by the cabinet as part of the permit issuance procedures under 401 KAR Chapter 38. In accordance with Section 3 of 401 KAR 38:030, the approved postclosure plan shall become a condition of any hazardous waste site or facility permit issued.

(2) For each hazardous waste management unit subject to the requirements of this section, the postclosure plan shall identify the activities that will be carried on after closure of each disposal unit and the frequency of these activities, and include at least:

(a) A description of the planned monitoring activities and frequencies at which they will be performed to comply with 401 KAR 34:060, 401 KAR 34:200, 401 KAR 34:210, 401 KAR 34:220, 401 KAR 34:230, and 401 KAR 34:250 during the postclosure care period; and

(b) A description of the planned maintenance activities, and frequencies at which they will be performed, to ensure:

1. The integrity of the cap and final cover or other containment systems in accordance with the requirements of 401 KAR 34:060, 401 KAR 34:200, 401 KAR 34:210, 401 KAR 34:220, 401 KAR 34:230, and 401 KAR 34:250; and

2. The function of the monitoring equipment in accordance with the requirements of 401 KAR 34:060, 401 KAR 34:200, 401 KAR 34:210, 401 KAR 34:220, 401 KAR 34:230, and 401 KAR 34:250; and

(c) The name, address and phone number of the person or office to contact about the hazardous waste disposal unit or facility during the postclosure care period.

(3) Until final closure of the facility, a copy of the approved postclosure plan shall be furnished to the cabinet upon request, including request by mail. After final closure has been certified, the person or office specified in subsection (2)(c) of this section shall keep the approved postclosure plan during the remainder of the postclosure period.

(4) Amendment of plan. The owner or operator shall request a permit modification to authorize a change in the approved postclosure plan in accordance with the applicable requirements of 401 KAR Chapter 38. The written request shall include a copy of the amended postclosure plan for approval by the cabinet.

(a) The owner or operator may submit a written request to the cabinet for a permit modification to amend the postclosure plan at any time during the active life of the facility or during the postclosure care period.

(b) The owner or operator shall submit a written request for a permit modification to authorize a change in the approved postclosure plan whenever:

1. Changes in operating plans or facility design affect the approved postclosure plan; or

2. There is a change in the expected year of final closure, if applicable; or

3. Events which occur during the active life of the facility, including partial and final closures, affect the approved postclosure plan.

(c) The owner or operator shall submit a written request for a permit modification at least sixty (60) days prior to the proposed change in facility design or operation, or no later than sixty (60) days after an unexpected event has occurred which has affected the

postclosure plan. An owner or operator of a surface impoundment or waste pile that intends to remove all hazardous waste at closure and is not otherwise required to submit a contingent postclosure plan under Section 6(3)(a)2 of 401 KAR 34:200 and Section 8(3)(a)2 of 401 KAR 34:210, shall submit a postclosure plan to the cabinet no later than ninety (90) days after the date that the owner or operator or cabinet determines that the hazardous waste management unit shall be closed as a landfill, subject to the requirements of Section 6 of 401 KAR 34:230. The cabinet shall approve, disapprove, or modify this plan in accordance with the procedures in 401 KAR Chapter 38. In accordance with Section 3 of 401 KAR 38:030, the approved postclosure plan shall become a permit condition.

(d) The cabinet may request modifications to the plan under the conditions described in paragraph (b) of this subsection. The owner or operator shall submit the modified plan no later than sixty (60) days after the cabinet's request, or no later than ninety (90) days if the unit is a surface impoundment or waste pile not previously required to prepare a contingent postclosure plan. Any modifications requested by the cabinet shall be approved, disapproved, or modified in accordance with the procedures in 401 KAR Chapter 38.

(5) For existing disposal facilities within the 100-year flood plain, the postclosure plan and cost estimates shall reflect compliance with the requirements in Section 9(2) of 401 KAR 34:020 to prevent washout of waste and protect the facility from inundation by waters of the 100-year flood.

Section 10. Postclosure Notices. (1) No later than sixty (60) days after certification of closure of each hazardous waste disposal unit, the owner or operator shall submit to the local zoning authority or the authority with jurisdiction over local land use and to the cabinet a record of the type, location, and quantity of hazardous wastes disposed of within each cell or other disposal unit of the facility. For hazardous wastes disposed of before January 12, 1981, the owner or operator shall identify the type, location, and quantity of the hazardous wastes to the best of his knowledge and in accordance with any records he has kept.

(2) Within sixty (60) days of certification of closure of the first hazardous waste disposal unit and within sixty (60) days of certification of closure of the last hazardous waste disposal unit, the owner or operator shall:

(a) Record, in accordance with state law, a notation on the deed to the facility property - or on some other instrument which is normally examined during title search - that will in perpetuity notify any potential purchaser of the property that:

1. The land has been used to manage hazardous wastes; and

2. Its use is restricted under this administrative regulation; and

3. The survey plat and record of the type, location, and quantity of hazardous wastes disposed of within each cell or other hazardous waste disposal unit of the facility required by Section 7 of this administrative regulation and subsection (1) of this section have been filed with the local zoning authority or the authority with jurisdiction over local land use and with the cabinet; and

(b) Submit a certification, signed by the owner or operator, that he has recorded the notation specified in paragraph (a) of this subsection, including a copy of the document in which the notation has been placed, to the cabinet.

(3) If the owner or operator or any subsequent owner or operator of the land upon which a hazardous waste disposal unit is located wishes to remove hazardous wastes, hazardous waste residues, the liner, if any, or contaminated soils, he shall request a modification to the postclosure permit in accordance with the applicable requirements in 401 KAR Chapter 38. The owner or operator shall demonstrate that the removal of hazardous wastes will satisfy the criteria of Section 8(3) of this administrative regulation. By removing hazardous waste, the owner or operator may become a generator of hazardous waste and shall manage it in accordance with all applicable requirements of this chapter. If he is granted a permit modification or otherwise

ADMINISTRATIVE REGISTER - 602

granted approval to conduct such removal activities, the owner or operator may request that the cabinet approve either:

(a) The removal of the notation on the deed to the facility property or other instrument normally examined during title during title search; or

(b) The addition of a notation to the deed or other instrument indicating the removal of the hazardous waste.

Section 11. Certification of Completion of Postclosure Care. No later than sixty (60) days after completion of the established postclosure care period for each hazardous waste disposal unit, the owner or operator shall submit to the cabinet by registered mail, a certification that the postclosure care period for the hazardous waste disposal unit was performed in accordance with the specifications in the approved postclosure plan. The certification shall be signed by the owner or operator and an engineer. Documentation supporting the engineer's certification shall be furnished to the cabinet upon request until he releases the owner or operator from the financial assurance requirements for postclosure care under Section 12 of 401 KAR 34:100.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: July 11, 1996

FILED WITH LRC: July 12, 1996 at 9 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Thursday, August 29, 1996, at 7 p.m. Eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing, at the address noted below, by August 24, 1996. If by that date Mr. Hale has not received any notification of intent to attend the hearing, the hearing will be canceled. This hearing is open to the public. Any person wishing to comment on the proposed administrative regulation will be given an opportunity to do so. Persons testifying at the hearing are requested to provide a written copy of their testimony, if available. A transcript of the hearing will not be made unless a request for such is filed with Mr. Hale by August 24, 1996 and arrangements for payment of the transcript are made by that date. Written comments may also be submitted on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than the date of the close of the public hearing on August 29, 1996. Persons submitting written comments are also requested to provide an electronic copy of their comments, if available. The preferred format for the electronic format is any version of Word Perfect on 3.5 inch diskettes; however, any other format would be greatly appreciated, should Word Perfect or 3.5 inch diskettes not be available. The Natural Resources and Environmental Cabinet does not discriminate on the basis of color, national origin, sex, religion, age, or disability in employment or the provision of services. Upon request, the Cabinet will provide reasonable accommodation, including auxiliary aids and services, necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as a interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by August 24, 1996.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: The proposed amendments affect owners and operators of hazardous waste facilities.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the 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. Effect on the 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. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No public comments were received.

2. Second and subsequent years: No public comments were received.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First Year: The agency staff will experience increased workloads due to processing the newly regulated entities. The increased workload should be the only effects on the agency.

2. Continuing costs or savings: Once the newly regulated entities are processed, there will be no additional costs.

3. Additional factors increasing or decreasing costs: There are no additional factors affecting costs.

b. Reporting and paperwork requirements: There are no additional paperwork requirements.

4. Assessment of anticipated effect on state and local revenues: There are no anticipated effects on state and local revenues.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: EPA grants are anticipated to be used for the implementation and enforcement of the regulation.

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

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: No alternatives were considered. These changes are consistent with federal standards.

8. Assessment of expected benefits of the administrative regulation: The expected benefits are consistency with federal standards and clarification of existing requirements.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: The public health and environmental welfare will improve across the commonwealth with the implementation of this regulation.

b. State whether a detrimental effect on the environment and public health would result if not implemented: Not applicable.

c. If detrimental effect would result, explain detrimental effect: Not applicable.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no statutes, policies, or regulations that conflict, overlap, or duplicate the regulation.

a. Necessity of proposed regulation if in conflict: Not applicable.

b. If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

11. Any additional information or comments: No additional comments.

12. TIERING: Is tiering applied? Tiering is applied to all of Kentucky's hazardous waste regulations, based on type and quantity of hazardous waste generated or managed and type of management activities performed by the owner or operator.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: